IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

-vs-

MORGAN STANLEY SENIOR FUNDING, INC.,

Defendant.

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.

Defendant,

HEARING BEFORE THE HONORABLE
ELIZABETH MAASS

Wednesday, September 15, 2004
Palm Beach County Courthouse
West Palm Beach, Florida 33401
8:45 - 9:15 a.m.

Reported By:
KATHY SZABO
Notary Public, State of Florida
Esquire Deposition Services
West Palm Beach Office Job #668687
Phone: 800.330.6952
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APPEARANCES:

On behalf of Coleman and MacAndrews:

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SEARCY, DENNEY, SCAROLA, BARNHART & SHIPLEY
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and

Via telephone on behalf of Coleman and MacAndrews:

JEROD S. SOLOVY, ESQUIRE
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IBM Plaza
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Chicago, Illinois 60611

On behalf of Morgan Stanley Senior Funding:

JOSEPH IANNO, JR., ESQUIRE
CARLTON, FIELDS
222 Lakeview Avenue
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West Palm Beach, Florida 33401

and

Via telephone on behalf of Morgan Stanley Senior Funding:

LARRY BEMIS, ESQUIRE
KIRKLAND and ELLIS
655 15th Street, N.W.
Suite 1200
Washington, DC 20005

P R O C E E D I N G S

- - -

THE COURT: We can start talking about a couple of preliminary matters. We need to reset --

MR. SCAROLA: -- the hearing relating to our trial setting.

THE COURT: Right. That was the continuation of the case management conference including the discussion of the trial setting. Is that the only one we missed?

MR. IANNO: No. I don't think we got to a lot of the motions that were scheduled for the hearing, was it the 23rd?

THE COURT: But that's still the continuation of the case management conference.

MR. IANNO: Right. Yes.

MR. SCAROLA: There are various discovery issues pending. There is the reset of the trial date. We're awaiting an order from Your Honor with regard to the contempt.

THE COURT: Right.

MR. SCAROLA: And I think that that's the general description.

THE COURT: But the only hearing we missed

was the continuation of the case management for the 7th.

We probably need we think at least an

hour, two hours? You tell me how long we need.

MR. SCAROLA: For what piece, for the setting the trial date?

THE COURT: Well, in the pieces we had left from the last case management conference.

MR. IANNO: I would say we will probably spend 45 minutes to an hour just talking about the trial setting and those dates, just as a guess. Maybe not. But an hour at a minimum I would say, Your Honor, to handle everything.

I know, Mr. Scarola, we were just talking about some scheduling issues.

THE COURT: Okay. Scheduling hearing issues or scheduling other issues?

MR. SCAROLA: I have some conflict issues.

THE COURT: You guys are coming back on the 23rd, right?

MR. SCAROLA: That's correct. Yes.

THE COURT: At this point, I would rather do it then.

MR. IANNO: Well, that's one of the scheduling concerns.

THE COURT: Is that one of the scheduling concerns?

MR. SCAROLA: Yes. The problem, Your Honor, is that I am scheduled to be out of town and my client would like me to be present when

we deal with --

THE COURT: Hi, this is Judge Maass. Who do I have on the phone?

MR. SOLOVY: In Chicago we have Mr. Marmer and Solovy.

MR. BEMIS: Good morning, Your Honor. In Washington, Larry Bemis and Tom Clare.

THE COURT: Anybody else?

MR. BEMIS: No, Your Honor. That's all from our side.

THE COURT: Okay. The court reporter asked that you identify yourself when you speak, okay?

MR. BEMIS: Yes, Your Honor. Larry Bemis.

THE COURT: We were talking about, before you all got on the phone, we were simply talking about what we need to reset and what the parameters were, and it was at least my understanding that what we need to reset is the continuation of the case management conference

that was set for the afternoon of the 7th and that includes the discussion of the trial setting; is that correct?

MR. BEMIS: Your Honor, this is Larry Bemis. That is our understanding.

THE COURT: And before you got on the

phone we decided we needed probably, to complete those items, at least an hour and preferably a little bit more. Do you think that's correct.

MR. BEMIS: I think that's a fair assessment. We might be able to do it a little shorter, but that's pretty close.

THE COURT: Okay. And I had asked counsel whether we thought we could incorporate it in the hearing set Thursday afternoon. Mr. Scarola said he had a conflict next week that he needed to discuss and that's when we got you all on the phone.

So Mr. Scarola, what's your concern about next week?

MR. SCAROLA: Thank you, Your Honor.

Obviously, we would like to be able to reach the trial-setting issues as soon as possible, and if there were a way for us to do

that this week sometime before Friday morning, that is our strong preference because I can be present for that. I leave Friday morning and don't return until Monday of the week after next. That is the last week in September is when I get back. I think the date is the 28th or something like that. So our preference is to deal with those issues before I leave.

THE COURT: But I thought, maybe I'm not remembering, I thought when we talked about this once before Mr. Bemis said that he had wanted to be here physically present when we discussed those issues or not.

MR. BEMIS: This is Larry Bemis. Yes, I do want to be present. And we have a case management conference next Thursday.

MR. SCAROLA: I understand that, and we were prepared to have the case management conference go forward while we were dealing with discovery issues.

But if we are dealing with a trial-setting issue, my client would like me to be present when we deal with the trial-setting issue. That's why we would very much like to be able to resolve that before the end of this week if

that's possible.

THE COURT: Right. I understand that concern. I'll be honest, we're closed tomorrow for Rosh Hashanah and I am out of town on Friday. So I can do it this afternoon, but in fairness to Mr. Bemis, he's been adamant sort of all along that he wanted to be present for that discussion.

So then the question is, do you want to

keep that discussion on the 23rd or are you also making a motion to continue that case management conference?

MR. SCAROLA: We have two problems with regard to the 23rd. We would not want to deal with the trial-setting issue in my absence and I will be absent on the 23rd. We're prepared to go forward with other issues on the 23rd.

THE COURT: But we still need a hearing on the trial issues.

MR. SCAROLA: That's correct. But we would also request, Your Honor, for the convenience of my Chicago co-counsel, if there's a way to move the 23rd hearing earlier in the day that will allow them to be able to get back to Chicago for the Jewish holidays

that week.

THE COURT: Right. Unfortunately, that's a day when the longest hearing I have the rest of the day is an hour, and I have a bunch of 15 minute and 30-minute hearings. So there's not a block of time.

MR. SCAROLA: What does it look like the following week in terms of moving everything to the following week?

THE COURT: The following week is set to be a jury trial.

MR. BEMIS: This is Mr. Bemis. The following week we've got depositions set in New York on Tuesday which requires travel on Monday and we have commitments of a firm partners' meeting in Chicago and we are all tied up starting on Friday. I'm just not available on the 29th and the 30th.

I will do anything on the 23rd that they want including coming in and out of court on 15-minute segments if that's what they want. But the next week has been blocked out as a result of prior scheduling.

THE COURT: I just lost the bailiff.

Hold on one second, let me go grab my JA.

(Brief recess.)

THE COURT: Sorry. I just wanted to check on something because we spent most of yesterday resetting stuff. What I can do on the 23rd starting there is take you guys from 3:00 to 5:00 and limit you, if you can, to at 9:30 and I can actually can give you two and a half hours at 9:30 that day. Weren't we discussing --

MR. SCAROLA: 9:30 on the 23rd.

THE COURT: Right. Instead of 3:00, just flip you with some hearings that I have.

Because those notices, the ones that I have beginning at 9:30, we only sent out the notices of hearing yesterday. Those were ones I had already missed, so if they are going to complain about the 23rd --

MR. SCAROLA: Mr. Solovy, how does that sound?

MR. SOLOVY: What would that be?

MR. SCAROLA: It would be 9:30 a.m. on Thursday, the 23rd.

MR. SOLOVY: 9:30 to what, Your Honor?

THE COURT: Until noon. I can give you until noon that day. I have a 30-minute and

then two hour hearings and then I will just -- wait, because then I won't fit those in.

I can give you a 10:00.

MR. SOLOVY: 10:00 to noon?

THE COURT: 10:00 to noon.

MR. SOLOVY: That would be good.

THE COURT: Okay.

MR. BEMIS: Your Honor, 10:00 to noon is fine for me for the 23rd.

THE COURT: Although we still have the issue of going back, right, and trying to get the hearing discussed about the trial setting.

MR. SCAROLA: If it is possible somehow to do that this week, then that's our preference.

Otherwise we don't want to wait three weeks to get a trial setting, Your Honor. And we will go forward in my absence on the 23rd with that issue. Obviously, we would rather not do that, but if faced with the alternative of either doing that or waiting two more weeks beyond that to get a trial setting, our preference is to move forward on the 23rd.

THE COURT: Okay. So that's what we will do. Okay.

MR. SOLOVY: Your Honor, could I raise

another issue, if I may, as long as we have everybody?

THE COURT: Ever so briefly because I have got a bunch of 8:45s waiting. What is it, sir?

MR. SOLOVY: The amendment to the pleading was due September 7th. Could we get a date now for that or do we have to wait until next week?

MR. BEMIS: Your Honor, we have a motion pending on that, and I didn't know that was going to be called up this morning to be argued and we're not in a position to argue that this morning.

THE COURT: We will just note it as another issue.

MR. SOLOVY: Well, Your Honor, they filed

a motion to extend the amendment to next Tuesday. That's later than we would like, but we're agreeable to that date, Your Honor, rather than just shilly-shallying along with this.

THE COURT: So what you're telling me is I can do an agreed order extending the time to file amended pleadings until next Tuesday, the 22nd?

MR. SOLOVY: The 21st.

MR. SCAROLA: The 21st.

THE COURT: Is everybody in agreement on that?

MR. BEMIS: Your Honor, the answer is no, we're not, because until such time as we get some pending matters resolved which Your Honor has under consideration, we have issues with regard to getting the filing made with the Court.

THE COURT: I'm confused. I thought the only thing I had under advisement was the motion to dismiss the contempt.

MR. IANNO: And that, the reason the 21st was picked is because we thought because everything was happening, we would have a resolution of that.

THE COURT: So why does that have anything

to deal with the pleadings in the primary case?

MR. IANNO: It has to do -- and, Larry, I don't know if you would like to address that or do you want me to?

MR. BEMIS: You can go ahead and address it.

MR. IANNO: It has to do with the objection to the pro hac vice objection that is

based on contempt. If they would agree to the pro hac vice admission of Kellog, Huber, that issue may get resolved.

THE COURT: What you're telling me is that their participation was so critical that you're unable to determine whether you need to amend the pleadings?

MR. IANNO: We need to have somebody that can sign the pleadings.

MR. SCAROLA: Mr. Ianno has repeatedly represented that his firm has no conflict in that regard, Your Honor.

MR. IANNO: I can't, for other reasons.

MR. BEMIS: Mr. Ianno has correctly summarized what our position is on this. We need to have a ruling. It's not a delay problem. We obviously have been internally addressing this, but there are simply issues

that I cannot address on the telephone that our other counsel are involved that implicate this and they are pending a ruling on these other matters and that is where we stand on this. We are prepared to proceed promptly once we have these other issues resolved, but, again, because there are other --

THE COURT: Promptly, like a day?

MR. BEMIS: -- counsel involved, we are not involved in the discussion related to it, they cannot participate on the telephone calls to the Court, we are just at a standstill on this.

MR. SOLOVY: Well, Your Honor, obviously, we take exception to that, obviously.

THE COURT: I understand. And I understand plaintiff's consternation. In all fairness, though, that motion wasn't set for a hearing today, I don't think it gets argued. I understand your concern.

MR. SCAROLA: Well, if it doesn't get argued they ought to be complying with the previously entered order. Simply by filing a motion for extension --

THE COURT: I understand it doesn't toll and I understand that's the argument you're going to make when they come in and they want

to amend the pleading.

Okay. I will see everybody but Mr. Scarola on the 23rd.

Was there anything else?

MR. IANNO: Mr. Scarola and I discussed,

because of these extensions, we're continuing the stay of the contempt discovery that had been previously extended.

MR. SCAROLA: That's fine. Do I need to do an order?

MR. IANNO: I don't think so. We have it on the record.

MR. SCAROLA: Only the order on the motion to dismiss the contempt proceeding.

MR. IANNO: Right.

THE COURT: Okay. Thank you very much.

Thank you, sirs.

(The hearing was concluded.)

C E R T I F I C A T E

THE STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, KATHY SZABO, Registered Professional Reporter, State of Florida at large, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 22nd day of September, 2004.

_____
KATHY SZABO
Court Reporter

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

CASE NO.: CA 03-5045 Al

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, CASE NO.CA 03-5 165 Al INC.,

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC., *et al.*,

Defendant.
_____/

JOINT SUBMISSION OF THE PARTIES FOR SEPTEMBER 23, 2004 CASE MANAGEMENT CONFERENCE

Pursuant to the Court's Order of February 24, 2004, the parties in the above-referenced action hereby submit the following Joint Submission in advance of the September 23, 2004 Case Management Conference.

I. Agreed-Upon Statement Of Background And Procedural History

The following is the parties' agreed-upon summary of the two companion cases now pending before this Court, which have been consolidated for trial.

A. Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co. Incorporated. (Case No. 03 CA-005045 Al)

Background. This case arises out of an acquisition transaction that was negotiated and consummated in late 1997 and early 1998, in which Coleman (Parent) Holdings Inc. ("CPH") sold its 82% interest in The Coleman Company, Inc. ("Coleman") to Sunbeam Corporation. ("Sunbeam"). Morgan Stanley & Co., Inc. ("Morgan Stanley") served as financial advisor to Sunbeam for parts of the acquisition transaction and served as the lead underwriter for a $750,000,000 debenture offering that Sunbeam used to finance the acquisition.

CPH's Complaint alleges claims arising from this transaction for fraudulent misrepresentation, negligent misrepresentation, aiding and abetting fraud, and conspiracy. CPH's Complaint has sought damages of at least $485 million and has reserved the right to seek punitive damages. Morgan Stanley denies the material allegations in CPH's Complaint and also denies CPH's entitlement to damages.

Procedural History. CPH filed its Complaint on May 8, 2003 (the "CPH Action"). Morgan Stanley filed its Answer on June 23, 2003 and, on June 25, 2003 filed its Motion to Dismiss Pursuant To Florida Rule of Civil Procedure 1.061 Or, In the Alternative, For Judgment On The Pleadings. The Court held a hearing on these motions on December 12, 2003. On December 15, 2003, the Court issued an Order denying both motions. On January 9, 2004, Morgan Stanley timely filed a Notice of Appeal regarding the denial of its motion to dismiss. *See* Florida Rule of Appellate Procedure 9.130(a)(3)(A) (providing for interlocutory appellate review of non-final orders "concerning venue"). On February 20, 2004, the Court consolidated CPH's action against Morgan Stanley with Morgan Stanley Senior Funding's action against CPH and MacAndrews & Forbes Holdings Inc.

B. Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., *et al.* (Case No. 03 CA-005165 AI)

Background. This action arises out of the same series of financial transactions as the CPH Action. In 1998, Morgan Stanley Senior Funding, Inc. ("MSSF") and other lenders entered into a credit agreement with Sunbeam under which MSSF agreed to provide senior secured financing to Sunbeam in connection with Sunbeam's acquisition of Coleman and two smaller companies.

MSSF's Complaint alleges that, in the course of Sunbeam's acquisition of Coleman, Defendants MacAndrews & Forbes Holdings Inc. ("MAFCO") and CPH provided false information to MSSF about the "synergies" that Sunbeam would achieve from the combination of Sunbeam and Coleman. MSSF alleges that Defendant's inflated synergy projections caused Sunbeam to pay a higher price to acquire Coleman and consequently caused Sunbeam's lenders (including MSSF) to make larger loans to finance the acquisition. MSSF's Complaint alleges that it suffered hundreds of millions of dollars in damages when Sunbeam declared bankruptcy in February 2001 and defaulted on acquisition-related loans. MSSF has alleged claims for fraud and negligent misrepresentation, and has reserved the right to seek punitive damages. CPH denies the material allegations in MSSF's Complaint and also denies MSSF's entitlement to damages.

Procedural History. MSSF filed its Complaint against MAFCO and CPH on May 12, 2003 (the "MSSF Action"). The MSSF Action was initially assigned to Division AG. Because the MSSF Action and the CPH Action involve the same series of financial transactions and arise from a common set of operative facts, the parties agreed that the two cases are companion cases under Local Rule 2.009 and requested a transfer to Division AI, where the first-filed, lower numbered CPH Action was assigned. The motion to transfer was granted on June 9, 2003.

Defendants CPH and MAFCO filed their Answer on June 25, 2003. On February 20, 2004, the Court consolidated MSSF's action against CPH and MAFCO with CPH's action against Morgan Stanley.

II. Report On Discovery In The Two Cases

A. Morgan Stanley's And MSSF's Position On Discovery

1. Merits Discovery

CPH, MAFCO, Morgan Stanley, and MSSF are actively pursuing written and deposition discovery in these consolidated actions. The parties have exchanged hundreds of thousands of pages of documents, have served and answered multiple sets of interrogatories and requests for admission, and have deposed more than two dozen party and non-party witnesses. Discovery in both cases is ongoing.

At the February 20, 2004 Case Management Conference, counsel for Morgan Stanley informed the Court that — according to counsel's best estimates — approximately seventy (70) additional depositions would need to be completed before the close of fact discovery. Thereafter, on or about March 11, the parties agreed to alternate weeks for taking and defending depositions.

Since the February 20 Case Management Conference, thirty (30) additional depositions have been completed. Six (6) more depositions have been scheduled and are confirmed for the weeks ahead. Morgan Stanley has multiple requests for deposition dates of CPH, MAFCO, and Coleman witnesses — and has attempted to secure deposition dates for several additional non-party witnesses. At the July 23 Case Management Conference, counsel for Morgan Stanley advised the Court that — according to counsel's best estimates approximately forty-three (43) days of deposition testimony remain to be completed. That number will increase, however, in

light of additional depositions requested by CPH and MAFCO since the July 23 Case Management Conference. Since that estimate was given, CPH and MAFCO have requested the depositions of four (4) additional current or former Morgan Stanley employees and have requested one (1) additional Rule 1.310 deposition (bringing the total number to 7).

In their Position on Discovery (below), CPH and MAFCO state that thirty-one (31) depositions have been taken by CPH and MAFCO, and eighteen (18) have been taken by MS&Co. and MSSF. But those figures — and the table prepared by CPH and MAFCO to summarize the depositions — do not accurately reflect the depositions taken by Morgan Stanley. Seven (7) of the third-party witnesses identified by CPH and MAFCO as "taken by" CPH and MAFCO were, in reality, examined by Morgan Stanley as well. Moreover, CPH and MAFCO count the Rule 1.310 deposition of Steven Fasman (taken by Morgan Stanley) as a single deposition, when in fact Mr. Fasman appeared for two separate Rule 1.310 depositions.[1] In reality, twenty-four (24) witnesses have been deposed by Morgan Stanley.

The parties have experienced considerable difficulty scheduling depositions in light of scheduling conflicts for counsel on both sides and the location of the witnesses, almost all of whom are located outside of Florida. CPH and MAFCO have offered witnesses for depositions outside of Florida on dates previously established by the Court for Case Management Conferences (or on the day before in New York) and have, on several occasions, confirmed (and then canceled or postponed) depositions previously set to go forward.

For example, CPH and MAFCO twice postponed the deposition of Barry Schwartz (now completed), postponed the deposition of Bruce Slovin (now completed), and postponed the deposition of James Robinson, for various reasons ranging from "unavoidable conflicts" to

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[1] CPH and MAFCO count the corresponding Rule 1.310 depositions of Morgan Stanley witnesses as two separate depositions.

"medical emergencies." Similar scheduling considerations have required Morgan Stanley to postpone the depositions of other deposition witnesses, many of whom no longer work for Morgan Stanley and are no longer under its control.

Even when depositions have been successfully scheduled, the parties have experienced difficulties beyond their control that have prevented depositions from going forward. When Mr. Schwartz's deposition was finally scheduled and confirmed for June 18, for example, the deposition needed to be postponed (for a third time) because Morgan Stanley's attorneys were unable to make it to New York for the deposition due to inclement weather and cancelled flights.

Morgan Stanley is, of course, willing to accommodate the legitimate scheduling considerations of witnesses and their counsel, but these schedule conflicts and difficulties have prevented the parties from proceeding with depositions at the pace contemplated during the February 20 Case Management Conference.

Finally, the parties have had to divert resources away from deposition discovery to address collateral issues unrelated to the merits of these consolidated actions. These issues are discussed in the next section.

2. Non-Merits Discovery

On March 12, CPH filed its Motion For A Rule To Show Cause. On May 14, 2004, the Court converted CPH's Motion for a Rule To Show Cause into a Motion for Contempt. On July 30, 2004, Morgan Stanley filed its Motion to Dismiss or Strike Plaintiff's Motion For Contempt. That motion, which is based on the Court's determination and July 26 Order that the Settlement Agreement was properly in the public domain as part of the Court's public file since December 2003, was addressed during the August 13 and August 17 Case Management Conferences. If granted, Morgan Stanley's Motion to Dismiss or Strike would obviate the need for further non-

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merits discovery, and would allow the parties and the Court to return their full attention to the merits of these consolidated actions.

On March 19, CPH served its first set of interrogatories relating to its motion for contempt. Morgan Stanley responded to those Interrogatories on June 16, 2004 and provided supplemental responses to CPH on June 29, 2004. On July 12, 2004, the Court entered an Order directing Morgan Stanley to supplement its responses to those Interrogatories within twenty days, including certain responses to be filed directly with the Court under seal. Morgan Stanley provided the non-privileged portions of its amended responses to CPH on August 2, 2004. Morgan Stanley has completed the *in camera* portion of its amended responses and is prepared to submit the *in camera* portion directly to the Court, pending the Court's ruling on Morgan Stanley's Motion to Dismiss or Strike.

On May 28, CPH served its second set of interrogatories relating to its motion for contempt — together with a set of document requests relating to that motion. On that same date, Morgan Stanley served its own interrogatories and requests for documents on CPH relating to CPH's motion for contempt. The parties served responses and objections to this "second wave" of non-merits discovery on June 28, 2004.

On August 13, the Court entered an Order temporarily staying all contempt discovery. If the Court does not grant Morgan Stanley's Motion to Dismiss or Strike, Morgan Stanley expects additional "waves" of non-merits discovery to be served in the weeks and months ahead, further diverting the parties from the merits.

CPH's contempt motion, together with CPH's related Motion to Allow Arthur Andersen Access to Confidential Transcript (filed May 5, 2004) and other motions relating to the confidentiality of documents and pleadings, have required extensive additional briefing,

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necessitated attendance of counsel at multiple specially-set hearings in Florida, and the preparation of non-merits discovery requests and responses. CPH's objections also have prevented attorneys from Kellogg, Huber, Hansen, Todd, and Evans P.L.L.C. ("KHHTE") from participating as co-counsel and assisting with discovery. These satellite issues have prevented the parties from conducting depositions at the pace originally contemplated during the February 20, 2004 Case Management Conference.

CPH and MAFCO, acting in concert with Arthur Andersen, are using the non-merits discovery served in these cases to manipulate the proceedings in these consolidated actions and Civil Action No. 04-22577 AA, now pending before Judge Miller. In pleadings filed with Judge Miller, Arthur Andersen has moved for sanctions against Morgan Stanley, sought to disqualify Morgan Stanley's attorneys in that action, and moved to stay all discovery in that action. Simultaneously, CPH (who has professed a "unity of interest" with Arthur Andersen) has sought, through the non-merits discovery served in these consolidated actions, to discover detailed information regarding Morgan Stanley's damages claims in the Civil Action No. 04-22577 AA. CPH seeks this information despite the fact that Arthur Andersen is not a party in these consolidated actions. Kirkland & Ellis LLP does not represent Morgan Stanley in Civil Action No. 04-22577 AA, and CPH has objected to Morgan Stanley's chosen counsel (KHHTE) from appearing in these consolidated actions.

The satellite issues and gamesmanship described in this section have prevented the parties from conducting depositions at the pace originally contemplated during the February 20, 2004 Case Management Conference.

B. CPH's And MAFCO's Position On Discovery

CPH and MAFCO stipulate only to the first paragraph of Section II.A above. CPH and MAFCO object to the remaining statements concerning discovery as incomplete, misleading, and self-serving on the part of Morgan Stanley and MSSF. CPH and MAFCO expressed these objections to Morgan Stanley and MSSF, and requested that a neutral statement of the discovery status be substituted, but Morgan Stanley and MSSF refused that request. Consequently, CPH and MAFCO provide the account of discovery that follows,

1. Deposition Discovery

As of September 16, 2004, 49 depositions have been taken. Of those depositions, 31 have been taken by CPH and MAFCO, and 18 have been taken by Morgan Stanley and MSSF:

MS/MSSF WITNESSES	AFFILIATION AT RELEVANT TIME	DATE	TAKEN BY
Boone, Shani	Morgan Stanley	04/22/2004	CPH/MAFCO
Burchill, Thomas	Morgan Stanley	08/27/2004	CPH/MAFCO
Chang, Tyrone	Morgan Stanley	01/08/2004	CPH/MAFCO
Conway, Andrew	Morgan Stanley	06/04/2004	CPH/MAFCO
Fuchs, Alexandre	Morgan Stanley	02/13/2004	CPH/MAFCO
Hart, Michael	MSSF	05/19/2004	CPH/MAFCO
Kitts, Robert	Morgan Stanley	02/12/2004	CPH/MAFCO
MS/MSSF (by John Plotnick)	Morgan Stanley	09/09/2003	CPH/MAFCO
MS E-mail Rep.(Robert Saunders)	Morgan Stanley	02/10/2004	CPH/MAFCO
Rafii, Lily	Morgan Stanley	04/02/2004	CPH/MAFCO
Savarie, Andrew	Morgan Stanley	01/22/2004	CPH/MAFCO
Seth, Ishaan	Morgan Stanley	07/30/2004	CPH/MAFCO
Smith, R. Bram	MSSF	02/24/2004	CPH/MAFCO
Strong, William	Morgan Stanley	12/04/2003	CPH/MAFCO
Stynes, James	Morgan Stanley	07/13/2004	CPH/MAFCO
Tyree, John	Morgan Stanley	09/15/2003	CPH/MAFCO
Tyree, John	Morgan Stanley	11/14/2003	CPH/MAFCO
Webber, Joshua	Morgan Stanley	05/18/2004	CPH/MAFCO
Whelan, Christopher	Morgan Stanley	07/14/2004	CPH/MAFCO

Wright, William	Morgan Stanley	07/01/2004	CPH/MAFCO
Yoo, Gene	Morgan Stanley	06/16/2004	CPH/MAFCO
MAFCO/CPH WITNESSES			
Drapkin, Donald	MAFCO	06/24/2004	MS
Engelman, Irwin	MAFCO	08/04/2004	MS
Gifford, Frank	MAFCO	07/22/2004	MS
Ginstling, Norman	MAFCO	04/06/2004	MS
Jones, Lawrence	MAFCO	09/03/2004	MS
MAFCO (by Steven Fasman)	MAFCO	09/15/2003 01/21/2004	MS
Moran, John	MAFCO	09/14/2004	MS
Nesbitt, William	MAFCO	08/31/2004	MS
Nesbitt, William	MAFCO	09/01/2004	MS
Page, Joseph	MAFCO	04/27/2004	MS
Salig, Joram	MAFCO	07/08/2004	MS
Schwartz, Barry	MAFCO	06/25/2004	MS
Shapiro, Paul	MAFCO	06/08/2004	MS
Shapiro, Paul	MAFCO	07/28/2004	MS
Slotkin, Todd	MAFCO	07/07/2004	MS
Slovin, Bruce	MAFCO	05/12/2004	MS
THIRD PARTY WITNESSES			
Bornstein, Lawrence	Arthur Andersen	01/15/2004	CPH/MAFCO
Brockelman, Mark	Arthur Andersen	01/14/2004	CPH/MAFCO
Denkhaus, Donald	Arthur Andersen	11/06/2003	CPH/MAFCO
Duffy, Robert	Credit Suisse First Boston	07/08/2004	MS
Geller, Steven	Credit Suisse First Boston	07/30/2004	MS
Kistler, Vance	Arthur Andersen	10/29/2003	CPH/MAFCO
Pastrana, Dennis	Arthur Andersen	01/12/2004	CPH/MAFCO
Pruitt, William	Arthur Andersen	01/13/2004	CPH/MAFCO
Dean, Alan	Davis Polk & Wardwell	06/03/2004	CPH/MAFCO
Lurie, James	Davis Polk & Wardwell	06/18/2004	CPH/MAFCO
Stack, Heather	Davis Polk & Wardwell	05/25/2004	CPH/MAFCO
Yales, Scott	Sunbeam	11/24/2003	CPH/MAFCO

In addition, both sides have requested deposition dates for certain individuals, and expressed interest in deposing still other individuals. Although Morgan Stanley and MSSF attempt to make it appear as if scheduling issues have been caused solely by CPH, in fact, Morgan Stanley and MSSF frequently have delayed providing dates for depositions and have changed previously set dates. In any event, Morgan Stanley's and MSSF's finger-pointing is irrelevant, because there is no motion pending before this Court concerning deposition scheduling — indeed, to date, no such motion ever has been filed.

Concerning counsel for Morgan Stanley's and MSSF's estimates about the depositions to be taken, CPH and MAFCO believe that counsel's estimate is exaggerated. In any event, given that approximately 10 attorneys presently are appearing for Morgan Stanley and MSSF in this case, Morgan Stanley and MSSF certainly have the resources to complete all necessary depositions within any schedule dictated by the Court.

2. Discovery concerning CPH's motion for contempt

The parties have served interrogatories and document requests on each other in connection with CPH's motion for contempt. Because Morgan Stanley's and MSSF's responses to the discovery requests that CPH and MAFCO served on March 19 were insufficient, however, CPH and MAFCO filed a motion to compel. On July 12, this Court entered an order granting that motion in part, and directing Morgan Stanley and MSSF to provide further information within 20 days. On August 2, Morgan Stanley and MSSF purported to provide non-privileged information in compliance with the July 12 order, but Morgan Stanley and MSSF did not comply with the Court's direction to provide privileged information for in camera review. Instead, Morgan Stanley and MSSF filed a motion to enlarge the deadline for doing so. The in-camera materials were submitted to the Court following the August 13 case management conference.

CPH and MAFCO also served further interrogatories and document requests in connection with CPH's motion for contempt on May 28, and Morgan Stanley and MSSF have served responses to those discovery requests. Because CPH and MAFCO believe that the responses are deficient in many respects, however, CPH and MAFCO filed a motion to compel. The Court made some rulings on that motion at the July 23 case management conference, but did not complete its review of the motion. CPH and MAFCO have re-noticed the motion for the upcoming case management conference on September 23.

III. Pretrial Schedule

On February 24, 2004, the Court entered an order setting this matter for trial in January 2005, and on March 23, 2004, this Court entered an Agreed Order setting the pretrial schedule in this matter and scheduling trial to begin on January 18, 2005. At the case management conference on July 23, this Court stated that it would be extending the trial date to March 2005. The Court directed the parties to come to the August 13 case management conference prepared to discuss scheduling the trial as well as associated adjustments to the pretrial schedule.

At that case management conference, the Court indicated that depending on the disposition of the motion for contempt, the Court might go back to an earlier trial date. In an Order entered after the case management conference, the Court directed the parties to come to the August 27 conference "prepared to discuss with specificity each party's ability to be prepared for trial beginning January 18, 2005." Because there was not time to address trial scheduling at

the August 27 conference, the issue was continued for consideration at the next case management conference.

Dated: September 16, 2004

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FAX COVER SHEET

		Phone Number	Fax Number
Date:	September 17, 2004		
To:	Jack Scarola, Esq.	(561) 689-6300	(561) 684-5816
	Jerold Solovy, Esq	(312) 923-2711	(312) 840-7671
	Michael Brody		(312) 840-7711
	Thomas Clare, Esq.		(202) 879-5200
From:	Joyce Dillard, CLA to Joseph Ianno, Jr.	(561) 659.7070	(561) 659.7368

Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 5

Message: To follow please find a copy of Joseph Ianno's letter of today's date to Judge Maass enclosing a fully executed Stipulation Regarding Draft Expert and proposed order prepared by CPH's counsel.

☐ **Original to follow Via Regular Mail** ☐ **Original will Not be Sent** ☐ **Original will follow via Overnight Courier**

****

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (if long distance, please call collect) and return the original message to us at the above address via the U.S. Postal Service. Thank you.

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If there are any problems or complications, please notify us immediately at:
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September 17, 2004

The Honorable Elizabeth Maass
Palm Beach County Courthouse
205 North Dixie Highway, Room 11.1208
West Palm Beach, Florida 33401

VIA HAND-DELIVERY

Re: *Coleman (Parent) Holdings Co. v. Morgan Stanley & Co.*, Case No: CA 03-5045 AI
Morgan Stanley v. MacAndrews & Forbes Holdings, Inc., Case No: CA 03-5165 AI

Dear Judge Maass:

Enclosed please find a courtesy copy of the parties Stipulation Regarding Draft Expert Reports with attached proposed Order Approving Stipulation. If Your Honor finds the proposed order satisfactory, we request that it be executed and conformed copies provided to counsel of record. Enclosed are additional copies and addressed stamped envelopes for your convenience.

Respectfully,

Joseph Ianno, Jr.

/jed

Enclosures

cc: Jack Scarola (by facsimile)
Jerold Solovy (by facsimile)

WPB#566751.35

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

STIPULATION REGARDING DRAFT EXPERT REPORTS

Morgan Stanley & Co. Inc. and Morgan Stanley Senior Funding, Inc. (collectively "Morgan Stanley"), by and through their undersigned attorneys, and Coleman (Parent) Holdings Inc. and MacAndrews & Forbes Holdings, Inc. (collectively "CPH"), by and through their undersigned attorneys, stipulate as follows:

1. Both Morgan Stanley and CPH expect that their respective expert witnesses will prepare and produce expert reports in connection with this action.

2. Counsel for Morgan Stanley and CPH have conferred, and have agreed that the potential discovery of drafts of expert reports, and other documents and communications related to such reports, would add time and cost to the process of preparing such reports, and thus have determined that the parties have a mutual interest in ensuring that such drafts, related documents, or any communications between the parties, their respective counsel, and their respective

consulting and/or testifying expert regarding any such draft, are not subject to discovery in this action.

3. Consequently, the parties stipulate that:

a. The drafts of any report prepared in connection with this action, by any consulting and/or testifying expert retained by either party, or any employee or agent of any such expert, will not be discoverable or admissible in evidence in connection with this action. Such drafts will include any revisions to, or mark-ups of, any draft of any report prepared in connection with this action.

b. Any communications between the parties, their respective counsel, and their respective consulting and/or testifying experts in this action, insofar as that communication relates to any draft of any expert report, as discussed above, also will not be discoverable or admissible in evidence in connection with this action.

Dated:

BY:

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Counsel for Coleman (Parent) Holdings Inc. and MacAndrews & Forbes Holdings

Dated: Sept 16, 2004

BY:

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Counsel for Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding

ORDER APPROVING STIPULATION

THIS CAUSE, having come before the Court upon the foregoing stipulation, and after having reviewed the agreement of the parties, the Court approves the stipulation.

DONE AND ORDERED in chambers in West Palm Beach, Florida this _____ day of September, 2004.

Elizabeth Maass
Circuit Judge

Copies furnished to:

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO: CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.
_____/

CASE NO: CA 03-5165 AI

AMENDED NOTICE OF VIDEOTAPED DEPOSITION

PLEASE TAKE NOTICE that Morgan Stanley & Company Incorporated and Morgan Stanley Senior Funding, Inc. will take the videotaped deposition of Adam Emmerich, pursuant to Florida Rules of Civil Procedure 1.280 and 1.310. The oral examination will take place beginning on September 28, 2004, at 9:30 a.m. and continue from day to day until completed at the offices of Wachtell Lipton Rosen & Katz, 51 West 52nd Street, New York, New York, 10019. The deposition will be taken before a person authorized to administer oaths and recorded by stenographic and videographic means. The video operator will be Esquire Deposition Services of 216 E. 45th Street in New York, New York. The witness is instructed to bring all books, papers, and other things in his possession or under his control relevant to this lawsuit (and not previously produced in discovery) to the examination.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 16th day of September, 2004.

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO: CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.
_____/

CASE NO: CA 03-5165 AI

NOTICE OF VIDEOTAPED DEPOSITION

PLEASE TAKE NOTICE that Morgan Stanley & Company Incorporated and Morgan Stanley Senior Funding, Inc. will take the videotaped deposition of James Maher, pursuant to Florida Rules of Civil Procedure 1.280 and 1.310. The oral examination will take place on October 18, 2004, at 9:30 a.m. and October 19, 2004, at 9:30 a.m. and continue from day to day until completed at the offices of Kirkland & Ellis, LLP, 153 East 53rd Street, New York, New York, 10022. The deposition will be taken before a person authorized to administer oaths and recorded by stenographic and videographic means. The video operator will be Esquire Deposition Services of 216 E. 45th Street in New York, New York. The witness is instructed to bring all books, papers, and other things in his possession or under his control relevant to this lawsuit (and not previously produced in discovery) to the examination.

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
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COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO: CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.
_____/

CASE NO: CA 03-5165 AI

MORGAN STANLEY'S OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC.'S AND MACANDREWS & FORBES HOLDINGS INC.'S MOTION TO COMPEL PRODUCTION OF DEBENTURE-RELATED DOCUMENTS

Neither Coleman (Parent) Holdings, Inc. nor MacAndrews & Forbes Holdings, Inc. (collectively "CPH") ever purchased a single Sunbeam Zero Coupon Convertible Senior Subordinated Debenture ("Sunbeam Debenture"). Despite this undisputed fact, CPH has already requested and received scores of documents regarding Morgan Stanley's activities as underwriter of the Sunbeam Debentures – and now seeks to compel the production of ***additional*** transaction-level communications and trading records of third-parties who ***did*** purchase Sunbeam Debentures. Enough is enough. Additional debenture-related documents sought by CPH have absolutely nothing to do with claims in these consolidated actions. Accordingly, CPH's Motion to Compel should be denied.

BACKGROUND

1. CPH is a wholly owned subsidiary of MacAndrews & Forbes Holdings, Inc. ("MAFCO"). Before CPH completed the acquisition transaction with Sunbeam, CPH was a holding company with an 82% interest in The Coleman Company, Inc. ("Coleman").

2. In late 1997 and early 1998, Sunbeam negotiated with CPH to purchase CPH's 82% interest in Coleman. Morgan Stanley served as Sunbeam's financial advisor during the negotiations that lead to the Coleman acquisition.

3. On February 27, 1998, CPH executed the Agreement and Plan of Merger among Sunbeam Corporation, Laser Acquisition Corp., CLN Holdings Inc., and Coleman (Parent) Holdings Inc. ("Merger Agreement"). Under the Merger Agreement, CPH agreed to sell its interest in Coleman for cash, for Sunbeam's assumption of Coleman and CPH debt, and for approximately 14 million shares of Sunbeam common stock. The Merger Agreement closed on March 30, 1998.

4. To finance Sunbeam's purchase of Coleman and two other companies, Sunbeam determined that it would issue approximately $2,014,000,000 of Sunbeam Debentures. Morgan Stanley served as the underwriter for the Sunbeam Debentures.

5. Sunbeam completed its initial offering of the Sunbeam Debentures on March 25, 1998.

6. Neither CPH nor MAFCO purchased any of the Sunbeam Debentures during the initial offering.

7. Following the initial offering of the Sunbeam Debentures, and to facilitate trading in the Sunbeam Debentures in the secondary-market, Morgan Stanley held a number of the Sunbeam Debentures in its own trading account. In the months following the initial offering, Morgan Stanley facilitated hundreds of secondary-market trades in the Sunbeam Debentures.

8. Neither CPH nor MAFCO traded in the Sunbeam Debentures in the secondary-market.

9. Morgan Stanley has already produced, in response to CPH's First, Second, and Third Requests for Production, scores of documents located after a good faith search involving, relating, or referring to the Sunbeam Debentures. These documents include, without limitation documents that relate to:

- Sunbeam's decision to finance the acquisitions in part with the proceeds from the Sunbeam Debentures such as minutes from the relevant board meeting and the presentations to the board;
- Morgan Stanley's due diligence and other activities undertaken as underwriter of the Sunbeam Debentures such as due diligence agendas, documents received from Sunbeam during due diligence, documents received from Arthur Andersen during due diligence and expense reports associated with due diligence efforts;
- The marketing of the Sunbeam Debentures such as the offering memorandum, drafts of the offering memorandum, the speaking points for the various road show presentations and drafts of the speaking points and the schedule and expenses associated with the road show;
- Morgan Stanley's decision to underwrite Sunbeam's offering of the Sunbeam Debentures including various drafts of an internal memorandum used by the committee making the underwriting decision; and
- Working group lists of the persons involved in the underwriting process.

10. Pursuant to Fla. R. Civ. P. 1.340(c), Morgan Stanley also produced, in response to the Court's July 12, 2004 Order regarding contempt discovery and subject to objections to the relevance of such documents to the merits of these consolidated actions, records of secondary-market trading activity of the Sunbeam Debentures by Morgan Stanley during the time period from March 19, 1998 to February 5, 2001. (*See* Morgan Stanley Confidential 0095741-812.)

ARGUMENT

The Florida Rules of Civil Procedure do not allow discovery requests that seek irrelevant information or that serve no purpose other than to harass and annoy. *See* Fla. R. Civ. P. 1.280(b)-(c). As the Florida Supreme Court stated, discovery was "never intended to be used as a tactical tool to harass an adversary" but rather is meant to simplify the issues and to eliminate the element of surprise. *Elkins v. Syken*, 672 So. 2d 517, 522 (Fla. 1996) ("To allow discovery that is overly burdensome and that harasses, embarrasses, and annoys one's adversary would lead to a lack of public confidence in the credibility of the civil court process.").

I. CPH Did Not Purchase Any Sunbeam Debentures – And Its Claims Against Morgan Stanley Have Nothing To Do With Secondary-Market Trading.

CPH seeks to discover Morgan Stanley's communications with any "Morgan Stanley customer or counter-party to any trade involving Morgan Stanley as a broker or principal relating to the Subordinated Debentures." (CPH Motion to Compel Prod. of Debenture-Related Docs at 1.) In other words, CPH wants Morgan Stanley to undertake a burdensome and wasteful search for transaction-level records and communications with third-party investors who (unlike CPH) purchased Sunbeam Debentures in the initial offering or who (unlike CPH) traded Sunbeam Debentures in the secondary-market. These third-party investors have absolutely nothing in common with CPH with respect to this litigation, and those investors' secondary-market trades have absolutely nothing to do with the issues in these consolidated actions.

First, CPH is differently situated than the third-party investors whose trading activities CPH now seeks to discover. Unlike the third-party investors, CPH did ***not*** purchase any Sunbeam Debentures and did ***not*** have any dealings with Morgan Stanley "as a broker or principal" regarding the Sunbeam Debentures. CPH's ***only*** dealings with Morgan Stanley were in the context of arms-length (and frequently contentious) negotiations of an acquisition

transaction. As an underwriter and a broker-dealer, Morgan Stanley had a ***completely different*** relationship with the institutional investors who purchased or traded in the Sunbeam Debentures. For this reason alone, Morgan Stanley's communications and trading activities with Sunbeam Debenture purchasers are too attenuated to be discoverable in this case.

Second, there can be no temporal or logical connection between third parties' after-the-fact secondary-market trades of Sunbeam Debentures and the issues in these consolidated actions. CPH's only claims against Morgan Stanley are based on alleged misrepresentations and omissions that supposedly induced CPH to enter into the February 27, 1998 Merger Agreement. That transaction closed on March 30, 1998. Morgan Stanley's after-the-fact communications and secondary-market trades with differently-situated investors, which took place ***after*** CPH signed the February 27, 1998 Merger Agreement and ***after*** CPH had actually closed on the acquisition on March 30, 1998, have absolutely no bearing on the claims or defenses in this action.

II. Morgan Stanley Has Already Produced Scores Of Debenture-Related Documents.

Despite the fact that CPH has never had any financial stake in the Sunbeam Debentures, CPH has requested – and Morgan Stanley has produced – several reams of documents related to the Sunbeam Debentures. Morgan Stanley has already produced documents concerning:

- Morgan Stanley's effort to be retained as the underwriter for the Debentures;
- any fees that Morgan Stanley earned as an underwriter for the Debentures;
- Morgan Stanley's due diligence as an underwriter;
- the change in the size of the Debenture offering;
- the comfort letters associated with the Debenture offering;
- the sale and marketing of the Sunbeam Debentures; and
- Morgan Stanley's internal approval process for underwriting the Debentures.

During the discovery concerning CPH's contempt allegation, CPH made additional demands for Debenture-related documents. Pursuant to Fla. R. Civ. P. 1.340(c), Morgan Stanley produced, in response to the Court's July 12, 2004 Order regarding contempt discovery, and subject to objections to the relevance of such documents to the merits of these consolidated actions, records of secondary-market trading activity of Sunbeam Debentures by MS & Co. in its convertible arbitrage facilitation account during the time period from March 19, 1998 to February 5, 2001. (*See* Morgan Stanley Confidential 0095741-812.)

In addition to being irrelevant to the issues before the Court, the documents that CPH requests are likely to be extremely voluminous and would be burdensome to locate, review and produce. First, CPH's request contains no time limitation, therefore it is likely to apply to over a thousand trading transactions and certainly applies to transactions that occurred over six years ago. Second, CPH's document request is so broad that it will include generic order tickets, trade confirmations, and monthly account statements -- documents that provide no more information than, for instance, an ATM receipt or bank statement. The documents that Morgan Stanley has already produced identify over 800 trade transactions and the related back-up documentation will likely fill several boxes of documents that would have to be located, reviewed, bates-stamped, and produced -- all for no useful purpose. CPH is truly on a fishing expedition.

III. CPH Offers No Explanation Of Relevance For Its Broadly Worded Request.

Despite numerous opportunities to do so, CPH has not articulated the relevance of the documents it now seeks to compel. CPH's failure or inability to do so is hardly surprising. CPH's request for documents relating to secondary-market trading in the Sunbeam Debentures is ***three times removed*** from the acquisition transaction that CPH was actually a party to and, as discussed above, specifically calls for documents that post-date all of the events giving rise to

CPH's claims. Under these circumstances, CPH's broadly-worded demand for additional debenture-related documents is harassing, burdensome, and cannot result in the discovery of admissible evidence.

CONCLUSION

Morgan Stanley is not trying to prevent CPH from obtaining full and fair discovery of issues that are relevant to these consolidated actions. Morgan Stanley has nothing to hide regarding its activities as underwriter of the Sunbeam Debentures and has proven as much with the thousands of pages of debenture-related documents it has already produced. But Morgan Stanley's communications and secondary-market trades with third-party investors have little if anything to do with the issues in these consolidated actions and certainly nothing to do with statements that were made to CPH during the course of the acquisition transaction. CPH's Motion should be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 16th day of September, 2004.

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BY: Joseph Ianno, Jr.
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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
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COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

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CASE NO: CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

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MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.
_____/

CASE NO: CA 03-5165 AI

MORGAN STANLEY'S OPPOSITION TO COLEMAN (PARENT) HOLDING INC.'S AND MACANDREWS & FORBES HOLDINGS INC.'S MOTION TO COMPEL DEPOSITION WITNESSES

Coleman (Parent) Holdings Inc. and MacAndrews & Forbes Holdings Inc. (collectively "CPH") has moved to compel the depositions of two unnecessary non-party witnesses and one unnecessary party witness. CPH's motion should be denied because (1) this Court cannot compel the depositions of the two non-party witnesses (Michael Rankowitz and Dwight Sipprelle) who do not reside in Florida and are no longer employed by Morgan Stanley; and (2) the third witness, William Kourakos, had only limited involvement in a single meeting that has already been the subject of extensive document and deposition discovery. All three depositions requested by CPH would unnecessarily duplicate the testimony of multiple other witnesses who have already been deposed, and unnecessarily add to the number of depositions to be completed at a time when all parties are working diligently to ***reduce*** the number of outstanding depositions and bring discovery to a close.

BACKGROUND

1. On July 13, 2004, CPH requested the depositions of William Kourakos, Michael Rankowitz, and Dwight Sipprelle.[1] In March 1998, all three of these individuals were members of Morgan Stanley's Leveraged Finance Commitment Committee.

2. Mr. Rankowitz left Morgan Stanley in January 2002. He lives in the New York metropolitan area.

3. Mr. Sipprelle left Morgan Stanley in March 2001. He lives and works in the New York metropolitan area.

4. The only involvement that Messrs. Rankowitz, Sipprelle, and Kourakos had in the events giving rise to these consolidated actions is their attendance at a March 20, 1998 Leveraged Finance Commitment Committee meeting. Their attendance at this one meeting is the only basis that CPH has identified to question these witnesses.

5. Messrs. Rankowitz and Sipprelle – both non parties – have declined to appear for a deposition. Morgan Stanley also objects to producing these individuals because their testimony is unnecessary, cumulative, and would be duplicative of the extensive testimony that CPH already has elicited regarding the Leveraged Finance Commitment Committee and the March 20, 1998 meeting. Several witnesses, including Mike Hart, Bram Smith, Chris Whelan, and Andrew Savarie have testified extensively about these topics.

6. Morgan Stanley attempted to reduce the number of depositions on both sides. After Morgan Stanley deposed several outside directors of the Coleman Company, CPH

[1] Due to an apparent facsimile transmission problem at CPH's Chicago-based counsel, Morgan Stanley's counsel responsible for scheduling did not receive the July 13, 2004 letter on that date, and only learned of the requests for Messrs. Rankowitz, Sipprelle, and Kourakos when they were referenced in a subsequent letter from CPH dated August 13, 2004. Promptly thereafter, Kirkland & Ellis LLP requested and obtained a copy of the July 13, 2004 letter and took affirmative steps to contact those individuals regarding the proposed depositions.

requested that Morgan Stanley forgo deposition testimony of the remaining outside directors because these outside directors attended only a handful of meetings and their testimony would only duplicate the testimony of directors who have already been deposed. In an attempt to reach a mutual agreement, Morgan Stanley suggested that the parties enter into a stipulation to not go forward with either set of depositions (the remaining outside Coleman directors or the former Leveraged Finance Committee members), with the understanding that these witnesses would not be called at trial. (Sept. 3, 2004 Letter from T. Clare to M. Brody (Ex. 1).) CPH rejected Morgan Stanley's offer and filed the instant motion to compel.

ARGUMENT

I. CPH Cannot Move To Compel Depositions Of Out-of-State Witnesses Who Are No Longer Employees Of Morgan Stanley.

CPH's "back door" approach to compelling the appearance of Messrs. Rankowitz and Sipprelle is improper under the Florida Rules. *See* Fla. R. Civ. P. 1.410(g) Messrs. Rankowitz and Sipprelle are no longer Morgan Stanley employees. They live and work outside Florida and they do not consent to appear voluntarily for a deposition. As such, CPH must issue a subpoena from the proper court, after first obtaining a commission from this Court. *See id.*[2]

II. CPH's Insistence On Mr. Kourakos's Testimony Is Unnecessary, Wasteful, And At Odds With The Parties' Efforts To Streamline The Remaining Discovery.

CPH's insistence on taking Mr. Kourakos's deposition – and its refusal to accept Morgan Stanley's proposal to mutually reduce the depositions left to be completed – is at odds with its oft-repeated position that deposition discovery can and should be brought promptly to a close.

---

[2] On September 15, 2004 CPH applied for a commission from this Court for the deposition of Mr. Sipprelle. Morgan Stanley objects to the issuance of a commission for Messrs. Rankowitz and Sipprelle for the reasons articulated in this opposition – and Messrs. Rankowitz and Sipprelle reserve the right to object to any subpoena that is issued by the courts of the states where they reside.

Mr. Kourakos's involvement in the events surrounding this litigation is limited to his attendance at one meeting, the March 20, 1998 Leveraged Finance Commitment Committee meeting. CPH already has deposed several other witnesses who attended that meeting, including Michael Hart and Bram Smith, each of whom testified for more than a full day, and were questioned extensively by CPH about topics related to the Leveraged Finance Commitment Committee generally and specifically to the March 20, 1998 meeting, including:

- The role of the Leveraged Finance Commitment Committee and the procedures in place to authorize a senior loan (May 19, 2004 Hart Dep. 144-45 (Ex. 2))[3];
- The individuals who participated in the decision to approve the loan to Sunbeam, and what roles those specific individuals had (Hart Dep. 145-49);
- The decision-making process for senior loans like the loan to Sunbeam, including whether there has to be a consensus before Morgan Stanley authorizes the loans (Hart Dep. 145-46);
- Whether there were concerns raised within Morgan Stanley relating to Sunbeam's sales results for the first quarter of 1998 (Hart Dep. 219; Feb. 24, 2004 Smith Dep. 163-69 (Ex. 3));
- The identity of the authors of the memos that were passed out at the March 20, 1998 meeting and the purpose of those memos (Hart Dep. 221-22; Smith Dep. 198);
- The topics of discussion at the March 20, 1998 meeting, including close-outs of what was said, whether Sunbeam's first quarter sales were discussed, and whether Sunbeam's March 19, 1998 press release was discussed (Hart Dep. 224-29; Smith Dep. 206-12);
- How long the March 20, 1998 meeting took, who participated in the meeting, and who made presentations at the meeting (Hart Dep. 224-25; Smith Dep. 208-10);

[3] Morgan Stanley previously designated Mr. Hart's and Mr. Smith's depositions confidential. Morgan Stanley withdraws its confidentiality designations with respect to the pages attached hereto.

- Whether anyone raised any concerns relating to Sunbeam or discussed delaying the loan in connection with the committee's discussion of whether to approve the loan to Sunbeam (Hart Dep. 228, 237; Smith Dep. 213);

- Whether the plan to syndicate the loan position was discussed, including whether there were any questions raised about how quickly the syndication could be completed; (Hart Dep. 228-29; Smith Dep. 211-12);

- Whether there was any discussion about Morgan Stanley Senior Funding's fees, including the overall fees that Morgan Stanley would realize from the debenture offering and the loan facility (Hart Dep. 229);

- Whether there was discussion on the subject of potential Coleman synergies and the sources for those synergies (Hart Dep. 239-44; Smith Dep. 221-23);

- The results of the March 20, 1998 meeting, including how the decision was reached to approve the loan and how quickly that decision was reached (Hart Dep. 231-32).

CPH has already elicited detailed testimony about the Leveraged Finance Commitment Committee and the March 20, 1998 meeting. Compelling Mr. Kourakos to appear would not only be wasteful because it will be duplicative of the extensive testimony that CPH has already taken, it would be counter-productive to CPH's own insistence that discovery close promptly.

CONCLUSION

For the foregoing reasons, Morgan Stanley requests that the Court deny CPH's Motion to Compel deposition witnesses in its entirety.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 16th day of September, 2004.

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Exhibit 1

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AND AFFILIATED PARTNERSHIPS

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To Call Writer Directly:
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September 3, 2004

BY FACSIMILE

Michael Brody, Esq.
Jenner & Block, LLP
One IBM Plaza
Chicago, IL 60611-7603

Re: ***Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.***
MSSF v. MacAndrews & Forbes Holdings Inc. et al.

Dear Mike:

I write in a further effort to reach an agreement regarding the depositions of the outside Coleman directors — as well as the former members of the Leveraged Finance Committee whose depositions you have requested.

You repeatedly have informed us — in urging to forego the depositions of the remaining outside Coleman directors — that the testimony of those additional directors will only duplicate the testimony of the Coleman directors who have already been deposed. The same is certainly true for the former members of the Leverage Finance Committee whose involvement, like the outside Coleman directors, was limited to attending a single meeting. The testimony of these former members of the Leveraged Finance Committee will only duplicate the other witnesses who attended the Leveraged Finance Committee meeting, including Bram Smith and Mike Hart, each of whom you will have deposed for more than a full day.

We urge you to reconsider whether any of these depositions are really necessary — and we renew our offer to enter into an appropriate stipulation regarding the depositions of the remaining outside Coleman directors and Leveraged Finance Committee members alike. If you are unwilling to enter into such a stipulation, then we will object to any efforts by CPH to compel the depositions of the former Leveraged Finance Committee members, nearly all of whom are third parties and no longer under Morgan Stanley's control.

Sincerely,

Thomas A. Clare

Thomas A. Clare

cc: Joseph Iannó, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark C. Hansen, Esq. (by facsimile)

Exhibit 2

Exhibit 3

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

DEPOSITION OF R. BRAM SMITH
New York, New York
Tuesday, February 24, 2004

Reported by:
PAMELA J. MAZZELLA, RPR
JOB NO. 157119

COPY

Q. What do you recall Mr. Hart reporting to you?

A. Let me go back here. I think probably talked to Strong as well, and in terms of what, what had happened here is that, is that the understanding was that they had some anticipated revenues that were going to come in in the third quarter -- excuse me, the third month of the quarter, the third month of the quarter, and that they would make up a lot of this shortfall then.

Q. That's what Mr. Strong reported to you?

A. I think that was a combination. We were doing a lot of this in groups of people. Change in composition. So it is very difficult to recall for you exactly who was at each and every one of these meetings.

Q. But your best recollection as you sit here is that Mr. Strong said the substance of this to you?

A. No. My recollection is that was kind -- that was bits of information that came out of the Morgan Stanley due diligence

effort that would involve those two individuals at different times and different degrees of involvement as well as others.

Q. Did you attempt to speak directly with Sunbeam yourself?

A. I did not.

Q. Did you direct Mr. Hart to do that?

A. I did not.

Q. Do you know if Mr. Hart had any direct communications with Sunbeam?

A. I do not know.

Q. On this topic I'm focusing on?

A. I do not know.

Q. What do you recall Mr. Hart telling you relating to what had happened in the first two months of the quarter, what the expectations were for the rest of the quarter and what the implications were for '98?

A. It's tough for me to remember specifically what his contribution was to that. I think it's more generic, that the Morgan Stanley due diligence team came up with the answers that I described before, that the company was highly confident that

they were going to make their -- were going to achieve results that were I guess ahead of last year, and that they felt that the rest of the year would come on pretty close to where the projections that they had provided us were going to be.

Q. Those are the conclusions that had being provided to you, correct?

A. Those were the conclusions provided, yes, by the company to the Morgan Stanley team.

Q. Do you know what factual foundation Morgan Stanley had for any of those propositions?

A. I think we had gotten some additional information from them, the company, showing how the projected sales for the rest of the quarter.

Q. Did you see that information yourself?

A. I think so.

Q. I thought you had indicated previously that you understood that Miss Porat was assigned to conduct an inquiry

relating to some of those issues.

Did I misunderstand you?

A. Did I say that? I think that if she was, she would have been part of the overall Morgan Stanley team. Again I can't overemphasize that it's a -- it was a huge commitment of resources by the part of the firm. At any given time there were 10 or 20 people working on it at different levels of seniority.

Certainly Ruth was one of the more senior people involved and so at various times she might be in the lead, and sometimes it's Mr. Strong or others.

Q. With respect to the question what had happened in the first two months of the quarter, were you told by anyone in the Morgan Stanley team that the primary reason for the shortfall in January and February in sales was that Sunbeam had accelerated first quarter revenue into the fourth quarter of 1998?

A. No. What we were told was that they were trying to sell more, more of these

grills, and accelerated the sales faster to get the jump on the competition.

Q. I didn't ask about the reason for doing it, but I asked whether you were told that the reason why Sunbeam sales in January and February were so far below 1997 levels was that Sunbeam had accelerated the sale of products into the fourth quarter of 1997.

A. No.

Q. Let me direct your attention to the March 19 letter, CPH Exhibit 17 which you have in front of you.

A. Uhm-hmm.

Q. To page 4, paragraph 6B. Let me read the first sentence for you. "For the period from December 29, 1997 through March 16, 1998 consolidated net sales decreased as compared to the corresponding period of the preceding year, primarily due to the company's new early buy program for outdoor grills which accelerated outdoor grill sales into the fourth quarter of fiscal 1997."

Do you see that statement?

A. Uhm-hmm.

Q. At any time prior to the close of Sunbeam's acquisition of my client's interests in Coleman company, were you advised of the facts contained in that sentence?

A. Yes.

Q. And who advised you of that?

A. Somebody from the team.

Q. What were you told?

A. That the company had accelerated the sales of grills to capture market share.

Q. Accelerated the sale of grills into the four quarter of 1997, correct?

A. 1997, yeah.

Q. And that the effect of that was to diminish the sales the company had realized in the first two months of 1998?

A. Yes.

Q. You don't know who told you that?

A. No.

Q. Do you know if it was part of a group meeting?

A. No, I don't recall.

Q. Do you know if it was Mr. Strong

who told you that?

A. Don't recall.

Q. Do you know if it was Mr. Tyree?

A. Don't recall.

Q. Miss Porat?

A. Don't recall.

Q. Mr. Hart?

A. Don't recall.

Q. Did the fact that Sunbeam's sales had declined so substantially in the first two months of 1998, sir, as a result of activities that resulted in accelerating the sale of grills in the fourth quarter of 1997, cause you to have any questions relating to the turn-around claims that Mr. Dunlap was making?

A. No.

Q. Why is that?

A. That was because that's one bit of information, and to look at it in the overall context of what the company was doing, their performance, where they -- and what that looked like was going to happen in the rest of '98 is all part of the decision.

Smith

that we, that the leveraged finance, the firm had put together in acquiring or requesting credit approval from the Leveraged Finance Committee.

Q. And the credit approval that is the subject of this material is the senior loan of Sunbeam, correct?

A. Is the senior loan, yes.

Q. You're the author of the March 19 cover memo, correct?

A. I am the sender of this, yes.

Q. And your memorandum advises that there will be a Leveraged Finance Commitment Committee meeting regarding Sunbeam on Friday, March 20 at 7:30 a.m., correct?

A. Yes.

Q. Did that meeting in fact take place?

A. I believe it did. Let me say it again. It did take place. Can I say it took place on the 20th at 7:30, I don't remember.

Q. Did you attend the meeting?

A. I did.

Q. Now, there are a list of people on

expectations for sales Sunbeam was as of March 20?

A. No, I don't recall.

Q. Do you recall that at the Leveraged Finance Commitment Committee meeting on March 20 there was discussion relating to the fact that Sunbeam sales for January and February were substantially below the sales for January and February of 1997?

A. I believe that was discussed.

Q. Who made that point?

A. Oh, I think it was -- I don't know who specifically made it. Somebody from the team would have brought that up.

Q. Do you recall if it was Mr. Strong who made that statement?

A. I do not recall who brought it up.

Q. Do you recall if it was you?

A. I believe it was not me.

Q. Do you recall if it was Mr. Hart?

A. I don't recall.

Q. Is there anyone else on this list that it could have been in your view other than you, Mr. Hart or Mr. Strong?

Smith

A. This list here on the front page may not have been all the people that attended. There may have been other folks from other disciplines that were there, for example, like John Tyree or the credit person who did the work. So I don't remember everybody who was there, so necessarily who brought it up and/or what type of discussion followed and how many people participated in that discussion.

Q. But you do recall that the Leveraged Finance Commitment Committee was advised that Sunbeam sales in January and February of '98 were substantially below --

A. Yes.

Q. -- Sunbeam sales for January of '97?

A. Yes.

Q. Do you recall that they were advised that the primary reason for that was that Sunbeam had accelerated the sale of first quarter product into the fourth quarter of 1997?

A. I don't remember exactly how it was

described to the committee.

Q. Do you remember whether any statements were made to the committee to explain the reason why Sunbeam sales in the first two months of 1998 were so far below 1997 sales results?

A. I remember a lot of conversation about it. I think that some of the causes were discussed, one of them being the sale of the grills earlier, as well as expecting sales at the last half of the month here to get them close -- to get them above, excuse me, where they thought they, where they were last year.

Q. Now, there is a list of names at the top of the second page.

A. Uhm-hmm.

Q. That's a memorandum to Leveraged Finance Committee meeting?

A. Yes.

Q. Leveraged Finance Committee dated March 20, 1998, correct?

A. Yes.

Q. Do you recall if any of the

individuals listed on the top portion of this memorandum participated in the Leveraged Finance Committee's meeting?

A. I don't -- I don't remember specifically who's there from this group. As I mentioned before, it was a bigger, a better attended meeting than, than the norm because of the visibility. So I think there were members from other groups there. I'm pretty sure there are members from other groups there, but I couldn't specifically tell you who was and who wasn't.

Q. Do you recall whether Mr. Strong participated?

A. Yes, he did. I do remember him participating.

Q. Do you remember if he was there in person?

A. I thought he was there in person, but I'm not a hundred percent sure.

Q. He might have participated by telephone?

A. He could have participated by conference call.

Q. Do you remember if Mr. Strong was asked for his recommendation that the company proceed with the senior loan?

A. Mr. Strong, whether he was asked or not, advocated going forward with the senior loan.

Q. Do you have any memory of Mr. Tyree being present?

A. I thought he was also.

Q. Now, if this meeting took place on March 20, it's the day after Sunbeam's March 19 press release, correct?

A. Yes.

Q. Do you recall if Mr. Tyree made any statement -- let me ask a more general question before we get to this particular meeting.

Did Mr. Tyree or anyone else, sir, ever advise you that Arthur Andersen had taken the position that the statements contained in Sunbeam's March 19 press release were incomplete and misleading?

A. You're question is did Mr. Tyree share that with me?

Smith

MR. MARKOWSKI: Would you read that question back, please.

(Record read.)

A. No.

Q. You have never heard that from anyone?

A. No, this is the first time I'm hearing it.

Q. Do you think it was appropriate that the Leveraged Finance Commitment Committee was advised of the performance of Sunbeam in January and February of 1998 in connection with evaluating the proposed loan to Sunbeam?

A. I think it was appropriate in the context of a, the overall due diligence and in this part of the underwriting.

Q. Do you recall whether there was any discussion at the Leveraged Finance Committee's meeting concerning how quickly Morgan Stanley would be able to syndicate its position in the Sunbeam loan?

A. Yes.

Q. Were you asked to address that?

A. Yes.

Q. Do you recall who asked you to address that?

A. No, but it would have -- not specifically, but it would have been one of the senior members of the committee.

Q. One of the core group members?

A. One of the core group.

Q. Do you recall what you said?

A. My best recollection is that we thought it would take six to eight weeks, which is pretty standard, to syndicate this once we, once we got going.

Q. That is the same target date you gave me earlier, correct, syndicating the position by the first part of May?

A. I think we said the last part of May. Yes.

Q. That was your view at that point in time?

A. Yes, it was.

Q. And you expressed that view to the members of the committee?

A. I did.

Q. Did anyone during the course of the Leveraged Finance Committee's meeting raise the question of deferring or delaying the decision?

A. The credit decision?

Q. Yes.

A. Not that I remember.

Q. Did anyone raise a question concerning whether the timing of the financing could be delayed so that the closing would occur later?

A. I don't recall.

Q. Did anyone express any reservations about proceeding with the loan?

A. The vote again was unanimous, so I think the committee was on board to go forward.

Q. Other than the final vote, did anyone express any questions or concerns about proceeding that reflected in your view a reservation about the decision?

A. There were plenty of questions. I wouldn't classify any of them as any reservations.

Smith

Q. And these were the synergies being presented to the Leveraged Finance Committee as those that would pertain to the Coleman acquisition, correct?

A. Yes.

Q. Do you know if any of the items that are identified, the bullet point items identified there originated with Coleman company management?

A. I wasn't part to any of that. I have no idea.

Q. Do you know if any of the ideas listed there originated with my client, Coleman (Parent) Holdings?

A. No, no idea.

Q. Do you know if any of the items listed on the top of page 116 concerning potential Coleman synergies originated with McAndrews & Forbes?

A. No idea.

Q. Or Mr. Perelman personally?

A. No idea.

Q. Mr. Gittes?

A. No idea.

Q. Or Jerry Levin?

A. No idea.

Q. I think I mispronounced his name. Jerry Levin.

Do you know who Jerry Levin is?

A. Yes, I do.

Q. And in March of 1998, the first part of 1998 he was the chief executive officer of Coleman company, correct?

A. I believe so.

Q. Did you ever have any discussions with Jerry Levin concerning potential synergies?

A. Not until after he was in charge of the Sunbeam.

Q. After he became chief executive officer of Sunbeam you had some discussions with him about synergies?

A. A variety of discussions.

Q. But prior to the funding of the senior loan to Sunbeam, you had no discussions with Mr. Levin --

A. No discussions.

Q. -- concerning potential synergies?

Smith

A. I never met the man.

Q. Did you have discussions with any member from Coleman company regarding potential synergies before the senior loan closed?

A. I did not.

Q. Anybody with Coleman (Parent)?

A. I did not.

Q. Or McAndrews & Forbes?

A. I didn't.

Q. Do you remember anyone at the Leveraged Finance Committee -- excuse me.

Do you remember anyone at the Leveraged Finance Commitment Committee's meeting saying that with respect to the potential Coleman synergies, we're relying on Coleman management for those concepts or the values associated with them?

A. No.

Q. Do you recall there being discussion at the Leveraged Finance Commitment Committee's March 20 meeting concerning the fact that the funds raised through the convertible debenture offering

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.
MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO: CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),

vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

NOTICE OF DEPOSITION SUBPOENA DUCES TECUM OF DONALD R. UZZI

TO: Donald R. Uzzi, 4201 Lomo Alto Drive, Apt. 307, Dallas, TX 75219.

Please take notice that the Morgan Stanley entities in the above-styled cause of action intend to take the oral deposition of Donald R. Uzzi pursuant to Texas Rule of Civil Procedure 201.2 and the Order of the Circuit Court of the Fifteenth Judicial Circuit In and For Palm Beach County, Florida entered on January 21, 2004 and attached hereto. The deposition will take place at 9:30 a.m. on October 28, 2004, at the offices of HAYNES AND BOONE, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202. The deposition will be videotaped and will continue from day to day until completed.

Donald R. Uzzi will also produce documents responsive to the Deposition Subpoena Duces Tecum attached hereto. These documents and materials shall be brought with the witness and produced on October 28, 2004, at HAYNES AND BOONE, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202.

Respectfully submitted,

Michael C. Occhuizzo
KIRKLAND & ELLIS LLP
655 15th Street, N.W. – Suite 1200
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Telephone: (202) 879-5000
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CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368

Dated: September 17, 2004

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following counsel of record by facsimile and Federal Express on this 17th day of September, 2004:

John Scarola, Esq.
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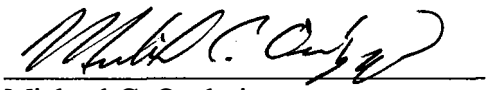

Michael C. Occhuizzo

THE STATE OF TEXAS

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.
MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO: CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

DEPOSITION SUBPOENA DUCES TECUM

TO: Any sheriff or constable of the State of Texas or other person authorized to serve and execute subpoenas as provided in Texas Rule of Civil Procedure 176.5.

You are commanded to summon **Donald R. Uzzi**, 4201 Lomo Alto Drive, Apt. 307, Dallas, TX 75219, to appear at the principal offices of HAYNES AND BOONE, LLP, 901 Main Street Suite 3100, Dallas, Texas 75202, on **Thursday, October 28, 2004 at 9:30 a.m.** to give testimony at a videotaped oral deposition and to permit inspection and copying of documents or tangible things to be used as evidence in this case.

Donald R. Uzzi is commanded to attend the oral deposition and to produce and permit inspection and copying of the following documents or tangible things described in the attached Exhibit 1. These documents and materials shall be brought with the witness and produced prior to the deposition on October 28, 2004, at HAYNES AND BOONE, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202.

Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both. TEX. R. CIV. P. 176.8(a).

DO NOT FAIL to return this writ to the Circuit Court of the Fifteenth Judicial Circuit In and For Palm Beach County, Florida with either the attached officer's return showing the manner of execution or the witness's signed memorandum showing that the witness accepted the subpoena.

ISSUED on September 17, 2004.

By: _____

Sean Trende
Texas State Bar No. 24034176
KIRKLAND & ELLIS LLP,
655 15th Street, N.W., Suite 1200,
Washington, D.C. 20005

This subpoena was issued pursuant to Texas Rule of Civil Procedure 201.2, the Order of the Circuit Court of the Fifteenth Judicial Circuit In and For Palm Beach County, Florida entered on January 21, 2004 and attached hereto as Exhibit 2, and at the request of Defendants' attorneys of record Thomas D. Yannucci, P.C., Lawrence P. Bemis (FL Bar No. 618349), and Thomas A. Clare of KIRKLAND & ELLIS LLP, 655 15th Street, N.W., Suite 1200, Washington, D.C. 20005; Joseph Ianno, Jr. (FL Bar No. 655351), CARLTON FIELDS, P.A., 222 Lakeview Ave., Suite 1400, West Palm Beach, FL 33401.

EXHIBIT 1

DEPOSITION SUBPOENA DUCES TECUM

You are hereby requested to produced the following documents pursuant to the definitions and instructions contained herein:

DOCUMENTS REQUESTED

1. All documents concerning the Coleman Transaction.

2. All documents concerning the Subordinated Debenture Offering.

3. All documents concerning the Bank Facility, or the Credit Agreement.

4. All documents reflecting or concerning any communications between or among any of Sunbeam, CPH, MAFCO, CSFB, Arthur Andersen, MS & Co., MSSF, Davis Polk, Wachtell, or Skadden in 1997 or 1998.

5. All documents provided by you in any Litigation or SEC Administrative Proceeding.

6. All calendars, diaries, timekeeping sheets or records maintained by you concerning any activities related to Coleman Transaction, the Subordinated Debenture Offering, the Bank Facility, the Credit Agreement.

7. All documents related to Sunbeam's Financial Information for all or any portion of 1996, 1997, and 1998, including but not limited to Financial Statements and documents concerning Sunbeam's forecasts and plans for revenue or earnings.

8. All documents related or referring to any cost-reduction or sales program or policy in place at Sunbeam during 1997 and 1998, including but not limited to documents concerning the "early buy" program, "Initiatives for Success", and "bill and hold" sales and the "no returns" policy.

9. All documents concerning returns of Sunbeam goods or product in 1997 and 1998, including but not limited to documents regarding the "no returns" policy and conversations or communications regarding the deletion of return authorizations from the J.D. Edwards system.

10. All documents pertaining to negotiations concerning the acquisition of Coleman, Signature Brands, and First Alert, including but not limited to documents concerning conversations or communications of any kind between or among any of MS & Co., MSSF, CPH or MAFCO personnel or representatives.

11. All documents concerning Synergies that might be achieved from a business combination of Sunbeam, Coleman, Signature Brands, and First Alert, or any combination thereof.

12. All documents related to or supporting the March 16, 1998 Representation Letter provided to Arthur Anderson, including but not limited to any drafts of such letter and any Financial Information used or referenced in writing the letter or drafts.

13. All documents concerning any "comfort letter" pertaining to the Subordinated Debenture offering or the Credit Agreement, including but not limited to Arthur Andersen's letters dated March 19, 1998 and March 25, 1998 and any drafts of such letters.

14. All documents concerning any investigation, analysis, or due diligence conducted by Sunbeam or its Advisors pertaining to the Coleman Transaction, including but not limited to documents and Financial Information pertaining to March 18, 1998 and March 24, 1998 conference calls.

15. All documents related to Sunbeam's March 19, 1998 press release, including but not limited to documents pertaining to the contents or drafting of the press release, the decision to issue the press release, and the decision to include the press release in the Offering memorandum.

16. All documents concerning the March 19, 1998 drafting session and/or meeting that took place at Global Financial Press concerning the Offering Memorandum, including but not limited to documents concerning any conversations or communications of any kind involving MS & Co. or Arthur Andersen personnel.

17. All documents related to the sale of the Subordinated Debenture, including but not limited to documents pertaining to roadshows or other communications with investors or analysts.

DEFINITIONS

1. "Advisors" shall mean financial advisors, legal advisors, accountants, consultants and any other third-party advising or assisting Sunbeam in any way with the Coleman Transaction, including but not limited to Arthur Anderson, Coopers & Lybrand, Llama Company, MS& Co., MSSF, and Skadden.

2. "Arbitrations" shall mean *Albert J. Dunlap and Sunbeam Corporation*, No. 32 160 00088 99 (AAA); and *Russell A. Kersh and Sunbeam Corporation*, No. 32 160 00091 99 (AAA).

3. "Arthur Andersen" shall mean Arthur Andersen LLP and any of its former or present partners, officers, directors, employees, representatives and agents.

4. "Bank Facility" shall mean the Credit Agreement, including amendments, and all funds extended by Lenders to Sunbeam pursuant to the Credit Agreement, including but not limited to Tranche A, Tranche B, and the Revolving Credit Facility.

5. "Communication" shall mean any exchange or transmittal of information by any means of transmission, including, without limitation, face-to-face conversation, mail, overnight delivery, Internet, telephone, electronic mail, or facsimile.

6. The term "concerning" shall mean relating to, referring to, describing, evidencing, or constituting.

7. "Coleman" shall mean Coleman Company, Inc. and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

8. "Coleman Transaction" shall mean Sunbeam's acquisition of Coleman Company, Inc. from CPH and all related communications, agreements, and transactions, including the February 27, 1998 Agreements and the March 30, 1998 closing.

9. "Cooper & Lybrand" shall mean the former Coopers & Lybrand LLP, and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents.

10. "CPH" shall mean Coleman (Parent) Holdings Inc. and any of its former or present officers, directors, employees, representatives and agents.

11. "Credit Agreement" shall mean the agreement entered into by Sunbeam, as borrower with Lenders, dated March 30, 1998 and all amendments thereto.

12. "CSFB" shall mean Credit Suisse First Boston LLC and any of its former or present officers, directors, employees, representatives and agents.

13. "Davis Polk" shall mean Davis Polk & Wardwell and any of its former or present partners, officers, directors, employees, representatives and agents.

14. "Document" shall mean any recording in any tangible form of any information, whether handwritten, typed, printed, stored on computer disks, tapes, or databases, or otherwise reproduced. "Document" or "documents" also includes electronic documents whether stored on

servers or hard drives, e-mail, backup tapes, voicemail and video and audio recordings. A draft or non-identical copy is a separate document within the meaning of this term.

15. "Financial Information" shall mean information concerning the past or present financial condition of Sunbeam or Sunbeam securities.

16. "Financial Statements" shall mean documents reflecting Financial Information, including without limitation quarterly reports, yearly reports, balance sheets, statements of income, earnings, cash flow projections, and sources and applications of funds.

17. "First Alert" shall mean First Alert, Inc., and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

18. The term "identify" (with respect to documents) shall mean to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).

19. "Lenders" shall mean the entities listed on Schedule 2.01 of the Credit Agreement under the heading "Lenders" and any other person that shall have become a party to the Credit Agreement as a Lender pursuant to an assignment and acceptance.

20. "Litigations" shall mean *In re Sunbeam Securities Litigation*, 98-8258-Civ.-Middlebrooks (S.D. Fla); *Camden Asset Management L.P. v. Sunbeam Corporation*, 98-8773-Civ.-Middlebroks and 98-8275-Civ.-Middlebrooks (S.D. Fla); *Krim v. Dunlap*, No. CL 983168AD (15th Jud. Cir., Fla.); *Stapleton v. Sunbeam Corp.*, No. 98-1676-Civ.-King (S.D. Fla); *Sunbeam Corp. v. PricewaterhouseCoopers LLP*, No. CL 005444AN (15th Jud. Cir., Fla.); *In re Sunbeam Corp., Inc.*, No. 01-40291 (AJG) (Bankr. S.D.N.Y.) and any adversary proceedings therein; *SEC v. Dunlap*, No. 01-8437-Civ.-Middlebrooks (S.D. Fla.); *Oaktree Capital Management LLC v. Arthur Andersen LLP*,

No. BC257177 (L.A. Cty., CA); and *Coleman (Parent) Holdings Inc. v. Arthur Andersen LLP*, No. CA 01-06062AN (15th Jud. Cir., Fla.), or other litigation concerning the Coleman Transaction.

21. "Llama Company" shall mean Llama Company and any of its former or present partners, officers, directors, employees, representatives and agents.

22. "MAFCO" shall mean MacAndrews & Forbes Holdings, Inc. and any of its officers, directors, former or present employees, representatives and agents.

23. The "March 19, 1998 Press Release" shall mean the press release issued by Sunbeam on March 19, 1998 concerning the shortfall of first quarter 1998 sales numbers and the reasons for such shortfall.

24. "MS & Co." shall mean Morgan Stanley & Co. Inc. and any of its former or present officers, directors, employees, representatives and agents.

25. "MSSF" shall mean Morgan Stanley Senior Funding, Inc. and any of its former or present officers, directors, employees, representatives and agents.

26. The term "person" shall mean any natural person or any business, legal or governmental entity or association.

27. The term "relating to" shall mean concerning, evidencing, referring to, or constituting.

28. The "Relevant Period," unless otherwise indicated, shall be from January 1, 1996 through the date of service of this subpoena.

29. "SEC" shall mean the Securities and Exchange Commission.

30. "SEC Administrative Proceedings" shall mean *In the Matter of Sunbeam Corp.*, SEC Administrative Proceeding File No. 3-10481, and *In the Matter of David C. Fannin*, SEC Administrative Proceeding File No. 3-10482.

31. "Signature brands" shall mean Signature Brands USA, Inc. and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

32. "Skadden" shall mean Skadden, Arps, Slate, Meagher & Flom, LLP and any of its former or present partners, officers, directors, employees, representatives and agents.

33. "Subordinated Debentures" shall mean the Sunbeam's Zero Coupon Convertible Senior Subordinated Debentures Due 2018.

34. "Subordinated Debenture Offering" shall mean the offering of Sunbeam's Subordinated Debentures.

35. "Sunbeam" shall mean Sunbeam Corporation and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents.

36. "Synergies" shall mean post-acquisition gains through increased revenue and/or decreased cost.

37. "Wachtell" shall mean Wachtell Lipton Rosen & Katz and any of its former or present partners, officers, directors, employees, representatives and agents.

38. The terms "you" or "your" shall mean Donald R. Uzzi and any of Donald R. Uzzi's present and former representatives and agents.

INSTRUCTIONS

1. Documents shall be produced as they are kept in the usual course of business, or organized and labeled to correspond to the categories in this Request. Documents attached to each other should not be separated. Documents consisting of items previously produced in the Litigations, Arbitrations, and/or SEC Administrative Proceedings with Bates numbering shall be produced in Bates number order.

2. All documents shall be produced in the file folder, envelope or other container in which the documents are kept or maintained by you. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks.

3. The relevant period, unless otherwise indicated, shall be from January 1, 1996 through the date of service of this subpoena, and shall include all documents and information which relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received prior or subsequent to that period. Please supplement or correct your responses to these requests if, at any time, you become aware that your responses are incomplete or incorrect in any request.

4. If you claim the attorney-client privilege, or any other privilege or work-product protection for all or any portion of a document, you shall provide a privilege log that describes the withheld material sufficiently to allow Morgan Stanley to test the privilege or protection asserted.

5. The following rules of construction apply:

1. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be outside their scope;

2. The term "including" shall be construed to mean "without limitation"; and

3. The use of the singular form of any word include the plural and vice versa.

Exhibit 2

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

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

AGREED ORDER APPOINTING COMMISSIONERS AND COMMISSIONS

THIS CAUSE, having come before the Circuit Court in and for Palm Beach County, State of Florida, on the agreement of the parties, and

WHEREAS, it appears to the Court that:

1. Defendant Morgan Stanley & Co. Incorporated ("MS & Co.") desires to take the videotaped depositions of and obtain documents from the following witnesses who reside in California, Connecticut, Kansas, Minnesota, New York, Texas, and the District of Columbia and who have knowledge of facts relevant to this case:

Karen Kay Clark
1674 Amarelle Street
Newbury Park, CA 91320

Frank N. Gifford
126 Taconic Road
Greenwich, CT 06831-3139

Robert J. Duffy
16 Saint Nicholas Road
Darien, CT 06820-2823

Joseph P. Page
921 Sheridan Street, Apt. 119
Wichita, KS 67213-1363

William H. Spoor
622 West Ferndale Road
Wayzata, MN 55391

Adam Emmerich
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Steven Cohen
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Steven K. Geller
301 East 79th Street, Apt. 4H
New York, NY 10021-0932

Donald Uzzi
4209 Beverly Dr.
Dallas, TX 75205-3020

Ann Dibble Jordan
2940 Benton Place NW
Washington, DC 20008

2. You are hereby appointed as commissioners to take the videotaped testimony (and obtain the requested documentation) of the above witnesses and other witnesses whose discovery is sought in the commissions' jurisdiction under oath and on oral examination in accordance with the applicable Florida Statutes and Rules of Civil Procedure:

Esquire Santa Ana
2100 North Broadway, Second Floor
Santa Ana, CA 97206

Del Vecchio Reporting
117 Randi Drive
Madison, CT 06443

Harper Court Reporting
P.O. Box 3008
Wichita, KS 67201

Kirby Kennedy & Associates
5200 Wilson Road #219
Minneapolis, MN 55424

Esquire Deposition Services
216 E. 45th Street, 8th FL
New York, New York 10017-3304

Esquire Deposition Services
703 McKinney Avenue #320
Dallas, Texas 75202

Esquire Deposition Services
1020 19th Street NW, #621
Washington, DC 20036

or any person able to administer oaths pursuant to the laws of California, Connecticut, Kansas, Minnesota, New York, Texas, and the District of Columbia and duly authorized by him.

3. This order does not purport to grant the power of the commissioners appointed to subpoena witnesses or documents, but simply the power to administer oaths and transcribe deposition testimony.

DONE AND ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida this ____ day of January, 2004.

SIGNED AND DATED

ELIZABETH T. MAASS
Circuit Court Judge

E.T. MAASS

Coleman (Parent) Holdings v. Morgan Stanley & Co. Inc.
2003 CA 005045AI
Agreed Order on Appointment of Commission

Copies furnished to:

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222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
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& SHIPLEY, P.A.
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Facsimile: (202) 879-5200

Jerold S. Solovy
JENNER & BLOCK, LLC
One IBM Plaza
Suite 4400
Chicago, Illinois 60611
Telephone: (312) 222-9350
Facsimile: (312) 527-0484

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

COLEMAN (PARENT) HOLDINGS, INC., CASE NO. 03 CA 5045 AI

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

v.

MACANDREWS & FORBES HOLDING, INC., et al.,

Defendants.
_____/

AGREED MOTION TO RESCHEDULE HEARING

Non-Party, Sunbeam Corporation, n/k/a American Household, Inc. ("Sunbeam"), hereby files this Agreed Motion to Reschedule Hearing and states as follows:

1. Sunbeam appeared at the Court's August 27, 2004 Status Conference to be heard on Morgan Stanley's Motion to Compel Production of Documents. At that time, Sunbeam consented to this Court's jurisdiction and agreed to waive the formality of a subpoena.

2. On or about August 28, 2004, this Court entered an Order setting the hearing on Morgan Stanley's Motion to Compel Production of Documents and Sunbeam's Motion for Protective Order for September 23, 2004 at 3:00 p.m. The Order also instructed Sunbeam to supply any and all supporting papers, including affidavits, for its Motion for Protective Order by September 13, 2004, ten days prior to the hearing.

3. Because of Hurricane Frances, undersigned counsel's office was closed for an extended period of time and undersigned counsel was without power and unable to contact its client to prepare the necessary affidavits and papers to the Court ten days prior to the September 23, 2004 hearing.

4. Additionally, Morgan Stanley wishes to take the deposition of Sunbeam's affiant prior to filing its response papers with the Court.

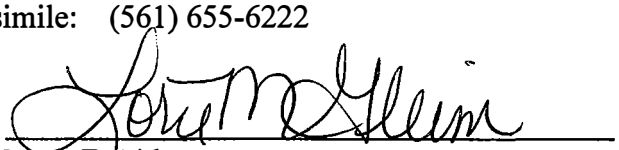
5. Therefore, Sunbeam requests that its Motion for Protective Order and Morgan Stanley's Motion to Compel Production of Documents be rescheduled to the Court's next Status Conference set for October 14, 2004.

6. Undersigned counsel has contacted Michael Brody, Esquire at Jenner & Block, counsel for Coleman (Parent) Holdings, Inc. and MAFCO, and has contacted Thomas Clare, Esquire and Zhonette Brown, Esquire at Kirkland & Ellis, counsel for Morgan Stanley and all counsel are in agreement to move the hearing to the Court's next Status Conference set for October 14, 2004.

7. This Motion has been filed in good faith and not for the purposes of delay.

WHEREFORE, Sunbeam hereby requests that this Court reschedule its Motion for Protective Order and Morgan Stanley's Motion to Compel Production of Documents for October 14, 2004.

GREENBERG TRAURIG, P.A.
777 South Flagler Drive - Suite 300E
West Palm Beach, FL 33401
Telephone: (561) 650-7900
Facsimile: (561) 655-6222

By: 
Mark F. Bideau
Florida Bar No. 564044
Lorie M. Gleim
Florida Bar No. 0069231

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via facsimile and mail to the addressees on the attached Service List, this 17 day of September, 2004.

GREENBERG TRAURIG, P.A.
777 South Flagler Drive - Suite 300E
West Palm Beach, FL 33401
Telephone: (561) 650-7900
Facsimile: (561) 655-6222

By: _____
Mark F. Bideau
Florida Bar No. 564044
Lorie M. Gleim
Florida Bar No. 0069231

SERVICE LIST

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Jack Scarola, Esq.
Searcy Denney Scarola Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Blvd.
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Jerold S. Solovy, Esq.
Michael Brody, Esq.
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One IBM Plaza, Suite 400
Chicago, IL 60611

WPB-FS1\GLEIML\511883v01\9/17/04\16560.071300

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

COLEMAN (PARENT) HOLDINGS, INC., CASE NO. 03 CA 5045 AI

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

v.

MACANDREWS & FORBES HOLDING, INC., et al.,

Defendants.

_____/

AGREED ORDER ON AGREED MOTION TO RESCHEDULE HEARING

THIS CAUSE, having come before the Court upon Non-Party, Sunbeam Corporation, n/k/a American Household, Inc. ("Sunbeam") Agreed Motion to Reschedule Hearing, and the Court being informed of the parties' agreement, having reviewed the Motion and being otherwise fully advised, it is hereby:

ORDERED AND ADJUDGED that Sunbeam's Agreed Motion to Reschedule Hearing is GRANTED. Sunbeam's Motion for Protective Order and Morgan Stanley's Motion to Compel Production of Documents is hereby rescheduled to the next Status Conference scheduled on October 14, 2004 at 8:00 a.m. at the Palm Beach County Courthouse, Room 11A, 205 North Dixie Highway, West Palm Beach, Florida

Morgan Stanley shall be permitted to depose any affiant whose affidavit is submitted to support any Motion for Protective Order prior to the hearing set herein. The movant shall supply the Court with:

1. copies of all relevant pleadings;

2. a copy of any memorandum of law; and

3. copies of all case law authority.

at least 10 days prior to the hearing set herein. Any response thereto shall be supplied to the Court at least 5 days prior to the hearing set herein.

DONE AND ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida, this 25 day of Sept., 2004

ELIZABETH T. MAASS
Circuit Court Judge

Copies furnished:
See attached Service List

SERVICE LIST

Joseph Ianno, Esq.
Carlton Fields, P.A.
222 Lakeview Avenue, Suite 1400
West Palm Beach, FL 33401

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Thomas A. Clare, Esq.
Zhonette M. Brown, Esq.
Kirkland and Ellis
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Washington, DC 20005

Jack Scarola, Esq.
Searcy Denney Scarola Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33401

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Loric M. Gleim, Esq.
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P.O. Box 20629
West Palm Beach, FL 33416-0629

WPB-FS1\GLEIML\511884v01\9/17/04\16560 07130

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC., et al.,
Defendants.

NOTICE OF TAKING VIDEOTAPED DEPOSITIONS

To: Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates, times, and locations set forth below:

DEPONENT	DATE AND TIME	LOCATION
Karen Eltrich	October 15, 2004, at 9:30 a.m.	Esquire Deposition Services 216 E. 45th St., 8th Floor New York, NY 10017
Jake Foley	October 22, 2004, at 9:30 a.m.	Esquire Deposition Services 216 E. 45th St., 8th Floor New York, NY 10017

The depositions will be recorded by stenographic and audio-visual means and will be taken before a person authorized to administer oaths and will continue day to day until completed. The videographer will be Esquire Deposition Services in New York.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 10th day of September, 2004.

Dated: September 20, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Michael T. Brody
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
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(561) 686-6300

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Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue, Suite 1400
West Palm Beach, FL 33401

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

COLEMAN (PARENT) HOLDINGS INC., Plaintiff,

vs.

MORGAN STANLEY & CO., INC., Defendant.

CASE NO.: CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC., Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC., et al.

Defendants.

CASE NO.: CA 03-5165 AI

MATERIAL REDACTED WITHOUT PRIOR DETERMINATION OF PROTECTABILITY BY COURT

COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES

Pursuant to Rule 1.190(f) of the Florida Rules of Civil Procedure and Fla. Stat. § 768.72(1), Coleman (Parent) Holdings Inc. ("CPH") respectfully moves for entry of an order granting leave to amend its Complaint to seek punitive damages against defendant Morgan Stanley & Co., Inc. ("Morgan Stanley"). The proposed amendment is attached hereto as Exhibit A.

A party seeking to assert a punitive damage claim need only make a "reasonable showing" of a "reasonable basis" for the recovery of punitive damages. Fla. Stat. § 768.72 (2001). A proffer of evidence in support of a punitive damage claim is sufficient; no evidentiary hearing is required. *See Strasser v. Yalmanchi*, 677 So. 2d 22, 23 (Fla. 4th DCA 1996). The

court should evaluate proffered evidence under a motion to dismiss standard without considering possible contradictory evidence: a "conventional summary judgment analysis is inapplicable." *Will v. Systems Eng'g Consultants*, 554 So. 2d 591, 592 (Fla. 3d DCA 1989); *see also Dolphin Cove Ass'n v. Square D. Co.*, 616 So. 2d 553, 553 (Fla. 2d DCA 1993) (reversing denial of amendment because "[p]rejudging the evidence is not . . . proper").

As the following proffer of evidence establishes, CPH should be permitted leave to assert a claim for punitive damages.

FACTUAL PROFFER

A. Sunbeam's Lackluster Business Performance, Its New Management Team Headed By Albert Dunlap, And Sunbeam's Engagement Of Morgan Stanley.

1. Sunbeam's New Management Team.

The backdrop for this lawsuit is the massive Florida-based fraud that occurred at Sunbeam Corporation ("Sunbeam") during the tenure of its former Chief Executive Officer, Albert Dunlap. The fraud resulted in hundreds of millions of dollars of damage to CPH, as the value of Sunbeam stock it had acquired dropped from more than $50 per share to 0. The fraud could not have succeeded without the assistance of Morgan Stanley.

On July 18, 1996, after several quarters of poor financial performance, Sunbeam's Board hired Dunlap – who was heralded as a "turn-around specialist" – to increase Sunbeam's sales and profits, which would lead to an increase in the value of Sunbeam shares. But Dunlap (and a number of hand-picked, long-time associates such as Russell Kersh, whom Dunlap installed as Sunbeam's Chief Financial Officer) devised a strategy to create the illusion rather than the reality of a turnaround, in order to artificially inflate Sunbeam stock. Dunlap's plan was to persuade

someone to purchase Sunbeam at the artificially inflated price before the illusion was discovered. Dunlap implemented a three-step plan to work his fraud.

First, Dunlap overstated Sunbeam's current financial problems by recording unnecessarily high reserves and booking expenses that should not have been recorded until later periods, so that Sunbeam appeared to be in worse shape in 1996 than it really was. This created an artificially low starting point against which Dunlap could measure his supposed turnaround.

Second, Dunlap overstated Sunbeam's 1997 revenues and earnings in order to create the illusion of dramatic improvement over 1996 results. Dunlap employed various techniques, including "bill-and-hold" sales and "channel stuffing." Phony "bill-and-hold" sales allowed Dunlap to make Sunbeam look successful by recognizing revenues from supposed sales, even though customers had not actually paid for or taken delivery of goods and were not obligated to do so. "Channel stuffing" involved a practice of accelerating sales that otherwise would have occurred in a later period, sometimes by offering steep discounts or other extraordinary customer inducements. Channel stuffing, therefore, had two future side effects: The profits on the sales were drastically reduced or eliminated, and sales that otherwise would have been realized in later periods were moved into 1997. These practices created the appearance that 1997 was strong, while assuring that 1998 would bring an end to the illusion. Thus, the need for the final step:

Third, Dunlap had to realize the value of the artificial increase in Sunbeam stock before 1998 results became known and the fraud became apparent to all. Dunlap and his team accomplished steps 1 and 2 on their own, but this third step required the aid and participation of a blue chip investment banking firm to locate and persuade potential buyers. Dunlap needed to find an investment banker capable of completing the necessary transaction, but he also needed to

find an investment banker who would be complicit in helping Dunlap sell a fiction. [redacted]

App. 1, Strong Dep. 12/4/2003 at 28.[1]

2. Morgan Stanley Joins Dunlap's Team.

[redacted] *Id.* at 6. [redacted] App. 2, at Morgan Stanley 85418. [redacted]

App. 3, at Morgan Stanley 85424.

[redacted]

[1] "App." refers to the exhibits in the separately bound, multi-volume Appendix accompanying this motion. CPH's citations to evidence supporting this factual proffer are merely representative of the evidence in support of its claims, and CPH anticipates adducing other evidence at trial in support of its claims for compensatory and punitive damages.

[redacted] App. 4, at Morgan Stanley 85438.

[redacted]

Id., a. Morgan Stanley 85440. [redacted]

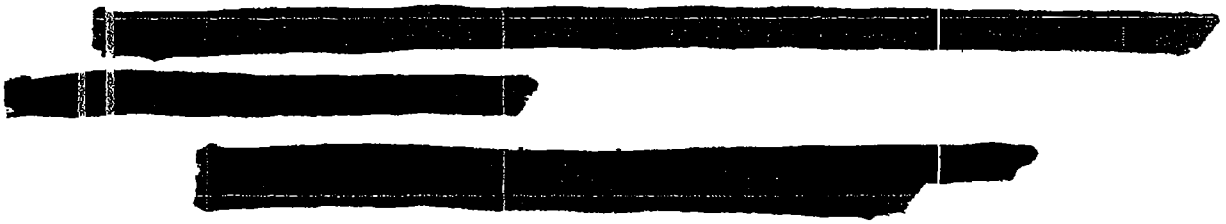
[redacted]

Id. [redacted] App. 3, at Morgan Stanley 85424.

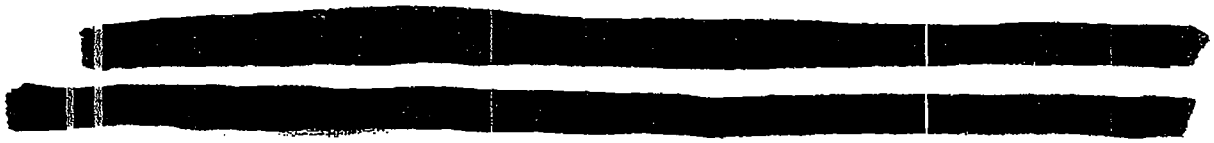
[redacted]

App. 5, at Morgan Stanley 85461. [redacted]

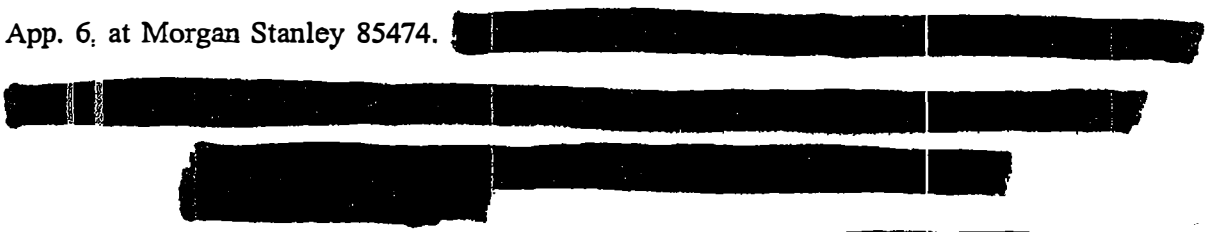
Id., a Morgan Stanley 85462.



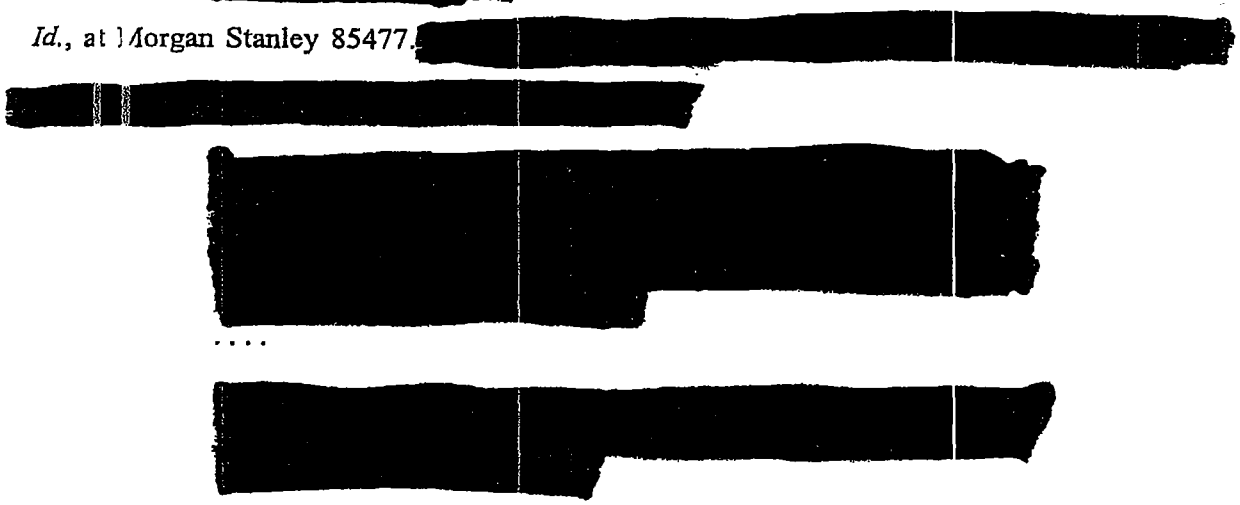
Id., a Morgan Stanley 85461.



App. 6, at Morgan Stanley 85474.



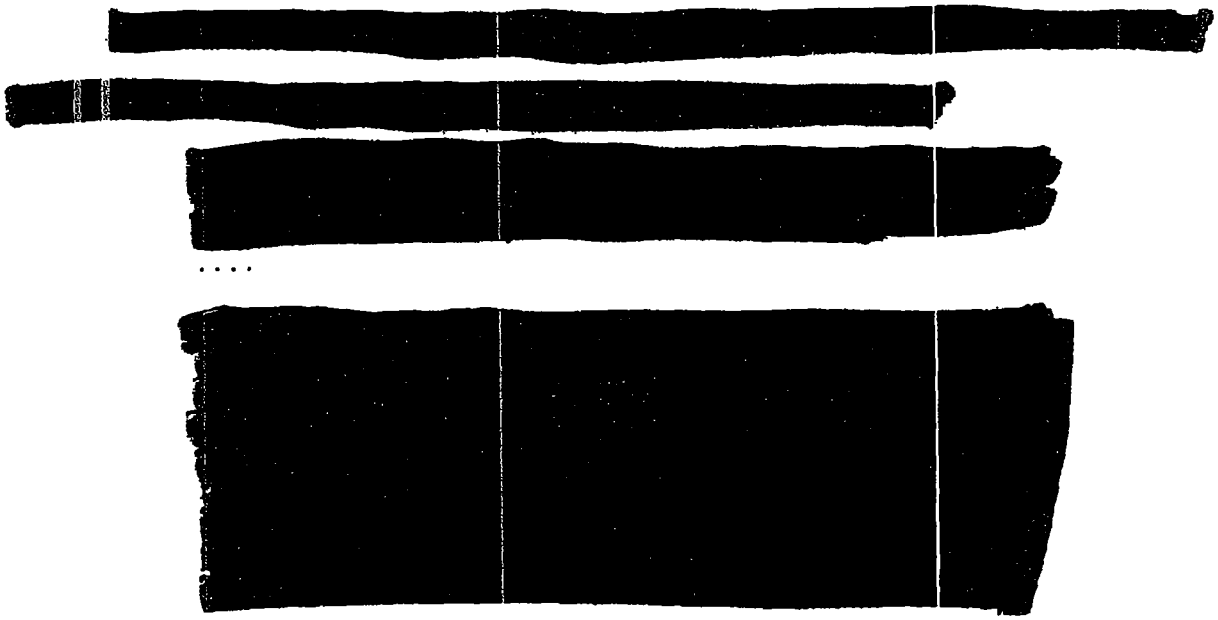
Id., at Morgan Stanley 85477.



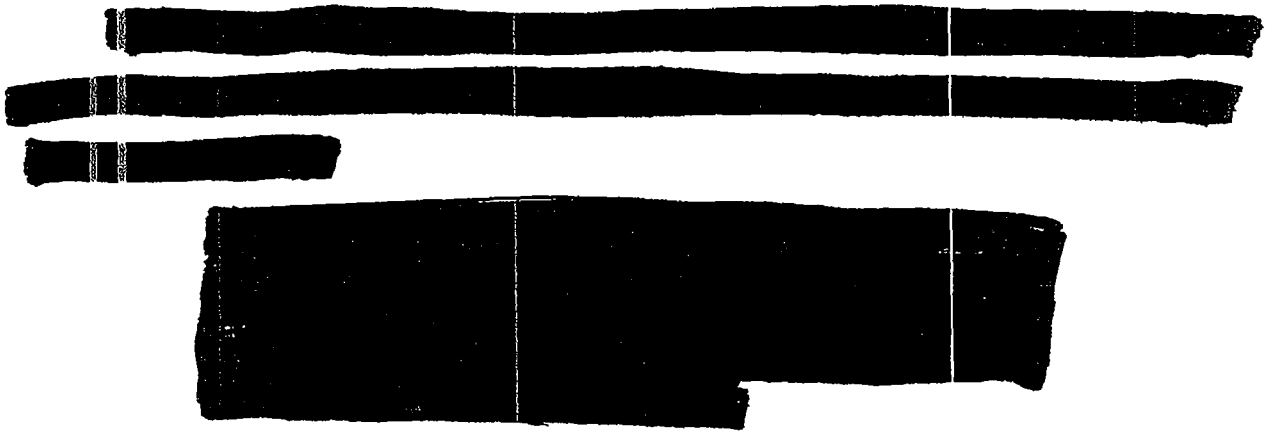
. . . .

Id., a Morgan Stanley 85480-85481.

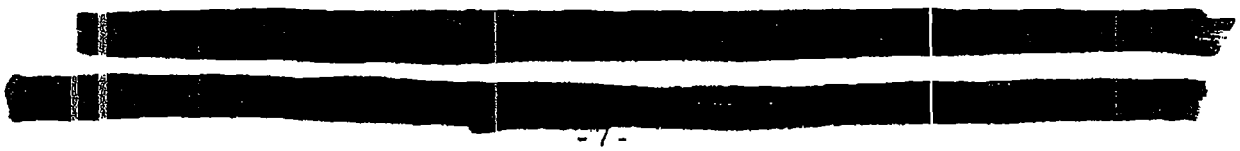
Id., a: Morgan Stanley 85485.



Id., a: Morgan Stanley 85492.



App. 5, at Morgan Stanley 85455.



[redacted] App. 1, Strong Dep. 12/4/2003, at 27-28; App. 7, Smith Dep. 2/24/2004, at 129-130; App. 8 Webber Dep. 5/18/2004, at 27.

B. Morgan Stanley Discovers The Fraud At Sunbeam.

[redacted] App. 9, CPH Ex. 84. After reviewing Sunbeam's books and business, Morgan Stanley set out to find a way to help Sunbeam cash in on the inflated price of its stock. [redacted] App. 1, Strong Dep. 12/4/2003, at 94-96. Morgan Stanley soon found Coleman.

On February 23, 1998, Morgan Stanley personnel held face-to-face discussions with representatives from CPH. Morgan Stanley handed CPH an 85-page presentation that Morgan Stanley had created [redacted] App. 10, CPH Ex. 9. As the meeting unfolded, Sunbeam executives, with the imprimatur of Morgan Stanley as it stood by in affirmation, detailed the supposed turnaround of Sunbeam, the expectations by Wall Street analysts for Sunbeam's continued growth in sales and earnings in 1998 and beyond, and the high confidence that Sunbeam would meet those expectations.

[redacted]

[redacted] *Id.*, at CP 26290. [redacted]

[redacted] *Id.*, at CP 26296-26297; App. 42, CPH Ex. 187.

[redacted] App. 42, CPH Ex. 187; App. 10, CPH Ex. 9, at CP 26290.

Each of these representations was false. [redacted]

Taken in by these representations, CPH agreed on February 27, 1998 to sell its 82 percent stake in Coleman for 14 million shares of Sunbeam stock plus additional consideration. It was, of course, imperative that the transaction close before Sunbeam's true financial condition came to light. [redacted]

[redacted] App. 11, Yoo Dep. 6/16/2004, at 218-219; App. 12, CPH Ex. 229.

It is inconceivable that Morgan Stanley could have been involved in its due diligence with Sunbeam since April 1997 and not have known at some early date that Sunbeam's

turnaround story was an illusion. But whatever it may have known sooner, Morgan Stanley knew about Sunbeam's frauds by mid-March 1998, when it was advised by Sunbeam's own outside auditors that Sunbeam was on a disaster course. [redacted] App. 13, Bornstein Dep. 1/15/2004, at 100-106; App. 14, CPH Ex. 123. Morgan Stanley admits in a separate lawsuit that these same revenue recognition practices "raised clear red flags that should have – and must have – alerted [the auditors] to the need for greater scrutiny regarding all of Sunbeam's revenue recognition decisions." App. 15, Amended Complaint, ¶ 84. Lawrence Bornstein, a senior audit manager for Sunbeam's outside accountants who participated in the telephone conference, testified that he was surprised Morgan Stanley never asked him the single most important question that should have been discussed on the call: How is Sunbeam doing? App. 13, Bornstein Dep. 1/15/2004, at 183. Either Morgan Stanley did not want to know – or, more likely, it already knew – that Sunbeam's performance was in shambles.

[redacted]

App. 44, CPH Ex. 110; App. 45, CPH Ex. 24; App. 20, Dean Dep. 6/3/2004, at 132-133; App. 46, Lurie Dep. 6/18/2004, at 126; App. 47, Harlow Dep. 6/9/1999, at 236-37; App. 23, Pruitt Dep. 1.13/2004, at 18-19; App. 18, CPH Ex. 16. [redacted]

[redacted]

App. 2(, Dean Dep. 6/3/2004, at 132-133; App. 18, CPH Ex. 16; App. 16, CPH Ex. 17, at MS 379. [redacted] (App. 15, Amended Complaint, ¶ 97), [redacted]

See App. 16, CPH Ex. 17, at MS 379. A draft of this letter had been received by Davis Polk & Wardwell, Morgan Stanley's law firm, no later than March 18. App. 45, CPH Ex. 24.

[redacted] App. 44, CPH Ex. 110, at CPH 38673; App. 16, CPH Ex. 17, at MS 378.

[redacted]

[redacted] App. 44, CPH Ex. 110, at CPH 38672; App. 16, CPH Ex. 17, at MS 377.

[redacted] App. 17, Tyree Dep. 11/14/03, at 346-347; App. 1, Strong Dep. 12/4/03, at 264-266, 286-293, 298-302.

[redacted]

See App. 18, CPH Ex. 16.

[redacted] App. 44, CPH Ex. 110; App. 16, CPH Ex. 17; App.

18, CPH Ex. 16. [redacted] These facts made it clear to Morgan Stanley that Sunbeam's 1997 results had been artificially inflated and were an illusion, that the illusion could not be sustained, and that the Sunbeam turnaround story was a sham.

[redacted] App. 18, CPH Ex. 16.

[redacted] *Id.*

[redacted] App. 44, CPH Ex. 110; App. 16, CPH Ex. 17, at MS 378. Armed with two documents showing that Sunbeam was only days from the close of the first quarter with disastrous sales and earnings, Morgan Stanley now faced a critical dilemma: continue the cover-up long enough to close the transaction and public debt offering and collect massive fees, or reveal the problems to CPH and the investing public, which at a minimum would delay the transaction, and risk losing all its fees.

C. Morgan Stanley Assists Sunbeam In Concealing The Sales Crisis Before The Transaction Closed.

Upon receiving the disastrous news from Sunbeam's outside auditors and Sunbeam's Executive Vice President of Consumer Products, Donald Uzzi, Morgan Stanley knew it could not stand by and say nothing; some sort of statement had to be made. That statement should have made full disclosure, but, instead, Morgan Stanley decided to help Sunbeam cover up the truth by assisting Sunbeam in preparing and issuing a false and misleading press release that misrepresented Sunbeam's true financial condition.

The press release, as issued on March 19, 1998, stated:

> "Sunbeam Corporation (NYSE: SOC) said today that it is possible that its net sales for the first quarter of 1998 may be lower than the range of Wall Street analysts' estimates of $285 million to $295 million, but net sales are expected to exceed 1997 first quarter net sales of $253.4 million. The Company stressed that sales of its products at retail remains very strong. The shortfall from analysts' estimates, if any, would be due to changes in inventory management and order patterns at certain of the Company's major retail customers. The Company further stated that based on the strength of its new product offerings and powerful brand names, it remains highly confident about the overall sales outlook for its products for the entire year."

App. 11, CPH 1395046.

The March 19, 1998 press release contained 5 lies: 3 affirmative misrepresentations and 2 misstatements of omissions. The misrepresentations: (1) it was "possible" Sunbeam might not achieve sales of $285 million to $295 million – a misrepresentation because it was impossible to achieve that level of sales and Morgan Stanley knew it; (2) Sunbeam was on track to exceed 1997 first quarter net sales of $253.4 million – a misrepresentation because Sunbeam was actually completely off the track; and (3) the shortfall from analysts' estimates, "if any," would be caused by retailers' order patterns and those orders would come in later in the year – a misrepresentation because the actual reason, which Morgan Stanley knew, was that the early buy

program had stolen those 1998 sales to make 1997 look better than it actually was. The misstatements of omission: (4) the actual sales numbers were not included so that investors could make their own informed decisions; and (5) most significant of all, nothing was said about earnings, creating the implication that Sunbeam was still on track to hit the earnings expectations of Wall Street analysts. Morgan Stanley had certain knowledge that Sunbeam had experienced a substantial loss rather than expected profits, but allowed the press release to imply falsely that there was no cause for concern about earnings. [redacted]

The March 19 press release was the product of a series of conference calls the previous day that had lasted late into the evening. Morgan Stanley, Sunbeam, and their lawyers engaged in a "heated" discussion about "the level of detail" that should be included in a press release. App. 20, Dean Dep. 6/3/2004, at 123-124, 132. As more persons were brought into the circle about the revelations Morgan Stanley had received, it became clear, as one of Morgan Stanley's lawyers admitted, that Sunbeam's first quarter 1998 sales certainly would be lower than what Wall Street expected. App. 21, Stack Dep. 5/25/04, at 123, 147-48. Morgan Stanley and Sunbeam were advised by another of Morgan Stanley's own lawyers that a forthright disclosure would be to include Sunbeam's actual sales figures for January and February 1998. That advice was "soundly rejected." App. 20, Dean Dep. 6/3/2004, at 132-133. Sunbeam and Morgan Stanley never sought the views of Sunbeam's outside auditors, who did not know about the press release until after it was issued; the auditors could not believe they were not consulted – as they typically would be – for their view on the accuracy of a release involving financial issues such as

this. App. 13, Bornstein Dep. 1/15/2004, at 62-64; App. 22, Pastrana Dep. 1/12/2004, at 93, 167; App. 23, Pruitt Dep. 1/13/2004, at 21. [redacted] App. 43, Wright Dep. 7/1/2004, at 92.

At the same time that the press release was issued, Morgan Stanley was in the middle of a series of road show presentations it organized to attract investors for the debenture offering it was underwriting to raise the cash needed to close the transaction. [redacted] App. 24, CPH Ex. 75, at SB 18225. Morgan Stanley stood with Sunbeam as CPH and other investors were specifically reassured that the press release was no cause for alarm because Sunbeam was on track to meet expectations. App. 25, Drapkin Dep. 6/24/2004, at 120. Morgan Stanley stood with Sunbeam as Sunbeam reassured its investors that it issued the press release only because the lawyers insisted, not because of any problem with the business at Sunbeam. Morgan Stanley's presence with Sunbeam as these reassuring statements were made caused several Wall Street analysts to reiterate their "buy" or "strong buy" ratings of the company. App. 26, CPH 1241513; App. 27, CPH 1039208; App. 28, CPH 1059641. These assurances – with Morgan Stanley's assent and confirmation – had their intended purpose of inducing CPH into going forward with the transaction.

D. Sunbeam's Outside Auditor Cries Foul On March 19, 1998.

Morgan Stanley's efforts to conceal Sunbeam's first quarter collapse and the true reasons for it raised the ire of Lawrence Bornstein, one of Sunbeam's senior outside audit managers, who was stunned to hear that Sunbeam had issued a press release assuring the public that it would exceed first quarter 1997 sales of $253.4 million. App. 13, Bornstein Dep. 1/15/2004, at 65-66, 217. [redacted] *Id.* at 85; App. 29, CPH Ex. 121.

On March 19, while Morgan Stanley was making final revisions to the debenture offering memorandum at the printer, Bornstein objected to the inclusion of the press release in the memorandum and confronted John Tyree of Morgan Stanley with his skepticism that Sunbeam could exceed first quarter 1997 sales of $253.4 million. App. 13, Bornstein Dep. 1/15/2004, at 75. Bornstein told Tyree: "I've done basic math, that they have done a million dollars in sales a day for the first 72 days and now they have to do – whatever it was, 12 to $15 million in sales for the next – . . . let's say 17 days, whatever the numbers were, and that I was very skeptical, that I remember saying to him that I don't think this company's turned around." Bornstein then warned Tyree: "You better hope to God that they do, because if not, you're all going to get sued." *Id.* at 80-81.

[redacted] *Id.* at 82; App. 30, CPH Ex. 118;

App. 3[illegible], CPH Ex. 119. Bornstein was concerned that Sunbeam might record as first quarter sales products that were not shipped until after the first quarter had closed. App. 13, Bornstein Dep. 1/[illegible]5/04, at 10-17. Bornstein testified that this cut-off review was unusual and required a "huge amount of effort." *Id.* at 30.

[redacted] *Id.* at 94-96; App. 32, CPH Ex. 114. [redacted] App. 48, Tyree Dep. 9/15/03, at 225. Mark Brockelman, Bornstein's assistant, reviewed Bornstein's March 31, 1998 memorandum in March or April 1998, and concluded that Bornstein's recollections were correct insofar as they related to events that Brockelman witnessed. Brockelman confirmed that Tyree was very upset with Bornstein and referred to Bornstein using derogatory terms outside his presence. App. 33, Brockelman Dep. 1/14/04, at 41, 48-50.

Sunbeam's first quarter actually ended on March 29, but Sunbeam was so desperate to record sales in the first quarter of 1998 that it extended the cut-off for the quarter two extra days to March 31 to capture additional sales. In addition, it even included two days of Coleman sales, in an effort to inflate the numbers and obscure the true picture of Sunbeam's performance. App. 13, Bornstein Dep. 1/15/2004, at 21-22.

E. The More It Learns, The Less Morgan Stanley Says.

After the March 19 press release was issued, Morgan Stanley made final preparations to close the Coleman acquisition. [redacted]

[redacted] App. 34, CPH Ex. 33. [redacted] App. 35, CPH Ex. 34. [redacted] App. 36, CPH Ex. 35. No Morgan Stanley witness has been able to explain the deletion of this item from the agenda, although it is obvious that Sunbeam was attempting to solve its first quarter deficit by taking sales from the second quarter, a fact which Morgan Stanley chose to ignore. [redacted] App. 17, Tyree Dep. 11/14/2003, at 530-31; App. 1, Strong Dep. 12/4/2003, at 245-46; App. 37, Hart Dep. 5/19/2004, at 248; App. 7, Smith Dep. 2/24/2004, at 229-30. In light of Morgan Stanley's knowledge of the sales crisis, it is plain that Morgan Stanley consciously decided not to ask questions the answers to which it already knew, answers that would blow up the deal and Morgan Stanley's fees.

Meanwhile, Morgan Stanley's finance committee met on March 20, 1998 to approve Morgan Stanley's underwriting of a loan to Sunbeam necessary to complete the acquisition of CPH's Coleman stock. [redacted] App. 7, Smith Dep. 2/24/2004, at 101; App. 37, Hart Dep. 5/19/2004, at 224-25; App. 38, CPH Ex. 76.

[redacted] App. 5, at Morgan Stanley 85455.

[redacted] App. 7, Smith Dep. 2/24/2004, at 203.

[redacted] App. 3[illegible], CPH Ex. 76; App. 7, Smith Dep. 2/24/04 at 203-204. [redacted] Instead, Morgan Stanley's senior management discussed how they could quickly transfer nearly the entire loan to other lenders to reduce Morgan Stanley's exposure. App. 7, Smith Dep. 2/24/2004, at 211-212.

On March 25, 1998, Sunbeam's outside auditor's sent yet another letter directly to Morgan Stanley that [redacted]

[redacted] App. 39, CPH Ex. 112; App. 28, CPH 1059641; App. 40, CPH 1393269. [redacted]

[redacted] App. 39, CPH Ex. 112, at CPH 129615.

[redacted] *Id.* [redacted]

Having directly participated in misleading CPH and other investors, Morgan Stanley had a duty to disclose the truth. Instead, Morgan Stanley closed the $750 million debenture offering on March 25, 1998, assisted Sunbeam in closing the acquisition of Coleman on March 30, 1998, [redacted]

F. The Fraudulent Scheme Unravels.

On April 3, 1998 – just four days after the Coleman transaction closed – Sunbeam announced that first quarter 1998 sales would not simply fail to meet expectations, but would be

lower than first quarter 1997 sales. App. 41, CPH Ex. 36; App. 19, CPH 395046. Undisclosed at that time was the fact that these results, which were themselves a disaster, included two extra days of Sunbeam sales, two extra days of Coleman sales, and almost $30 million of sales stolen from the second quarter by the use of phony "bill and hold" accounting. That sales shortfall was shocking news, and the market reacted predictably as Sunbeam's stock price fell precipitously. After a few months, the fraud began to unravel. In June 1998, Sunbeam's Board launched an internal investigation. The investigation led to the firing of Dunlap and Kersh; a restatement of Sunbeam's financials for 1996, 1997, and first quarter 1998; an investigation by the United States Securities and Exchange Commission; numerous shareholder lawsuits; and ultimately, Sunbeam's bankruptcy filing.

[redacted] App. 6, at Morgan Stanley 8547. [redacted]

Dunlap had been fired in disgrace, the fraud was well known, and CPH had lost hundreds of millions of dollars.

CPH'S PROFFER SUPPORTS A CLAIM OF PUNITIVE DAMAGES

Punitive damages are appropriate when a defendant's conduct is fraudulent, deliberately violent or oppressive, malicious, or committed with such gross negligence as to indicate a wanton disregard for the rights of others. *See W.R. Grace & Co. v. Waters*, 638 So. 2d 502, 503 (Fla. 1994); *see also Merrill Lynch & Co., Inc. v. Allegheny Energy, Inc.*, 2003 WL 22795650, at *8 n 10 (S.D.N.Y. 2003) (punitive damages are available under New York law when the conduct engaged in may be characterized as "gross" or "morally reprehensible" and stating that "[i]f

Merrill Lynch sold a business that it knew was in a significantly different condition than it represented and failed to disclose certain facts when it had the duty to do so, such conduct may be said to be gross or morally reprehensible"). Indeed, "a claim of fraud sufficient to justify compensatory damages is also sufficient to support an award of punitive damages." *Rapaport v. Jimmy Bryan Toyota of Ft. Lauderdale, Inc.*, 522 So. 2d 1005, 1006 (Fla. 4th DCA 1988); *accord Lou Bachrodt Chevrolet, Inc. v. Savage*, 570 So. 2d 306, 308 (Fla. 4th DCA 1990).

It is indisputable that CPH has adequately alleged causes of action for fraud, aiding and abetting, and conspiracy. The gist of CPH's causes of action is that Morgan Stanley – operating under the most base roots of malice and greed – affirmatively defrauded CPH and aided and abetted Sunbeam's fraud. The same facts that prove those causes of action prove CPH's right to ask a jury for punitive damages.

CONCLUSION

For the foregoing reasons, because CPH has made a reasonable showing that Morgan Stanley committed fraud in wanton disregard of CPH's rights, CPH should be permitted to amend its Complaint to seek punitive damages against Morgan Stanley.

Dated: September 21, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO.: CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
et al.

Defendants.
_____/

CASE NO.: CA 03-5165 AI

COLEMAN (PARENT) HOLDINGS INC.'S AMENDMENT TO ITS COMPLAINT TO SEEK PUNITIVE DAMAGES

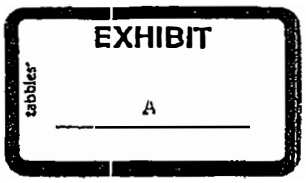
Pursuant to Rule 1.190 of the Florida Rules of Civil Procedure and Fla. Stat. § 768.72(1), together with plaintiff Coleman (Parent) Holdings Inc.'s Motion to Amend Its Complaint To Seek Punitive Damages, CPH hereby amends the ad damnum in its Complaint to include a claim for punitive damages against defendant Morgan Stanley & Co., Inc. as follows:

WHEREFORE, plaintiff Coleman (Parent) Holdings Inc. demands judgment against defendant Morgan Stanley & Co., Inc. as follows:

A. Compensatory damages to be determined at trial in an amount in excess of $485 million;

B. An award of costs and expenses incurred in this action, including reasonable attorneys' and experts' fees and expenses;

C. Punitive damages; and



D. Any further relief as the Court may deem just and proper in light of all the circumstances of the case.

Dated: September 21, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO: 2003 CA 005045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. 2003 CA 005165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S MOTION FOR DETERMINATION OF PROTECTABILITY OF MATERIAL REDACTED FROM COURT RECORDS

Plaintiff Coleman (Parent) Holdings Inc. ("CPH"), pursuant to the Court's Order of September 15, 2004, hereby moves for a judicial determination of the confidentiality of the redactions made in the redacted copy of the motion to add a claim for punitive damages that CPH filed on September 21, 2004. In support of this motion, CPH states as follows:

1. On September 21, 2004, CPH filed a motion to add a claim for punitive damages that references certain documents have been designated as confidential by the parties and certain third parties. Specifically, Sunbeam has designated the documents appearing at Tabs 24, 36, and 42 to the appendix as confidential. The law firm of Skadden Arps has designated the document appearing at Tab 41 as confidential. Arthur Andersen has designated the documents appearing at

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Motion To Seal
Case No.: 2003 CA 005045 AI

Tabs 14, 30, 31, 32, 39, and 44 as confidential. The remaining documents designated as confidential have been so designated by the parties, although CPH hereby withdraws its confidentiality designations, so that only the confidentiality designations made by Morgan Stanley and by the third parties just addressed remain in place. In accordance with the Court's September 15, 2004 Order, CPH has filed a redacted version of the motion along with an unredacted version under seal.

2. Because the Court has not made a prior determination of confidentiality of the documents and transcripts in question, in accordance with the September 15, 2004 Order, CPH hereby requests such a determination. Notice to the public is being given contemporaneously with this motion through a Notice to Media that is being sent to the Palm Beach County Daily Business Review. *See* Administrative Order No. 2.032-2/00.

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Motion To Seal
Case No.: 2003 CA 005045 AI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 21st day of September, 2004.

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Coler n: (Parent) Holdings Inc. vs Morgan Stanley & Company
Motic n fo Seal
Case Nc.: 2003 CA 005045 AI

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH CCUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiffs,
vs.
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CASE NO: 2003 CA 005045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,
vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant,
_____/

CASE NO. CA 03-5165 AI

NOTICE OF FILING PLEADING UNDER SEAL

COLEMAN (PARENT) HOLDINGS INC. hereby gives notice of the filing of CPH's Motion to Amend its Complaint to Seek Punitive Damages, filed under Seal on this date.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 21st day of Sept, 2004.

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Searcy Denney Scarola
Barnhart & Shipley, P.A.
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West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 684-5816
Attorneys for CPH

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Notice Of Filing Pleading Under Seal
Case No.: 2003 CA 005045 AI

COUNSEL LIST

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One IBM Plaza
Suite 4400
Chicago, IL 60611

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs. Case No. CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff, Case No. CA 03-5165 AI

vs.

MACANDREWS & FORBES HOLDINGS, INC.

Defendant

_____/

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: October 14, 2004

TIME: 8:00 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

Coleman (Parent) Holdings Inc. vs. Morgan Stanley & Co., Inc.
Case No. 2003 CA 005045 AI
Notice of Hearing

SPECIFIC MATTERS TO BE HEARD:

CP-1's Motion To Amend Its Complaint To Seek Punitive Damages

CP-1's Motion for Determination of Protectability of Material Redacted from Court Records

CP-1's Notice to Media

Cole na l (Parent) Holdings Inc. vs. Morgan Stanley & Co., Inc.
Case N . 2003 CA 005045 AI
Noti e f Hearing

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all Counsel on the attached list, this 21st day of September, 2004.

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Coleman (Parent) Holdings Inc. vs. Morgan Stanley & Co., Inc.
Case No. 2003 CA 005045 AI
Notice of Hearing

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FAX TRANSMITTAL

JENNER & BLOCK

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Tel 312 222-9350
www.jenner.com

Chicago
Dallas
Washington, DC

Date: September 21, 2004

To: Thomas A. Clare, Esq. Fax: (202) 879-5200
Voice: (202) 879-5993

Joseph Ianno, Jr., Esq. Fax: (561) 659-7368
Voice: (561) 659-7070

From: Michael T. Brody
312 923-2711

Employee Number: Client Number: 41198-10003

Important: This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is attorney work product, privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via postal service. Thank you.

Message:

Total number of pages including this cover sheet: 4 Time Sent:

If you do not receive all pages, please call: 312 222-9350 Sent By:

Secretary: Caryn Jo Geisler Extension: 6490

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
et al.,
Defendants.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITIONS

To: Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates, times, and locations set forth below, which previously have been agreed to by the parties:

DEPONENT	DATE AND TIME	LOCATION
Jason Kunreuther	September 24, 2004, at 9:30 a.m.	Esquire Deposition Services 216 E. 45th St., 8th Floor New York, NY 10017
R. Bram Smith	October 8, 2004, at 9:30 a.m.	Esquire Deposition Services 216 E. 45th St., 8th Floor New York, NY 10017
Michael Hart	October 8, 2004, at 1:00 p.m.	Esquire Deposition Services 216 E. 45th St., 8th Floor New York, NY 10017

The depositions will be recorded by stenographic and audio-visual means and will be taken before a person authorized to administer oaths and will continue day to day until completed. The videographer will be Esquire Deposition Services in New York.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 21st day of September, 2004.

Dated: September 21, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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Michael T. Brody
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(312) 222-9350

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

Case No. CA 03-5045 AI

vs.
MORGAN STANLEY & CO., INC.,
Defendant,
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

Case No. CA 03-5165 AI

vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant,
_____/

NOTICE TO MEDIA

TO: Palm Beach County Daily Business Review
Attn: Legal Department
P.O. Box 66
West Palm Beach, Florida 33402

A hearing on a motion for a determination of the protectability of material redacted from court records will be conducted in the consolidated cases of *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.*, Palm Beach County Circuit Court Case Number CA 03-5045 AI and *Morgan Stanley Senior Funding, Inc., v. MacAndrews & Forbes Holdings, Inc.*, Palm Beach County Circuit Court Case Number CA 03-5165 AI on the 14th day of October, 2004, at 8:00 a.m. before the Honorable Elizabeth T. Maass, Circuit Court Judge, in Room 11 A of the Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida.

Dated this 21st day of September, 2004.

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		Phone Number	Fax Number
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	Thomas Clare, Esq.		(202) 879-5200
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Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 4

Message: To follow please find a copy of Morgan Stanley's AMENDED Motion for Enlargement of Time to File Amended Affirmative Defenses

☐ Original to follow Via Regular Mail ☐ Original will Not be Sent ☑ Original will follow via Overnight Courier

****

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,
vs.
MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO: CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,
vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.
_____/

CASE NO: CA 03-5165 AI

MORGAN STANLEY'S AMENDED MOTION FOR ENLARGEMENT OF TIME TO FILE AMENDED AFFIRMATIVE DEFENSES

Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc. (collectively "Morgan Stanley"), by and through its undersigned counsel, move this Court to enlarge the time for Morgan Stanley to file amended affirmative defenses. In support of its motion, Morgan Stanley states as follows:

1. Pursuant to the agreement of the parties, amendments to the pleadings are due September 21, 2004.

2. Contemporaneously with this Motion, Morgan Stanley is serving its Amended Answer and Affirmative Defenses. However, Morgan Stanley is unable to serve its Seventh Affirmative Defense until the Court determines the pending pro hac vice motions of the attorneys from Kellogg, Huber, Hansen, Todd & Evans, PLLC.

3. Morgan Stanley will be prepared to serve and file the Seventh Affirmative Defense upon determination of the pending pro hac vice motions of the attorneys from Kellogg, Huber, Hansen, Todd & Evans, PLLC.

WHEREFORE, Morgan Stanley respectfully requests that this Court enlarge the time for Morgan Stanley to serve its Seventh Affirmative Defense together with such other and further relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 21st day of September, 2004.

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,
vs. CASE NO: CA 03-5045 AI
MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,
vs. CASE NO: CA 03-5165 AI
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.
_____/

MORGAN STANLEY'S MOTION FOR ENLARGEMENT OF TIME TO FILE AMENDED AFFIRMATIVE DEFENSES

Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc. (collectively "Morgan Stanley"), by and through its undersigned counsel, moves this Court to enlarge the time for Morgan Stanley to file amended affirmative defenses. In support of its motion, Morgan Stanley states as follows:

1. Pursuant to the agreement of the parties, amendments to the pleadings are due September 21, 2004.

2. Contemporaneously with this Motion, Morgan Stanley is serving its Amended Answer and Affirmative Defenses. However, as the Court is aware,

3. Morgan Stanley respectfully requests that the Court extend the deadline for providing the amended responses for in camera review until August 20, 2004 for the following reasons:

a) On July 26, 2004, counsel for Plaintiff refused to agree to a Special Master to issue a report and recommendation concerning privilege issues. As the Court stated on July 23, 2004, the Court would not be able to rule on these issues quickly; therefore, there would be no prejudice if this short extension was granted.

b) The deadline for seeking appellate review of the July 12, 2004 Order is August 11, 2004. Due to the other issues pending in this action, Morgan Stanley requires additional time to analyze whether to seek appellate review of the July 12, 2004 Order. If appellate review is sought, it would be unnecessary for the Court to conduct an in camera inspection until the appellate review is completed. At the very least, the deadline should be extended until after the deadline for filing a Petition for Certiorari.

c) The next Case Management Conference in this matter is scheduled for August 13, 2004. It is anticipated that additional issues concerning the Motion for Contempt and related discovery be raised at that conference. Morgan Stanley believes that the Court's rulings at the Case Management Conference on August 13, 2004 will have a direct impact on the application of the Court's July 12, 2004 Order. Therefore, compliance with the July 12, 2004 Order should be delayed until after the August 13, 2004 Case Management Conference.

4. Morgan Stanley will provide amended responses to the Interrogatories as required by the July 12, 2004 Order for any non-privileged information that was not required to be submitted to the Court for in camera inspection.

WHEREFORE, Morgan Stanley respectfully requests that this Court enlarge the time for Morgan Stanley to comply with the Court's July 12, 2004 Order until August 20, 2004 together with such other and further relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 21st day of September, 2004.

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BY: Joseph Ianno, Jr.
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16div-006762

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,
vs.
MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO: CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,
vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.
_____/

CASE NO: CA 03-5165 AI

MORGAN STANLEY'S MOTION FOR LEAVE TO AMEND PLEADINGS

Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc. (collectively "Morgan Stanley"), by and through its undersigned counsel, moves this Court for leave to file and serve its amended answer and amended affirmative defenses. In support of its motion, Morgan Stanley states as follows:

1. Pursuant to the agreement of the parties, amendments to the pleadings are due September 21, 2004.

2. Morgan Stanley has prepared its Amended Answer with the exception of the Seventh Affirmative Defense. Contemporaneously with this Motion, Morgan Stanley has requested an enlargement of time to file its Seventh Affirmative Defense. A copy of Morgan Stanley's Amended Answer is attached hereto as Exhibit "A."

WHEREFORE, Morgan Stanley respectfully request that this Court grant leave to amend together with such other and further relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 21st day of September, 2004.

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EXHIBIT "A"

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO: CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.
_____/

CASE NO: CA 03-5165 AI

AMENDED ANSWER OF MORGAN STANLEY & CO. INCORPORATED

Defendant Morgan Stanley & Co. Incorporated ("MS & Co.") responds to Plaintiff Coleman (Parent) Holdings, Inc.'s ("CPH") Complaint by denying generally that MS & Co. engaged in any fraudulent or negligent misrepresentations, any conspiracy to defraud, that MS & Co. assisted Sunbeam Corporation ("Sunbeam") or any employee, director or agent of Sunbeam in the commission of a fraudulent scheme, or that MS & Co. otherwise defrauded CPH in any manner. Specifically, MS & Co. responds to CPH's allegations as follows:

Nature of the Action

1. MS & Co. denies the allegations contained in Paragraph 1.

2. MS & Co. admits that, beginning in mid-1997, MS & Co. served as an investment banker for Sunbeam. MS & Co. admits that it attempted to identify a party interested in purchasing Sunbeam, and that those efforts were ultimately unsuccessful. MS & Co. admits that it recommended that Sunbeam's management consider acquiring other companies instead and

suggested, as is common in corporate mergers and acquisitions, that Sunbeam consider, among other options, using Sunbeam stock as part of the consideration for such an acquisition. MS & Co. denies that it had any knowledge as to the accuracy of the value of Sunbeam's stock, or that MS & Co. knew (or even suspected) that the value of Sunbeam's stock had been "fraudulently inflated." MS & Co. admits that it facilitated communications between Sunbeam and Coleman, but denies that it in any way "persuaded" CPH to sell its interest in Coleman. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 2 and consequently denies them.

3. MS & Co. admits that it agreed to serve as underwriter of a $750 million debenture offering for Sunbeam. MS & Co. admits that, as an advisor to Sunbeam, it had access to certain financial documents, and further states that those same documents were made available to CPH during the acquisition negotiations. Further, in that regard, MS & Co. specifically disclaimed any independent evaluation of Sunbeam's financial records, and expressly stated that it relied solely on documentation and information provided by Sunbeam and Sunbeam's audited financial statements. MS & Co. admits that on March 18, 1998, it learned that Sunbeam's first quarter 1998 sales were "soft." Sunbeam insisted that its sales would meet expectations, but MS & Co. insisted that Sunbeam issue a press release to warn the market of the softening sales. Additionally, MS & Co. received two "comfort letters" from Sunbeam's auditors, Arthur Andersen. MS & Co. performed all of its obligations as an underwriter of Sunbeam securities. MS & Co. denies that it had any role in the accounting judgments described in the complaint, or any obligations to audit or independently examine Sunbeam's accounting records. MS & Co. denies that it owed any duties to CPH. MS & Co. denies that it had any independent knowledge as to the reasons behind Sunbeam's soft sales, that Sunbeam had a "practice of accelerating

sales," or that it "materially misrepresent[ed]" information to CPH. Further, MS & Co. specifically denies that it in any manner assisted Sunbeam in concealing its 1998 first quarter sales numbers in order to close the transaction. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 3 and consequently denies them.

4. MS & Co. admits that CPH has brought this action against MS & Co. alleging fraudulent misrepresentation, aiding and abetting, conspiracy, and negligent misrepresentation, but denies that there is any merit to the suit. MS & Co. specifically denies that it made any fraudulent or negligent representations to CPH, that it in any way aided or abetted a fraudulent scheme against CPH, or that it participated in a conspiracy to defraud CPH. MS & Co. denies that any losses that CPH suffered resulted from fraud or any wrongful conduct on the part of MS & Co. MS & Co. denies the remaining allegations contained in Paragraph 4.

5. MS & Co. admits that CPH purports to seek compensatory damages against MS & Co., but denies that such claim is valid, for MS & Co. denies that it was engaged in any wrongful conduct. MS & Co. denies the remaining allegations contained in Paragraph 5.

Jurisdiction and Venue

6. MS & Co. admits the allegations contained in Paragraph 6. MS & Co. further admits that it is incorporated in Delaware and has its principal place of business in New York.

7. MS & Co. denies that venue is proper in this district.

Parties and Other Key Participants

8. MS & Co. admits that CPH represented, in negotiations with Sunbeam, that it owned, directly or indirectly, approximately 82% of Coleman prior to March 30, 1998. MS & Co. admits that on March 30, 1998, Sunbeam acquired CPH's interest in Coleman by paying

CPH with 14.1 million shares of Sunbeam common stock and other consideration, including a cash payment by Sunbeam to CPH in the amount of $159,956,756.00. (*See* Feb. 27, 1998 Merger Agmt. § 3.1(a)(i) (Ex. 1).) MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 8 and consequently denies them.

9. MS & Co. admits that it is an investment banking firm providing financial and securities services. MS & Co. admits that, as part of its business operations, it at times provides advice on mergers and acquisitions, and raises capital in equity and debt markets, depending on the needs of its clients. MS & Co. admits that it served as Sunbeam's investment banker for certain aspects of Sunbeam's acquisition of Coleman, and served as underwriter of certain securities issued by Sunbeam in connection with the acquisition. MS & Co. denies any remaining allegations contained in Paragraph 9.

10. MS & Co. admits that Sunbeam was a publicly-traded company which manufactures and markets household and specialty consumer products, including outdoor cooking products. MS & Co. admits that Sunbeam marketed these products under several brand names, including Sunbeam and Oster. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 10 and consequently denies them.

11. MS & Co. admits that Albert Dunlap had served as the Chief Executive Officer of Sunbeam. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 11 and consequently denies them.

12. MS & Co. admits that Russell Kersh had served as the Executive Vice President of Sunbeam. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 12 and consequently denies them.

13. MS & Co. admits that Arthur Andersen LLP served as Sunbeam's auditors and provided independent/outside accounting services to Sunbeam. MS & Co. further admits that, during the performance of its engagement, it received "comfort letters" from Arthur Andersen. MS & Co. never served as auditor for Sunbeam, and never provided Sunbeam with any accounting or accounting-related services. MS & Co. lacks sufficient knowledge or information to know the location of Lawrence Bornstein or to form a belief as to the truth of any allegations pertaining to him, and consequently denies them. MS & Co. denies any remaining allegations contained in Paragraph 13.

Factual Background

14. MS & Co. admits the allegations contained in Paragraph 14.

15. MS & Co. responds that the allegations contained in Paragraph 15 pertain to publicly available information, and refers to such information for the truth or falsity of such allegations. To the extent that further response is required, MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 15 and consequently denies them.

16. MS & Co. responds that the allegations contained in Paragraph 16 pertain to publicly available information, and refers to such information for the truth or falsity of such allegations. To the extent that further response is required, MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 16 and consequently denies them.

17. MS & Co. admits, on information and belief, that Albert Dunlap was hired as Sunbeam's Chief Executive Officer on or about July 18, 1996. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 17 and consequently denies them.

18. MS & Co. admits, on information and belief, that Russell Kersh was hired as Sunbeam's Chief Financial Officer. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 18 and consequently denies them.

19. MS & Co. admits, on information and belief, that Albert Dunlap and members of his senior management team entered into employment agreements with Sunbeam. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 19 and consequently denies them.

20. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 20 and consequently denies them.

21. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 21 and consequently denies them.

22. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 22 and consequently denies them.

23. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 23 and consequently denies them.

24. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 24 and consequently denies them.

25. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 25 and consequently denies them.

26. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 26 and consequently denies them.

27. MS & Co. admits, on information and belief, that Sunbeam reported a loss of $18.1 million in the third quarter of 1996, and that it had a $34.5 million gain in the third quarter 1997. MS & Co. further admits, on information and belief, that Sunbeam reported an increase in profits from $6.5 million in 1996 to $67.7 million in 1997. MS & Co. responds that the allegations contained in Paragraph 27 regarding stock prices pertain to publicly available information and MS & Co. refers to such information for the truth or falsity of such allegations. To the extent that further response is required, MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 27 and consequently denies them.

28. MS & Co. admits that it was engaged by Sunbeam to explore a possible sale of Sunbeam's core business or the initiation of one or more acquisitions. MS & Co. denies that it ever served as Dunlap's "shill." MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 28 and consequently denies them.

29. MS & Co. admits that William Strong and other MS & Co. employees met with Sunbeam in the spring of 1997 to discuss Sunbeam's investment banking requirements. Further, MS & Co. admits that, although it was not engaged in a previous relationship with Sunbeam, William Strong had worked with Dunlap before, during Strong's previous employment with

Salomon Brothers. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 29 and consequently denies them.

30. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 30 and consequently denies them.

31. MS & Co. admits that William Strong and other MS & Co. employees met with Sunbeam in the spring of 1997 to discuss Sunbeam's investment banking requirements. MS & Co. admits that it was engaged by Sunbeam to explore a possible sale of Sunbeam's core business or the initiation of one or more acquisitions. MS & Co. admits that it initially sought a buyer for Sunbeam. To the extent this Paragraph alleges that MS & Co. was motivated to participate in a fraud in order to retain a single client and receive a customary fee, that allegation is foreclosed, among other reasons, by the fact that MS & Co.'s own affiliate lent hundreds of millions of dollars to Sunbeam two days after the Coleman acquisition closed. (June 1998 Credit Facilities Mem. (Ex. 2).) MS & Co. denies any remaining allegations contained in Paragraph 31.

32. MS & Co. admits that it searched for a buyer for Sunbeam. MS & Co. further admits that it assembled marketing materials based on financial documentation and audited financial statements provided to MS & Co. by Sunbeam and Arthur Andersen, for use in meetings with potential acquirers. MS & Co. admits that, despite contacting many companies, it was unable to find a buyer for Sunbeam. MS & Co. specifically denies CPH's allegation that MS & Co. knew that it would not be compensated if "it failed to deliver a major transaction," or that "Davis and Chase were standing by . . . to reclaim their position as Dunlap's investment banker of choice." MS & Co. denies any remaining allegations contained in Paragraph 32.

33. MS & Co. denies that it provided the "solution" to any "problem" alleged in Paragraph 33. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 33 and consequently denies them.

34. MS & Co. admits after its unsuccessful attempts to locate a purchaser for Sunbeam, it suggested that Sunbeam acquire one or more other companies instead. MS & Co. admits that it proposed to Sunbeam, among other options, the possibility of paying for any such acquisition in part with Sunbeam's stock. MS & Co. specifically denies any knowledge to the effect that a "failure to find a buyer for Sunbeam could prove fatal to [their] relationship." MS & Co. further denies any involvement in or knowledge of fraudulently inflated Sunbeam stock or concealment of any fraud at Sunbeam. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 34 and consequently denies them.

35. MS & Co. admits that, beginning in mid-1997, MS & Co. served as an investment banker for Sunbeam. MS & Co. admits that it attempted to identify a party interested in purchasing Sunbeam, and that those efforts were ultimately unsuccessful. MS & Co. admits that it recommended that Sunbeam's management consider, among other options, acquiring other companies instead and suggested, as is common in corporate mergers and acquisitions, that Sunbeam consider using Sunbeam stock as part of the consideration for such an acquisition. MS & Co. denies that it developed "acquisition strategies" for Sunbeam or that the services or potential transactions it discussed with Sunbeam's management were deceptive or in any way designed to facilitate fraud. MS & Co. specifically denies that it in any way knew of or knowingly assisted Dunlap to "camouflage Sunbeam's results" thereby making it "difficult to detect any shortfall in Sunbeam's performance," or that it knew of or assisted Dunlap in taking

"new massive restructuring charges," which thereby created increased "cookie jar reserves." MS & Co. denies any remaining allegations contained in Paragraph 35.

36. MS & Co. admits that, in its capacity as advisor to Sunbeam, it identified Coleman as a potential acquisition candidate. MS & Co. admits that it communicated with representatives of Coleman to discuss a potential acquisition, but denies that it "persuade[d] CPH to sell its interest in Coleman to Sunbeam." MS & Co. admits that CPH represented, in negotiations with Sunbeam, that it owned, directly or indirectly, approximately 82% of Coleman prior to March 30, 1998. MS & Co. denies the remaining allegations contained in Paragraph 36.

37. MS & Co. admits that it facilitated a meeting between representatives from Sunbeam and MacAndrews & Forbes Holdings, Inc. ("MAFCO") in December 1997. MS & Co. admits that it prepared Sunbeam's representatives for that meeting. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 37 and consequently denies them.

38. MS & Co. admits that discussions between Sunbeam, MAFCO and CPH resumed in early 1998. MS & Co. further admits that its Managing Directors James Stynes and Robert Kitts worked on MS & Co.'s engagement for Sunbeam. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 38 and consequently denies them.

39. MS & Co. denies that it "persuade[d]" CPH to sell Coleman in exchange for Sunbeam stock. MS & Co. denies that it "prepared" financial information for CPH. There is, in any event, no factual allegation contained in Paragraph 39 or elsewhere that identifies such alleged information at all, let alone with particularity. MS & Co. further denies that it knowingly "provided" CPH with false financial and business information, or otherwise knowingly relayed

false information to CPH which created an appearance that "Sunbeam was prospering and that Sunbeam's stock had great value." Specifically, MS & Co. denies that it knowingly provided CPH with false 1996 and 1997 sales and revenue figures or with false projections. MS & Co. denies that it "falsely assured CPH that Sunbeam's 'early buy' sales program would not hurt Sunbeam's future revenues," that "Sunbeam would meet or exceed" first quarter 1998 estimates, that 1998 earnings estimates were accurate, that a plan to earn $2.20/share was attainable or even low, or that it "specifically advised CPH that Sunbeam's first quarter 1998 sales were 'tracking fine' and running ahead of analysts' estimates."

In any event CPH could not have relied on such alleged representations in light of (i) the Merger Agreement's representations and warranties (Merger Agmt. §§ 5.1-5.4), none of which refer to any alleged representation contained in this Paragraph, (ii) the representations and warranties in a separate agreement that was executed by Coleman and Sunbeam (Feb. 27, 1998 Company Merger Agmt. § 5.1-5.12 (Ex. 3)), which are expressly incorporated into the Merger Agreement and none of which refer to any alleged representation contained in this Paragraph, and (iii) the Merger Agreement's broad integration clause which forecloses reliance on any alleged representation contained in this Paragraph (Merger Agmt. § 12.5). MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 39 and consequently denies them.

40. MS & Co. admits that CPH agreed to sell its shares in Coleman to Sunbeam, and that CPH agreed to accept Sunbeam stock as partial payment for the sale, but denies that MS & Co. "persuaded" CPH to make the deal. CPH is a sophisticated party and was represented by its own expert advisors and attorneys. (*Id.* §§ 1.1; 4.11.) CPH and its advisors also enjoyed full access to Sunbeam's "books, records, properties, plants and personnel." (*Id.* § 6.7.) CPH also

expressly disclaimed reliance on statements allegedly made during negotiations. (*Id.* § 12.5.) MS & Co. responds that the allegations contained in Paragraph 40 regarding stock value pertain to publicly available information, and refers to such information for the truth or falsity of such allegations. To the extent that further response is required, MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 40 and consequently denies them.

41. MS & Co. admits that on February 27, 1998, Sunbeam's Board of Directors met at Morgan Stanley's New York offices to discuss Sunbeam's possible purchase of Coleman. MS & Co. denies the remaining allegations contained in Paragraph 41.

42. MS & Co. admits it made a presentation during the February 27, 1998 Sunbeam Board of Directors Meeting. MS & Co. further admits that MS & Co. representatives, including William Strong, Robert Kitts, James Stynes and Ruth Porat, were present at this meeting. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 42 and consequently denies them.

43. MS & Co. admits that at that February 27, 1998 New York meeting, it provided Sunbeam with a written "fairness opinion" regarding the fair acquisition price of Coleman. This opinion was based on financial information provided to MS & Co. by Sunbeam, Coleman, and Arthur Andersen, and on synergy analyses which MS & Co. received from CPH. The written fairness opinion explicitly stated that MS & Co. "[has] not made any independent valuation or appraisal of the assets or liabilities of [Sunbeam]." (Feb. 27, 1998 Fairness Op. at 3 (Ex. 4).) MS & Co. denies any remaining allegations contained in Paragraph 43.

44. MS & Co. admits that the Sunbeam Board of Directors approved the Coleman acquisition at the February 27, 1998 meeting in New York. MS & Co. lacks sufficient

knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 44 and consequently denies them.

45. MS & Co. admits that it continued to provide investment banking services to Sunbeam after the Coleman acquisition was approved. MS & Co. denies any remaining allegations contained in Paragraph 45.

46. MS & Co. admits that the Coleman acquisition was announced on March 2, 1998. MS & Co. responds that the allegations contained in Paragraph 46 regarding stock prices pertain to publicly available information, and refers to such information for the truth or falsity of such allegations. To the extent that further response is required, MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 46 and consequently denies them.

47. MS & Co. admits that it agreed to serve as underwriter for Sunbeam's subordinated debentures. The "cash portion" of the consideration set forth in the Merger Agreement was also financed in part through a $680 million loan made by Morgan Stanley Senior Funding, an affiliate of MS & Co. (*See* Credit Facilities Mem.) MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 47 and consequently denies them.

48. MS & Co. admits that the money raised from the sale of the debentures was used in part to finance Sunbeam's acquisition of Coleman.

49. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 49 and consequently denies them.

50. MS & Co. admits that the convertible debentures were presented to potential investors at a series of "road show" meetings and conference calls. MS & Co. admits that it

reviewed and commented on the offering memorandum and other materials used to present the debentures to potential investors. MS & Co. denies that it "misrepresented Sunbeam's financial performance" or "emphasized Dunlap's purported 'turnaround' accomplishments." To the contrary, the offering memorandum expressly stated that MS & Co. assumed no responsibility for the accuracy or completeness of Sunbeam's audited financial information and warned investors not to rely on any projections of future performance. (March 19, 1998 Note Offering Mem. at 2-3, 12-17, 72 (Ex. 5).) MS & Co. denies any remaining allegations contained in Paragraph 50.

51. MS & Co. admits that it launched the debenture offering with a presentation to the Morgan Stanley sales force, but denies the remaining allegations contained in Paragraph 51.

52. MS & Co. admits that the debenture offering was increased from $500 million to $750 million. MS & Co. admits that the debentures were offered to investors nationwide. MS & Co. denies any remaining allegations contained in Paragraph 52.

53. MS & Co. admits that its employees traveled on one occasion to Sunbeam's Florida offices. MS & Co. denies the remaining allegations contained in Paragraph 53, except to the extent that they constitute legal conclusions to which no response is required.

54. MS & Co. admits that William Strong worked on MS & Co.'s engagement for Sunbeam. MS & Co. also admits that Strong has provided deposition testimony discussing conversations with Sunbeam officials. MS & Co. denies that Strong or any other MS & Co. employee was accurately apprised of Sunbeam's financial condition because MS & Co. at all times relied on information provided by Sunbeam management and Arthur Andersen, including Sunbeam's audited financial statements. MS & Co. lacks sufficient knowledge or information to

form a belief as to the truth of any remaining allegations contained in Paragraph 54 and consequently denies them.

55. MS & Co. denies CPH's allegation that it was "telling CPH and the investing public . . . that Sunbeam's turnaround was a success, that Sunbeam's sales for the first quarter of 1998 were ahead of expectations of outside analysts, and that Sunbeam was poised for record sales." Furthermore, any information communicated by MS & Co. was based on financial data and information provided to it by Sunbeam and Arthur Andersen — a fact that MS & Co. regularly publicized through disclaimer statements. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 55 and consequently denies them.

56. MS & Co. denies the allegations contained in Paragraph 56.

57. MS & Co. admits that it received a facsimile schedule regarding Sunbeam's finances on or about March 18, 1998. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 57 and consequently denies them.

58. MS & Co. admits that on or about March 18, 1998, it received a faxed financial schedule which reflected that Sunbeam's January and February 1998 sales were below those of January and February 1997. MS & Co. denies that it made assertions or otherwise disseminated information to CPH or others that it knew to be false. MS & Co. denies any knowledge of the fact that Sunbeam had not undergone a successful turnaround, or that Sunbeam's financial performance had not improved in the manner presented by Sunbeam's management and audited financial statements. MS & Co. admits that on March 18, 1998, it learned that Sunbeam's first quarter 1998 sales were "soft." Sunbeam insisted that its sales would meet expectations, but MS

& Co. insisted that Sunbeam issue a press release to warn the market of the softening sales. Additionally, MS & Co. received two "comfort letters" from Sunbeam's auditors, Arthur Andersen. MS & Co. performed all of its obligations as an underwriter of Sunbeam securities. MS & Co. denies that it had any role in the accounting judgments described in the complaint, or any obligations to audit or independently examine Sunbeam's accounting records. MS & Co. denies that it owed any duties to CPH. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 58 and consequently denies them.

59. MS & Co. admits that on March 18, 1998, it learned that Sunbeam's first quarter 1998 sales were "soft." Sunbeam insisted that its sales would meet expectations, but MS & Co. insisted that Sunbeam issue a press release to warn the market of the softening sales. Additionally, MS & Co. received two "comfort letters" from Sunbeam's auditors, Arthur Andersen. MS & Co. performed all of its obligations as an underwriter of Sunbeam securities. MS & Co. denies that it had any role in the accounting judgments described in the Complaint, or any obligations to audit or independently examine Sunbeam's accounting records. MS & Co. denies that it owed any duties to CPH. MS & Co. denies all remaining allegations contained in Paragraph 59.

60. MS & Co. admits that Sunbeam issued a press release on March 19, 1998 that included language selectively quoted in Paragraph 60. MS & Co. further states that the March 19, 1998 press release contained the following additional statement, omitted in the Complaint:

> **Cautionary Statements** - Statements contained in this press release, including statements relating to the Company's expectations regarding anticipated performance in the future, are "forward looking statements," as such term is defined in the Private Securities Litigation Reform act of 1995. Actual results could differ materially from the Company's statements in this release regarding its expectations, goals or projected results, due to various factors, including those set forth in the Company's Cautionary Statements contains in its Annual Report on Form 10-K for its fiscal year ended December 31, 1997 filed with the Securities and Exchange Commission.

(March 19, 1998 Press Release (Ex. 6).)

61. MS & Co. admits that Sunbeam issued a press release on March 19, 1998 that included language selectively quoted in Paragraph 61. MS & Co. further states that the March 19, 1998 press release contained the following additional statement, omitted in the Complaint:

> **Cautionary Statements** - Statements contained in this press release, including statements relating to the Company's expectations regarding anticipated performance in the future, are "forward looking statements," as such term is defined in the Private Securities Litigation Reform act of 1995. Actual results could differ materially from the Company's statements in this release regarding its expectations, goals or projected results, due to various factors, including those set forth in the Company's Cautionary Statements contains in its Annual Report on Form 10-K for its fiscal year ended December 31, 1997 filed with the Securities and Exchange Commission.

(*Id.*) MS & Co. denies all remaining allegations contained in Paragraph 61.

62. MS & Co. denies the allegation that it knew that the "shortfall from analysts' estimates was . . . caused by Sunbeam's acceleration of 1998 sales into the fourth quarter of 1997." MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 62 and consequently denies them.

63. MS & Co. denies the allegations contained in Paragraph 63.

64. MS & Co. specifically denies that it "knew that a full and truthful disclosure . . . would doom the debenture offering," or that it had any knowledge that the press release was untruthful or otherwise misleading. MS & Co. denies the allegations contained in Paragraph 64.

65. MS & Co. denies the allegations contained in Paragraph 65. To the extent that this Paragraph quotes the Merger Agreement, that document speaks for itself and contradicts the allegations contained in the Complaint.

66. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 66 and consequently denies them.

67. MS & Co. denies the allegations contained in Paragraph 67.

68. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 68 and consequently denies them.

69. MS & Co. admits that it continued to serve as Sunbeam's investment banker, and continued to prepare to close the debenture offering and the acquisition of Coleman, but denies any knowledge as to the alleged falsity of the March 19, 1998 press release. MS & Co. denies the remaining allegations contained in Paragraph 69.

70. MS & Co. admits that throughout its service to Sunbeam, MS & Co. employees, including Tyree, spoke via telephone with representatives of Sunbeam. MS & Co. denies any knowledge that the press release was untruthful or otherwise misleading. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 70 and consequently denies them.

71. MS & Co. admits that it received "comfort letters" from Arthur Andersen. MS & Co. denies the allegation that it knew that "Sunbeam's earnings for the first quarter of 1998 were going to miss Wall Street analysts' earning expectations." MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 71 and consequently denies them.

72. MS & Co. admits that it continued to prepare to close both the debenture offering and the acquisition of Coleman. MS & Co. denies any allegation of its "having directly participated in misleading CPH and other investors." MS & Co. responds that the allegation that MS & Co. "had a duty to disclose the true facts" to CPH is a legal conclusion to which no response is required. MS & Co. denies the remaining allegations contained in Paragraph 72.

73. MS & Co. admits that it received compensation for investment banking work performed by MS & Co. for Sunbeam. MS & Co. denies the allegation that it facilitated Sunbeam's fraud. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 73 and consequently denies them.

74. MS & Co. admits that on March 19, 1998, Sunbeam issued a press release which stated that "net sales for the first quarter of 1998 may be lower than the range of Wall Street analysts' estimates of $285 million to $295 million." MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 74 and consequently denies them.

75. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 75 and consequently denies them.

76. MS & Co. admits that it advocated issuing a press release to warn the market of the softening sales, but denies that it represented that Sunbeam's sales would exceed analysts' projections. MS & Co. denies the remaining allegations contained in Paragraph 76.

77. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 77 and consequently denies them.

Count I -- Fraudulent Misrepresentation

78. MS & Co. repeats and realleges its responses to Paragraphs 1 through 77 as if set forth herein.

79. MS & Co. denies the allegations contained in Paragraph 79.

80. MS & Co. denies the allegations contained in Paragraph 80.

81. MS & Co. denies the allegations contained in Paragraph 81.

82. MS & Co. denies the allegation contained in Paragraph 82.

83. MS & Co. denies the allegation contained in Paragraph 83.

Count II -- Aiding and Abetting Fraud

84. MS & Co. repeats and realleges its responses to Paragraphs 1 through 77 as if set forth herein.

85. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 85 and consequently denies them.

86. MS & Co. denies the allegation contained in Paragraph 86.

87. MS & Co. admits that, beginning in mid-1997, MS & Co. served as an investment banker and underwriter for Sunbeam. MS & Co. admits that it attempted to identify a party interested in purchasing Sunbeam, and that those efforts were ultimately unsuccessful. MS & Co. admits that it recommended that Sunbeam's management consider acquiring other companies instead and suggested, as is common in corporate mergers and acquisitions, that Sunbeam consider using Sunbeam stock as part of the consideration for such an acquisition. MS & Co. denies that it had any knowledge as to the accuracy of the value of Sunbeam's stock, or that MS & Co. knew (or even suspected) that the value of Sunbeam's stock had been "fraudulently inflated."

MS & Co. admits that it facilitated communications between Sunbeam and Coleman, but denies that it in any way "persuaded" CPH to sell its interest in Coleman.

MS & Co. admits that on March 18, 1998, it learned that Sunbeam's first quarter 1998 sales were "soft." Sunbeam insisted that its sales would meet expectations, but MS & Co. insisted that Sunbeam issue a press release to warn the market of the softening sales. Additionally, MS & Co. received two "comfort letters" from Sunbeam's auditors, Arthur Andersen. MS & Co. performed all of its obligations as an underwriter of Sunbeam securities.

MS & Co. admits that the convertible debentures were presented to potential investors at a series of "road show" meetings and conference calls. MS & Co. admits that it reviewed and commented on the offering memorandum and other materials used to present the debentures to potential investors. MS & Co. denies the remaining allegations contained in Paragraph 87.

88. MS & Co. denies the allegations contained in Paragraph 88.

Count III -- Conspiracy

89. MS & Co. repeats and realleges its responses to Paragraphs 1 through 77 as if set forth herein.

90. MS & Co. denies the allegations contained in Paragraph 90.

91. MS & Co. admits that it served as a financial advisor to Sunbeam and an underwriter of Sunbeam securities, but denies that it in any way committed "overt acts in furtherance of a conspiracy." MS & Co. denies that it performed an independent financial analysis of Sunbeam; to the contrary, MS & Co. informed CPH that it was relying solely on financial data and information provided to it by Sunbeam and Arthur Andersen. MS & Co. admits that it underwrote the $750 million convertible debenture offering. MS & Co. denies the remaining allegations contained in Paragraph 91.

92. MS & Co. denies the allegations contained in Paragraph 92.

Count IV – Negligent Misrepresentation

93. MS & Co. repeats and realleges its responses to Paragraphs 1 through 77 as if set forth herein.

94. MS & Co. admits that it served as a financial advisor to Sunbeam and an underwriter of Sunbeam securities. MS & Co. responds that the allegations contained in Paragraph 94 constitute legal conclusions to which no response is required. Alternatively, MS & Co. denies the remaining allegations contained in Paragraph 94.

95. MS & Co. denies the allegations contained in Paragraph 95.

96. MS & Co. denies the allegations contained in Paragraph 96.

DEFENSES AND AFFIRMATIVE DEFENSES

In addition to the foregoing responses, MS & Co. asserts the following defenses and affirmative defenses to the claims stated in CPH's Complaint. MS & Co. does not assume the burden of proof on these defenses when the substantive law provides otherwise.

First Defense

CPH's alleged claims must be dismissed on *forum non conveniens* grounds pursuant to Florida Rule of Civil Procedure 1.061(a).

Second Defense

CPH's alleged claims are barred, in whole or in part, for failure to state a cause of action.

First Affirmative Defense

CPH's alleged claims are barred, in whole or in part, by the doctrine of waiver. In particular, CPH contractually waived its alleged claims when it agreed in Section 12.5 of the Merger Agreement and Section 10.4 of the Company Merger Agreement that the Agreements contained the entire agreement and understanding between CPH and Sunbeam and that the

provisions of the Agreements superseded "all prior agreements and understandings, oral or written" with respect to the subject of the Agreements. (Merger Agmt. § 12.5; *see* Company Merger Agmt. § 10.4.)

Additionally, CPH waived its alleged claims when CPH failed to exercise its contractual rights under the Merger Agreement and Company Merger Agreement to examine Sunbeam's books, records, and facilities and then failed to invoke the "material adverse effect" clause of the Merger Agreement. CPH failed to make a reasonable inquiry into information concerning Sunbeam's financial statements, results of operations, projections, facilities, and business plans (hereinafter "Sunbeam Information") after signing the Merger Agreement and Company Merger Agreement, after Sunbeam issued its March 19, 1998 press release, and before CPH accepted over 14 million shares of Sunbeam common stock as partial consideration for the sale of its interest in Coleman. CPH then failed to invoke Section 8.2(c) of the Merger Agreement, a remedy available solely to CPH, thereby permitting the transaction to close and waiving its alleged claims.

Second Affirmative Defense

CPH's alleged claims are barred, in whole or in part, by the doctrine of estoppel. In particular, CPH, is estopped from asserting its claim for the following reasons.

(a) By virtue of the customs and practices in the New York financial markets observed in connection with the negotiation of mergers and acquisitions among sophisticated parties, CPH as an affiliate of MAFCO, understood and agreed that MS & Co., as Sunbeam's investment banker, did not make any representations or warranties to CPH about the accuracy or completeness of the Sunbeam Information supplied to CPH. CPH further understood and agreed MS & Co. would not have any liability to CPH by reason of CPH's use of the Sunbeam Information that MS & Co. provided to CPH. MS & Co. relied upon CPH's understanding and

agreement to the customs and practices in the New York financial markets when MS &Co. provided Sunbeam Information to CPH. CPH is now estopped from claiming to have relied upon Sunbeam Information that MS & Co. supplied to CPH.

(b) By virtue of a letter agreement with Sunbeam dated February 23, 1998, and acknowledged in the Merger and Company Merger Agreements (Merger Agmt. §§ 6.7, 11.2 12.5; Company Merger Agmt. §§ 7.2, 9.2 10.4), CPH, as an affiliate of Coleman, agreed that Sunbeam and its representatives, including MS & Co., did not make any representations or warranties about the accuracy or completeness of the information that they supplied to CPH. CPH further agreed that Sunbeam and its representatives, including MS & Co., would not have any liability to CPH by virtue of CPH's use of the information that they provided to CPH. MS & Co. relied upon CPH's agreement when it provided Sunbeam Information to CPH, and CPH is estopped from now claiming to have relied upon information supplied to CPH outside of Merger Agreement or the Company Merger Agreement.

(c) By virtue of Section 12.5 of the Merger Agreement and Section 10.4 of the Company Merger Agreement, CPH agreed that the Merger Agreement and the Company Merger Agreement contained the entire agreement and understanding between CPH and Sunbeam and that the provisions of the Agreements superseded "all prior agreements and understandings, oral or written" with respect to the subject of the Agreements. (Merger Agmt. § 12.5; *see* Company Merger Agmt. § 10.4.) MS & Co. relied upon CPH's agreement when MS & Co. provided Sunbeam Information to CPH, and CPH is estopped from now claiming to have relied upon information supplied to CPH outside of the Agreements.

(d) CPH bargained for and received access to Sunbeam Information pursuant to Section 6.7 of the Merger Agreement and to Sections 7.2 and 7.3 of the Company Merger

Agreement. When MS & Co. provided Sunbeam Information to CPH, MS & Co. relied upon CPH's contractual undertaking and ability to verify independently all statements that MS & Co. or Sunbeam made to CPH. CPH is estopped from now claiming to have relied upon information supplied to CPH by MS & Co. or Sunbeam when CPH, a sophisticated party, had equal access to Sunbeam Information and equal ability to evaluate Sunbeam Information.

(e) CPH held itself out to be and is a commercially and financially sophisticated party, capable of protecting its own interests. MS & Co. relied upon these representations when it provided Sunbeam Information to CPH, and CPH is estopped from now disclaiming these representations.

(f) CPH represented to Sunbeam and MS & Co. that it had retained and would rely upon its own sophisticated advisors, including an investment banker and a law firm capable of protecting CPH's interests. CPH and its advisors represented that they were doing their own due diligence on CPH's behalf through the meetings and information that they requested from Sunbeam and its advisors. MS & Co. relied upon these representations when it provided Sunbeam Information to CPH, and CPH is estopped from now disclaiming these representations.

Third Affirmative Defense

To the extent that CPH sustained any cognizable damages, the damages claimed by CPH were the result, in whole or in part, of CPH's failure to mitigate its damages. In particular, CPH investigated but failed to pursue reasonable available measures to hedge its position with regard to its ownership of Sunbeam stock. Had CPH implemented the potential hedges available, CPH would not have suffered the loss of the value of Sunbeam stock that occurred during and after June of 1998. In addition, CPH failed to mitigate its damages when it chose to install its own executives at Sunbeam and to accept warrants from Sunbeam to settle its alleged claims against Sunbeam. CPH chose to keep and indeed increase its holdings in

Sunbeam, taking its chances that Sunbeam stock would increase in value, rather than selling its Sunbeam stock and reasonably limiting its losses.

Fourth Affirmative Defense

Any future claim by CPH for punitive damages is barred, in whole or in part, because (i) MS & Co. did not engage in intentional misconduct; (ii) the allegedly tortuous conduct is not gross, wanton, willful, reckless or otherwise morally culpable; and (iii) the alleged conduct was not part of a pattern directed at the public generally.

Fifth Affirmative Defense

To the extent that CPH sustained any cognizable damages, the damages claimed by CPH were the result, in whole or in part, of the comparative negligence, fault or culpable conduct of CPH (including its parent corporations and its direct or indirect wholly and majority owned subsidiaries) at the times and places set forth in the Complaint. As a result thereof, MS & Co. is entitled to have its liability to CPH, if any, reduced pursuant to N.Y. C.P.L.R. § 1411 and Florida Statute § 768.81. In particular, fault should be apportioned to CPH for its negligence or fault in failing to request, review or make use of available Sunbeam Information. The negligence of CPH, itself or by or through its agents and advisors, caused or contributed to CPH's damages in the following ways:

(a) CPH was negligent in failing to make a reasonable independent inquiry into Sunbeam Information including but not limited to failure to request access to Sunbeam's books and records, *before* agreeing to accept over 14 million shares of Sunbeam common stock as partial consideration for the sale of its interest in Coleman and signing the Merger Agreement, and directing the signing of the Company Merger Agreement.

(b) CPH was negligent in failing to make a reasonable inquiry into the Sunbeam Information available to CPH *after* signing the Merger Agreement and Company Merger

Agreement, including but not limited to information available pursuant to Section 6.7 of the Merger Agreement and to Sections 7.2 and 7.3 of the Company Merger Agreement, and *before* CPH accepted over 14 million shares of Sunbeam common stock as partial consideration for the sale of its interest in Coleman.

(c) CPH was negligent in failing to make a reasonable inquiry into Sunbeam Information *after* Sunbeam issued its March 19, 1998 press release and *before* CPH accepted over 14 million shares of Sunbeam common stock as partial consideration for the sale of its interest in Coleman.

(d) CPH was negligent in failing to make a reasonable inquiry concerning the existence or absence of a "material adverse effect" as defined in the Merger Agreement and the Company Merger Agreement *before* the closing of the Merger Agreement at which time CPH accepted over 14 million shares of Sunbeam common stock as partial consideration for the sale of its interest in Coleman.

(e) CPH was negligent in failing to make use of the means available to CPH to investigate or confirm statements about Sunbeam Information made to CPH by Sunbeam or MS & Co. during late 1997 and the first quarter of 1998 before CPH accepted over 14 million shares of Sunbeam common stock as partial consideration for the sale of its interest in Coleman.

Sixth Affirmative Defense

To the extent that CPH sustained any cognizable damages, the damages claimed by CPH were the result, in whole or in part, of the negligence or fault of one or more third parties for whom MS & Co. bears no responsibility and over whom MS & Co. had no dominion, authority, or control. As a result thereof, MS & Co. is entitled to have its liability to CPH, if any, reduced pursuant to N.Y. Gen. Oblig. § 15-108 or Florida Statute § 768.81. More specifically, fault should be apportioned to Sunbeam and its subsidiaries and successors in interest

(collectively "Sunbeam") for its negligence or fault in preparing and providing Sunbeam Information to CPH, MS & Co. and third parties, and its negligence in making disclosures required by federal securities laws. Sunbeam's negligence caused or contributed to CPH's damages in the following ways:

(a) Federal laws and regulations imposed upon Sunbeam, a publicly held company, a duty to prepare and publicly file financial statements that present fairly, in all material respects, the consolidated financial condition of Sunbeam. Sunbeam negligently breached that duty when it filed inaccurate or incomplete financial statements for 1996, 1997, and the first quarter of 1998.

(b) Beginning in the fall of 1997 Sunbeam engaged MS & Co. to serve as its investment banker. As a result of this engagement, MS & Co. acted as an advisor to Sunbeam in certain aspects of Sunbeam's acquisition of Coleman and two other companies. Sunbeam later engaged MS & Co. to purchase for resale ("underwrite") $2,014,000,000 face value of Sunbeam Zero Coupon Convertible Senior Subordinated Debentures, which were issued by Sunbeam in March of 1998. As part of its activities as an investment banker and an underwriter, MS & Co. made inquiries of Sunbeam concerning Sunbeam Information. Sunbeam had a duty to provide MS & Co. with true and accurate Sunbeam Information. In response to MS & Co.'s inquiries and on its own initiative, Sunbeam provided MS & Co. with Sunbeam Information that Sunbeam knew or should have known, in the exercise of reasonable care was inaccurate or incomplete. Sunbeam provided such Sunbeam Information, including but not limited to the publicly filed financial statements identified in subparagraph (a), to MS & Co. with the knowledge and understanding that MS & Co. would provide such Sunbeam Information to third parties,

including CPH. Sunbeam failed to use reasonable care in providing MS & Co. with truthful and accurate Sunbeam Information.

(c) On March 18, 1998, MS & Co. made inquiries of Sunbeam concerning Sunbeam's sales to date and total projected sales for the first quarter of 1998. In response to MS & Co.'s inquires, Sunbeam provided Sunbeam Information concerning its first quarter 1998 sales which, in the exercise of reasonable care, Sunbeam knew or should have known was incorrect. Sunbeam failed to use reasonable care in providing MS & Co. with truthful and accurate Sunbeam Information.

(d) During the course of Sunbeam's negotiations with CPH, Sunbeam provided CPH with Sunbeam Information, which, in the exercise of reasonable care, Sunbeam knew or should have known was incorrect. Sunbeam failed to use reasonable care in providing CPH with truthful and accurate Sunbeam Information.

(e) In June of 1998, a special committee of Sunbeam's board of directors engaged in an investigation of Sunbeam Information for 1996, 1997, and the first quarter of 1998. As a result of this investigation, Sunbeam determined and announced publicly that it would be required to amend its publicly filed financial statements for 1996, 1997 and the first quarter of 1998. Through these restatements Sunbeam acknowledged in October of 1998 that the Sunbeam Information that it had provided to MS & Co., to CPH, and to the public was inaccurate and incomplete.

(f) Sunbeam's negligence in preparing, filing, and providing inaccurate and incomplete Sunbeam Information as aforesaid is the sole proximate cause of CPH's damages.

Seventh Affirmative Defense

* * * * *

Eighth Affirmative Defense

MS & Co. is entitled to a set-off for any settlement by any party or non-party to CPH for any claim arising out of the transactions that are the subject of the Complaint pursuant to N.Y. Gen. Oblig. § 15-108 or Florida Statutes § 46.015, 768.31 and 768.041. The basis for such set-off is set forth fully in these Affirmative Defenses. In particular, MS & Co. is entitled to a set-off as a result of the settlement between CPH and Sunbeam dated August 12, 1998 (Ex. 7) and the settlement between CPH and Arthur Andersen dated October 10, 2002 (*see* Dec. 4, 2003 Order on Defendant's Motion to Compel Production of Settlement Agreement).

WHEREFORE, MS & Co. denies that CPH is entitled to any relief whatsoever, and to the extent that CPH should recover any damage award, that award should be offset by CPH's failure to take appropriate steps to mitigate its damages, CPH's own negligence, the comparative fault of third parties, and the settlements that CPH has already received. MS & Co. respectfully requests that the Court enter judgment for MS & Co. dismissing the complaint with prejudice, and grant such other and further relief as may be just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this _____ day of _____, 2004.

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO: CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.
_____/

CASE NO: CA 03-5165 AI

NOTICE OF VIDEOTAPED DEPOSITION

PLEASE TAKE NOTICE that Morgan Stanley & Company Incorporated and Morgan Stanley Senior Funding, Inc. will take the videotaped deposition of Karen K. Clark, pursuant to Florida Rules of Civil Procedure 1.280 and 1.310. The oral examination will take place beginning on October 8, 2004, at 9:30 a.m. and continue from day to day until completed at the offices of Kirkland & Ellis, LLP, 777 South Figueroa Street, Los Angeles, California, 90017. The deposition will be taken before a person authorized to administer oaths and recorded by stenographic and videographic means. The video operator will be Esquire Santa Ana of 2100 N. Broadway in Santa Ana, California. The witness is instructed to produce all books, papers, and other things in her possession or under her control relevant to this lawsuit (and not previously produced in discovery) on October 4, 2004.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 21st day of September, 2004.

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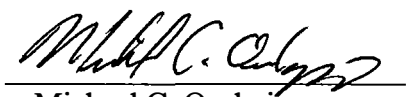
BY: 
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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER AND NOTICE OF HEARING

This case came before the Court, in Chambers, on Coleman (Parent) Holdings, Inc.'s Motion to Appoint Commission. Based on the foregoing, it is

ORDERED AND ADJUDGED that hearing on Coleman (Parent) Holdings, Inc.'s Motion to Appoint Commission is hereby set for

September 23, 2004, at 10:00 a.m.

at the West Palm Beach Courthouse, Room 11A, 205 N Dixie Hwy, WPB, FL.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 21 day of September, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

16div-006802

copies furnished:
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West Palm Beach, FL 33409

Jerold S. Solovy, Esq.
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Chicago, Il 60611

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-4380 within two (2) working days of your receipt of this [describe notice]; if you are hearing or voice impaired, call 1-800-955-8771.

SPANISH

Si Ud. es una persona incapacitada que necesita de un servicio especial para participar en este proceso, Ud. tiene derecho a que le provean cierta ayuda sin costo alguno. Por favor pongase en contacto con el Coordinador de la Oficina Administrativa de la Corte ADA, situada en el 205 North Dixie Highway, Oficina 5.2500, West Palm Beach, Florida, 33401, teléfono (561) 355-4380, dentro de los dos (2) próximos días hábiles después de recibir esta [describa la notificación]; si tiene incapacidad de oir ó hablar llame al 1-800-955-8771.

CREOLE

Si ou sé yon moun ki Infim, ki bézwen ninpôt akomodasyon pou ka patisipé nan pwosè sa-a, ou gen dwa, san'l pa kouté'w anyin, pou yo ba'w kèk sèvis. Tanpri kontakté koôdinatè ADA ya nan Biro Administratif Tribinal nan cité Palm Beach la, ki nan 205 North Dixie Highway, Cham 5.2500, West Palm Beach, Florida 33401, niméro téléfonn-nan sé (561) 355-4380, rélé dé (2) jou dé lè ou résévwa [notis sa-a]; si ou bèbè ou byen soud rélé 1-800-955-8771.

FRENCH

Si vous êtes infirme, et en besoin de n'importe accommodation pour pouvoir participer á ces procédures, vous pouvez gratuitement recevoir, certains services. S'il-vous-plait contactez le coordinateur du Bureau Administratif du Tribunal de Palm Beach, située à 205 North Dixie Highway, Chambre 5.2500, West Palm Beach, Florida 33401, numéro de téléphone (561) 355-4380 durant deux (2) jours suivant la réception de [cette note]; si vous êtes muets ou sourds, appelez 1-800-955-8771.

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

STIPULATION REGARDING DRAFT EXPERT REPORTS

Morgan Stanley & Co. Inc. and Morgan Stanley Senior Funding, Inc. (collectively "Morgan Stanley"), by and through their undersigned attorneys, and Coleman (Parent) Holdings Inc. and MacAndrews & Forbes Holdings, Inc. (collectively "CPH"), by and through their undersigned attorneys, stipulate as follows:

1. Both Morgan Stanley and CPH expect that their respective expert witnesses will prepare and produce expert reports in connection with this action.

2. Counsel for Morgan Stanley and CPH have conferred, and have agreed that the potential discovery of drafts of expert reports, and other documents and communications related to such reports, would add time and cost to the process of preparing such reports, and thus have determined that the parties have a mutual interest in ensuring that such drafts, related documents, or any communications between the parties, their respective counsel, and their respective

consulting and/or testifying expert regarding any such draft, are not subject to discovery in this action.

3. Consequently, the parties stipulate that:

a. The drafts of any report prepared in connection with this action, by any consulting and/or testifying expert retained by either party, or any employee or agent of any such expert, will not be discoverable or admissible in evidence in connection with this action. Such drafts will include any revisions to, or mark-ups of, any draft of any report prepared in connection with this action.

b. Any communications between the parties, their respective counsel, and their respective consulting and/or testifying experts in this action, insofar as that communication relates to any draft of any expert report, as discussed above, also will not be discoverable or admissible in evidence in connection with this action.

Dated: _____

BY: _____

John Scarola
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Counsel for Coleman (Parent) Holdings Inc. and MacAndrews & Forbes Holdings

Dated: Sept 16, 2004

BY: _____

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Counsel for Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding

ORDER APPROVING STIPULATION

THIS CAUSE, having come before the Court upon the foregoing stipulation, and after having reviewed the agreement of the parties, the Court approves the stipulation.

DONE AND ORDERED in chambers in West Palm Beach, Florida this ___ day of September, 2004.

SIGNED & DATED
SEP 21 2004
JUDGE ELIZABETH T. MAASS

Elizabeth Maass
Circuit Judge

Copies furnished to:

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CHICAGO_1134127_1

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VIA FACSIMILE 561-659-7368
September 22, 2004

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DARRYL L. LEWIS*
WILLIAM A. NORTON*
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JAMES PETER LOVE
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STEVE M. SMITH
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Joseph Ianno, Jr., Esquire
Carlton Fields, et al.
222 Lakeview Avenue, Suite1400
West Palm Beach, FL 33401

Re: Coleman(Parent)Holdings Inc. v. Morgan Stanley & Co., Inc.
Matter No.: 029986-230580

Dear Joe:

Enclosed is a copy of Plaintiffs' Motion to Allow CPH in Excess of 30 Interrogatories. Also enclosed is our Notice of Hearing on the motion for September 29, 2004.

If there is a possibility of resolving any of the issues raised in the motion without the necessity of court intervention, please call me. Since my schedule often makes it difficult to reach me by phone during regular business hours, I invite you, if necessary, to call me at home in the evening at 561-575-2427.

Sincerely,

JACK SCAROLA
JS/mm
Enc.

cc: Thomas Clare, Esq. (Via Fax)
Jenner & Block LLP (Via Fax)

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff, Case No. CA 03-5045 AI

vs.
MORGAN STANLEY & CO., INC.,
Defendant,
_____/
MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff, Case No. CA 03-5165 AI

vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant,
_____/

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE September 29, 2004

TIME 8:45 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

Coleman (Parent) Holdings Inc.'s Motion to Allow CPH in Excess of 30 Interrogatories

Moving counsel certifies that he or she contacted opposing counsel and attempted to resolve the discovery dispute without hearing.

Colen ar Holdings, Inc. vs Morgan Stanley & Company
Case No : 2003 CA 005045 AI
Notic: o Hearing

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to all Counsel on the attached list, this 22nd day of Sept, 2004.

JACK SCAROLA
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Attorney for CPH

Colen ar Holdings, Inc. vs Morgan Stanley & Company
Case No : 2003 CA 005045 AI
Notic o Hearing

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al,
Defendants.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO ALLOW CPH IN EXCESS OF 30 INTERROGATORIES

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, hereby requests this Court to allow CPH in excess of 30 interrogatories. In support of this motion, CPH states as follows:

1. CPH to date has propounded five sets of interrogatories. Set 1 contained 10 interrogatories (Ex. A), Set 2 contained 2 interrogatories (Ex. B), Set 3 contained 1 interrogatory (Ex. C), Set 4 contained 1 interrogatory (Ex. D), and Set 5 contained 1 interrogatory (Ex. E). Morgan Stanley answered CPH's first set of interrogatories, but answered only the first interrogatory and part of the second interrogatory in the second set, on the ground that once the subparts supposedly set forth in the interrogatories were counted, CPH had exceeded the limit of 30 set forth in the Florida Rules of Civil Procedure. *See* Ex. F.

2. Morgan Stanley since has taken the position that additional interrogatories exceed the 30 interrogatory limit. Morgan Stanley refused to answer the third set of interrogatories on that ground (Ex. G)—although the parties later resolved the issues raised by the interrogatories by agreement. Moreover, while the answers to the fourth and fifth sets of interrogatories are not

due until mid-October, Morgan Stanley has advised that it "is unwilling to consent to an extension of the 30-interrogatory limit" with respect to those interrogatories. *See* Ex. H, 9/17/04 Letter from T. Clare to M. Brody.

3. The interrogatories Morgan Stanley has refused to answer plainly are relevant and proper. The second interrogatory in the second set asks Morgan Stanley to identify handwriting on certain specified documents that Morgan Stanley itself produced. *See* Ex. B. The interrogatory in the fourth set requests the factual basis for Morgan Stanley's partial or complete denials of 16 of the 21 requests for admission in CPH's third set of requests for admission. *See* Ex. D. The interrogatory in the fifth set requests the factual basis for Morgan Stanley's categorical denials of the three requests for admission in CPH's fourth set of requests for admission. *See* Ex. E.

4. Because interrogatories are a desirable way to facilitate discovery in a cost-effective manner, and because the number of interrogatories CPH has served to date plainly is reasonable in light of the magnitude and complexity of this litigation, CPH respectfully requests that this Court allow all of the interrogatories CPH has served to date. CPH further requests that this Court direct Morgan Stanley to respond to the unanswered interrogatories in Sets 2-5 within the greater of: (a) 14 days from the date of the Court's Order on this motion or (b) 30 days from the date of service of the interrogatories in question.

Dated: September 22, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC

By: _____
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
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(561) 686-6300

#1155143

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 22nd day of SEPT., 2004.

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and MacAndrews & Forbes Holdings, Inc.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,

Defendant(s).

_____/

CASE NO: CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant(s).

_____/

NOTICE OF VIDEOTAPED DEPOSITION

PLEASE TAKE NOTICE that Morgan Stanley & Company Incorporated and Morgan Stanley Senior Funding, Inc. will take the videotaped deposition of Jerry Levin, pursuant to Florida Rules of Civil Procedure 1.280 and 1.310. The oral examination will take place on October 21 & 22, 2004, at 9:30 a.m. and continue from day to day until completed at the offices of Carlton Fields, P.A., 222 Lakeview Ave., Suite 1400, West Palm Beach, Florida 33401. The deposition will be taken before a person authorized to administer oaths and recorded by stenographic and videographic means. The video operator will be Esquire Deposition Services Courthouse Tower, 44 West Flagler Street, 14th Floor, Miami, Florida. The witness is instructed to bring all books, papers, and other things in his possession or under his control relevant to this lawsuit (and not previously produced in discovery) to the examination.

16div-006816

Dated: September 23, 2004

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar # 618349)
Thomas A. Clare
Zhonette M. Brown
Michael C. Occhuizzo
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Facsimile: (561) 659-7368
e-mail: jianno@carltonfields.com

BY:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and federal express on this 23rd day of September, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar # 618349)
Thomas A. Clare
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BY:

SERVICE LIST

Counsel for Coleman(Parent) Holdings & MacAndrews & Forbes

John Scarola
SEARCY, DENNEY, SCAROLA,
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2139 Palm Beach Lakes Boulevard
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Jerold S. Solovy
JENNER & BLOCK, LLC
One IBM Plaza, Suite 4400
Chicago, Illinois 60611

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

v. CASE NO: CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.
_____/

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a hearing has been set in the above-styled case as follows:

DATE:	September 29, 2004
TIME:	8:45 a.m. (time permitting)
PLACE:	Palm Beach County Courthouse, Courtroom 11A 205 North Dixie Highway West Palm Beach, Florida 33401
BEFORE:	Judge Elizabeth T. Maass
CONCERNING:	Morgan Stanley's Verified Motion to Admit Mark C. Hansen, Pro Hac Vice;

Morgan Stanley's Verified Motion to Admit James M. Webster, III, Pro Hac Vice;

Morgan Stanley's Verified Motion to Admit Rebecca A. Beynon, Pro Hac Vice

KINDLY GOVERN YOURSELVES ACCORDINGLY.

The undersigned counsel hereby certifies that a good faith attempt to resolve the issues contained in the foregoing motions or matters will be made with opposing counsel prior to hearing on these matters on the Court's Motion Calendar.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no costs to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-2431 within two (2) working days of your receipt of this notice; if you are hearing or voice impaired, call 1-800-955-8771.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 24th day of September, 2004.

Thomas D. Yannucci, P.C.
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Counsel for Defendant
Morgan Stanley & Co. Incorporated

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BY: _____
Joseph Ianno, Jr.
Florida Bar No: 655351

WPB#571076.14

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Chicago, IL 60611

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

CASE NO: CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

CASE NO: CA 03-5165 AI

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.
_____/

VERIFIED MOTION TO ADMIT
JAMES M. WEBSTER III, PRO HAC VICE

Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc. (collectively "Morgan Stanley"), pursuant Fla. R. Jud. Adm. 2.061, requests this Court to admit attorney James M. Webster III, *pro hac vice*, and in support of this Motion, states the following:

1. Morgan Stanley requests that this Court permit James M. Webster III an attorney with the law firm of Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., whose address is 1615 M Street, N.W., Suite 400, Washington, D.C. 20036, to appear *pro hac vice* and participate fully in this action as additional counsel on behalf of Morgan Stanley. Morgan Stanley retained Mr. Webster and the firm of Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C. on February 23, 2004, to provide legal representation in connection with the above-captioned consolidated cases.

2. Mr. Webster is a member in good standing of the Bar of the District of Columbia, where he was admitted on April 1, 1996, and the Bar of the State of Maryland, where he was admitted on December 15, 1994. He is also admitted to practice in the U.S. District Courts for the District of Columbia and Maryland, and the U.S. Courts of Appeals for the District of Columbia and Fourth Circuits. Mr. Webster has not been disciplined in any jurisdiction.

3. Mr. Webster has read all the applicable provisions of The Rules of Judicial Administration and the Rules Regulating The Florida Bar.

4. This verified motion complies with the Rules of Judicial Administration.

5. The undersigned will remain associated with this matter at all stages as required by local rules.

6. On April 13, 2004, Mr. Webster was admitted *pro hac vice* by this Court to represent Morgan Stanley in the matter *Morgan Stanley & Co. Incorporated v. Arthur Andersen LLP*, No. CL 04-2257 AA (Miller, J.). Mr. Webster has not, in the past five years, sought *pro hac vice* admission in any other matter before this or any other Florida state court.

7. Mr. Webster will be associated with Joseph Ianno, Jr. for purposes of this representation. Mr. Ianno is a member in good standing of the Florida Bar.

8. A proposed order granting this Motion is attached hereto.

9. Counsel for Coleman (Parent) Holdings, Inc., and MacAndrews and Forbes, Inc. has been consulted regarding this motion and has advised that Plaintiff objects to this motion, although they refused to provide the basis for the objection.

WHEREFORE, Morgan Stanley respectfully requests that James M. Webster III be authorized to appear *pro hac vice* as counsel for Morgan Stanley in this matter.

The undersigned verifies that he has knowledge of the facts stated herein, and that the statements in the foregoing motion are true and correct.

James M. Webster III

Dated: 9/23/04

Respectfully submitted,

Joseph Iannno, Jr.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion To Admit James M. Webster *Pro Hac Vice* has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 24th day of September, 2004.

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BY: Joseph Ianno, Jr.
Joseph Ianno, Jr.
Florida Bar No. 655351

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West Palm Beach, FL 33409

Jerold S. Solovy
Michael Brody
JENNER & BLOCK, LLC
One IBM Plaza, Suite 400
Chicago, IL 60611

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO: CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.
_____/

CASE NO: CA 03-5165 AI

ORDER GRANTING VERIFIED MOTION TO ADMIT JAMES M. WEBSTER, III, PRO HAC VICE

THIS CAUSE came before the Court on Morgan Stanley & Co. Incorporated's and Morgan Stanley Senior Funding, Inc.'s (collectively "Morgan Stanley") Verified Motion to Admit James M. Webster, III, Pro Hac Vice. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Morgan Stanley's Verified Motion to Admit James M. Webster, Pro Hac Vice is GRANTED, and Mr. Webster is admitted to practice in this case.

DONE AND ORDERED in West Palm Beach County, Florida this ____ of September, 2004.

_____
Elizabeth T. Maass
Circuit Court Judge

Copies furnished to:

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci, P.C.
Thomas A. Clare
KIRKLAND & ELLIS LLP
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Washington, D.C. 20005

Mark Hansen
James M. Webster, III
Rebecca A. Beynon
KELLOGG HUBER HANSEN TODD & EVANS, P.L.L.C.
1615 M. Street, N.W., Suite 400
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Jack Scarola
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Suite 4400
Chicago, Illinois 60611

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

CASE NO: CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

CASE NO: CA 03-5165 AI

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.
_____/

VERIFIED MOTION TO ADMIT MARK C. HANSEN, PRO HAC VICE

Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc. (collectively "Morgan Stanley"), pursuant Fla. R. Jud. Adm. 2.061, requests this Court to admit attorney Mark C. Hansen, *pro hac vice*, and in support of this Motion, states the following:

1. Morgan Stanley requests that this Court permit Mark C. Hansen, an attorney with the law firm of Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., whose address is 1615 M Street, N.W., Suite 400, Washington, D.C. 20036, to appear *pro hac vice* and participate fully in this action as counsel on behalf of Morgan Stanley. Morgan Stanley retained Mr. Hansen and the firm of Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., on February 23, 2004, to provide legal representation in connection with the above-captioned consolidated cases.

2. Mr. Hansen is a member in good standing of the Bar of the District of Columbia, where he was admitted in December 1990, the Bar of the State of Massachusetts, where he was admitted in December 1983, and the Bar of the State of Maryland, where he was admitted in April 1995. He is also admitted to practice before the U.S. District Courts for the District of Columbia, Massachusetts, Maryland, Illinois, the U.S. Courts of Appeals for the District of Columbia, First, Second, Third, Fourth, Fifth, Sixth, Seventh, Ninth, Eleventh, and Federal Circuits, and the Maryland Court of Appeals. Mr. Hansen has not been disciplined in any jurisdiction.

3. Mr. Hansen has read all the applicable provisions of The Rules of Judicial Administration and the Rules Regulating The Florida Bar.

4. This verified motion complies with the Rules of Judicial Administration.

5. The undersigned will remain associated with this matter at all stages as required by local rules.

6. On April 13, 2004, Mr. Hansen was admitted *pro hac vice* by this Court to represent Morgan Stanley in the matter *Morgan Stanley & Co. Incorporated v. Arthur Andersen LLP*, No. CL 04-2257 AA (Miller, J.). Mr. Hansen has not, in the past five years, sought *pro hac vice* admission in any other matter before this or any other Florida state court.

7. Mr. Hansen will be associated with Joseph Ianno, Jr. for purposes of this representation. Mr. Ianno is a member in good standing of the Florida Bar.

8. A proposed order granting this Motion is attached hereto.

9. Counsel for Coleman (Parent) Holdings, Inc., and MacAndrews and Forbes, Inc. has been consulted regarding this motion and has advised that Plaintiff objects to this motion, although they refused to provide the basis for the objection.

WHEREFORE, Morgan Stanley respectfully requests that Mark C. Hansen be authorized to appear *pro hac vice* as counsel for Morgan Stanley in this matter.

The undersigned verifies that he has knowledge of the facts stated herein, and that the statements in the foregoing motion are true and correct.

Mark C. Hansen

Dated: Sept. 23, 2004

Respectfully submitted,

Joseph Ianno, Jr.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion To Admit Mark C. Hansen *Pro Hac Vice* has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 24th day of September, 2004.

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BY: Joseph Ianno, Jr.
Joseph Ianno, Jr.
Florida Bar No. 655351

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Chicago, IL 60611

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

CASE NO: CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

CASE NO: CA 03-5165 AI

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.
_____/

ORDER GRANTING VERIFIED MOTION TO ADMIT MARK C. HANSEN, PRO HAC VICE

THIS CAUSE came before the Court on Morgan Stanley & Co. Incorporated's and Morgan Stanley Senior Funding, Inc.'s (collectively "Morgan Stanley") Verified Motion to Admit Mark C. Hansen, Pro Hac Vice. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Morgan Stanley's Verified Motion to Admit Mark C. Hansen, Pro Hac Vice is GRANTED, and Mr. Hansen is admitted to practice in this case.

DONE AND ORDERED in West Palm Beach County, Florida this ____ of September, 2004.

_____
Elizabeth T. Maass
Circuit Court Judge

Copies furnished to:

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci, P.C.
Thomas A. Clare
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Rebecca A. Beynon
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One IBM Plaza
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Chicago, Illinois 60611

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO: CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.
_____/

CASE NO: CA 03-5165 AI

VERIFIED MOTION TO ADMIT REBECCA A. BEYNON, PRO HAC VICE

Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc. (collectively "Morgan Stanley"), pursuant Fla. R. Jud. Adm. 2.061, request this Court to admit attorney Rebecca A. Beynon, *pro hac vice*, and in support of this Motion, states the following:

1. Morgan Stanley requests that this Court permit Rebecca A. Beynon, an attorney with the law firm of Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., whose address is 1615 M Street, N.W., Suite 400, Washington, D.C. 20036, to appear *pro hac vice* and participate fully in this action as counsel on behalf of Morgan Stanley. Morgan Stanley retained Ms. Beynon and the firm of Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., on February 23, 2004, to provide legal representation in connection with the above-captioned consolidated cases.

2. Ms. Beynon is a member in good standing of the Bar of the District of Columbia, where she was admitted in 1995, and the Bar of the State of Texas, where she was admitted in November 1994. Ms. Beynon has not been disciplined in any jurisdiction.

3. Ms. Beynon has read all the applicable provisions of The Rules of Judicial Administration and the Rules Regulating The Florida Bar.

4. This verified motion complies with the Rules of Judicial Administration.

5. The undersigned will remain associated with this matter at all stages as required by local rules.

6. On April 13, 2004, Ms. Beynon was admitted *pro hac vice* by this Court to represent Morgan Stanley in the matter *Morgan Stanley & Co. Incorporated v. Arthur Andersen LLP*, No. CL 04-2257 AA (Miller, J.). Ms. Beynon has not, in the past five years, sought *pro hac vice* admission in any other matter before this or any other Florida state court.

7. Ms. Beynon will be associated with Joseph Ianno, Jr. for purposes of this representation. Mr. Ianno is a member in good standing of the Florida Bar.

8. A proposed order granting this Motion is attached hereto.

9. Counsel for Coleman (Parent) Holdings, Inc., and MacAndrews and Forbes, Inc. has been consulted regarding this motion and has advised that Plaintiff objects to this motion although they refused to provide the basis for the objection.

WHEREFORE, Morgan Stanley respectfully requests that Rebecca A. Beynon be authorized to appear *pro hac vice* as counsel for Morgan Stanley in this matter.

The undersigned verifies that she has knowledge of the facts stated herein, and that the statements in the foregoing motion are true and correct.

Rebecca A. Beynon

Dated: September 23, 2004

Respectfully submitted,

Joseph Ianno, Jr.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion To Admit Rebecca A. Beynon *Pro Hac Vice* has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 24th day of September, 2004.

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BY: Joseph Ianno, Jr.
Joseph Ianno, Jr.
Florida Bar No. 655351

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

CASE NO: CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

CASE NO: CA 03-5165 AI

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.
_____/

ORDER GRANTING VERIFIED MOTION TO ADMIT REBECCA A. BEYNON, PRO HAC VICE

THIS CAUSE came before the Court on Morgan Stanley & Co. Incorporated's and Morgan Stanley Senior Funding, Inc.'s (collectively "Morgan Stanley") Verified Motion to Admit Mark C. Hansen, Pro Hac Vice. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Morgan Stanley's Verified Motion to Admit Rebecca A. Beynon, Pro Hac Vice is GRANTED, and Ms. Beynon is admitted to practice in this case.

DONE AND ORDERED in West Palm Beach County, Florida this ____ of September, 2004.

_____
Elizabeth T. Maass
Circuit Court Judge

Copies furnished to:

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
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James M. Webster, III
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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER ON COLEMAN (PARENT) HOLDINGS, INC. AND MACANDREWS & FORBES HOLDINGS, INC.'S MOTION TO COMPEL PRODUCTION OF DEBENTURE-RELATED DOCUMENTS

THIS CAUSE came before the Court September 23, 2004 on Coleman (Parent) Holdings, Inc. and MacAndrews & Forbes Holdings, Inc.'s Motion to Compel Production of Debenture-Related Documents, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Coleman (Parent) Holdings, Inc. and MacAndrews & Forbes Holdings, Inc.'s Motion to Compel Production of Debenture-Related Documents is Granted, in part. Defendant Coleman (Parent) Holdings, Inc.'s Fifth Request for Production of Documents is limited to documents involving or related to the purchase or repurchase of the Subordinated Debentures by Morgan Stanley. Morgan Stanley & Co. shall produce for inspection and copying all items in the request, as so narrowed, within its care, custody, or control, within 20 days.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 24 day of September, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
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West Palm Beach, FL 33401

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Jerold S. Solovy, Esq.
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Chicago, Il 60611

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER ON COLEMAN (PARENT) HOLDINGS, INC. AND MACANDREWS & FORBES HOLDINGS, INC.'S MOTION TO COMPEL SUPPLEMENTATION OF RESPONSES TO REQUESTS FOR ADMISSION

THIS CAUSE came before the Court September 23, 2004 on Coleman (Parent) Holdings, Inc. and MacAndrews & Forbes Holdings, Inc.'s Motion to Compel Supplementation of Responses to Requests for Admission, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Coleman (Parent) Holdings, Inc. and MacAndrews & Forbes Holdings, Inc.'s Motion to Compel Supplementation of Responses to Requests for Admission is Denied.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 24 day of September, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
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West Palm Beach, FL 33401

Thomas D. Yannucci
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Jerold S. Solovy, Esq.
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Chicago, Il 60611

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER ON COLEMAN (PARENT) HOLDINGS, INC.'S MOTION TO APPOINT COMMISSION

THIS CAUSE came before the Court September 23, 2004 on Coleman (Parent) Holdings, Inc.'s Motion to Appoint Commission, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that the Court defers ruling, pending filing a supplemental motion addressing the Court's authority to authorize a non-resident to subpoena a third party for a deposition.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 24 day of September, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

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Chicago, Il 60611

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff, Case No. CA 03-5045 AI

vs.
MORGAN STANLEY & CO., INC.,
Defendant,
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff, Case No. CA 03-5165 AI

vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant,
_____/

ORDER ON CPH AND MAFCO'S MOTION TO COMPEL DEPOSITION WITNESSES

THIS CAUSE having come to be considered upon the Coleman (Parent) Holdings Inc. and MacAndrews & Forbes Holdings, Inc.'s Motion to Compel Deposition Witnesses, and the Court having reviewed the file and being fully advised in the premises, it is hereby,

ORDERED and ADJUDGED: the Motion is granted, - pert. Morgan Stanley shall make Mr. Kourakas available for deposition. Coleman may depose Messrs. Ronkowitz and Sippretta, if otherwise properly subpoenaed.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this 23 day of Sept., 2004.

ELIZABETH T. MAASS
CIRCUIT COURT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

COUNSEL LIST

Joseph Ianno, Jr., Esquire
Carlton Fields, et al.
222 Lakeview Avenue
Suite1400
West Palm Beach, FL 33401

Thomas D. Yannucci, P.C.
Thomas A. Clare
Brett McGurk
Kirkland and Ellis
655 15th Street, N.W., Suite 1200
Washington, DC 20005

Jerold S. Solovy, Esq.
Jenner & Block LLP
One IBM Plaza
Suite 4400
Chicago, IL 60611

Jack Scarola, Esq.
Searcy Denney Scarola Barnhart & Shipley
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITIONS

To: Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

PLEASE TAKE NOTICE that Defendant Coleman (Parent) Holdings, Inc. ("CPH") requests the deposition upon oral examination of Plaintiff Morgan Stanley Senior Funding, Inc. pursuant to Florida Rule of Civil Procedure 1.310 on the date and time set forth below:

Morgan Stanley Senior Funding, Inc. October 14, 2004 at 9:30 a.m.

The deposition will be recorded by stenographic and videographic means at the offices of Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017-3004. The videographer will be Esquire Deposition Services. The deposition will be taken before a person authorized to administer oaths and will continue day to day until complete.

The deposition is being taken with respect to the topics described on the attached Exhibit A. Please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 27th day of September, 2004.

Dated: September 27, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: Deirdre Connell
One of Its Attorneys

Jerold S. Solovy
Michael T. Brody
Deirdre E. Connell
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409
(561) 686-6300

Exhibit A

CORPORATE DEPOSITION TOPICS

1. All misrepresentations and/or omissions which Morgan Stanley Senior Funding, Inc. ("MSSF") contends were committed by or on behalf of MacAndrews & Forbes Holdings Inc., Coleman (Parent) Holdings Inc., or The Coleman Company, Inc. in connection with Sunbeam's acquisition of CPH's interest in The Coleman Company, Inc., including, but not limited to the following:

A. The identities of the individuals who allegedly made misrepresentations and/or omissions that MSSF allegedly relied upon.

B. The individual(s) to whom the alleged misrepresentations and/or omissions were made;

C. The date and time that each alleged misrepresentation and/or omission was made;

D. The identities of the individuals who relied upon the alleged misrepresentations and/or omissions;

E. The reliance of each individual on the alleged misrepresentations and/or omissions.

SERVICE LIST

Thomas A. Clare, Esq.
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Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
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West Palm Beach, FL 33401

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER FOLLOWING CASE MANAGEMENT CONFERENCE

THIS CAUSE came before the Court September 23, 2004 for a case management conference, with all parties well represented by counsel. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that trial in this action shall begin no later than February 22, 2005. Counsel are advised that the Court may summon jurors beginning Friday, February 18, 2005, for purposes of determining preliminary hardship challenges. Counsel shall confer and attempt to agree on modification of the implicated dates contained in the March 19, 2004 Agreed Order Concerning Pretrial Schedule to accommodate the trial setting. The parties shall provide the undersigned at least seven days prior to the case management conference set October 14, 2004 either a proposed Agreed Order modifying the implicated dates, or each shall provide a proposed order, indicating that party's position on

appropriate modifications.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 29 day of September, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci
655 15th Street, NW, Suite 1200
Washington DC 20005

John Scarola, Esq.
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West Palm Beach, FL 33409

Jerold S. Solovy, Esq.
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CARLTON FIELDS, P.A.

ATTORNEYS AT LAW

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MAILING ADDRESS
P.O. Box 150, West Palm Beach, FL 33402-0150
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FAX COVER SHEET

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To:	Jack Scarola, Esq.	(561) 689-6300	(561) 684-5816
	Jerold Solovy, Esq	(312) 923-2711	(312) 840-7671
	Michael Brody		(312) 840-7711
	Thomas Clare, Esq.		(202) 879-5200
From:	Joseph Ianno, Jr.	(561) 659-7070	(561) 659-7368

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,
vs.
MORGAN STANLEY & CO., INC.,
Defendant.
/

CASE NO: CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,
vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.
/

CASE NO: CA 03-5165 AI

MORGAN STANLEY'S MOTION TO RESET HEARING

Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc. (collectively "Morgan Stanley"), by and through its undersigned counsel, move this Court to reset the hearing on Coleman (Parent) Holdings, Inc. ("CPH") Motion to Amend Complaint to Seek Punitive Damages ("Motion to Amend"). In support of its motion, Morgan Stanley states as follows:

1. On September 21, 2004, CPH served its Motion to Amend. Due to transmission difficulties and the size of the appendix and supporting documents, a complete copy of the Motion to Amend was not received until September 22, 2004. The Motion to Amend consists of over 1700 pages and, according to CPH's complaint, it seeks punitive damages in excess of $1.5 billion dollars. Contemporaneously with the Motion to Amend, CPH served a Notice of Hearing

scheduling the Motion to Amend to be heard at the next Case Management Conference on October 14, 2004.

2. Pursuant to Fla.R.Civ.P. 1.190, a motion seeking to amend to assert a claim for punitive damages and supporting documents must be served on all parties at least 20 days before the hearing. While technically CPH's Motion to Amend complies with the timing requirements of Rule 1.190(f), because of this Court's previous Orders, any opposition to CPH's Motion to Amend must be served by Morgan Stanley on October 7, 2004. Thus, Morgan Stanley will be provided with only 15 days to respond to CPH's Motion to Amend consisting of approximately 1700 pages and seeking damages in excess of $1.5 billion dollars. Requiring Morgan Stanley to respond to the Motion to Amend in fifteen days is a denial of due process and would violate the intent of Rule 1.190(f).

3. There will be no prejudice to any of the parties if the hearing on the Motion to Amend is rescheduled to another Case Management Conference or scheduled hearing time. Currently, a hearing on Motions for Summary Judgment is scheduled for November 19, 2004. Due to the recent delays, Motions for Summary Judgment will not be prepared in sufficient time to be heard on November 19, 2004. Consequently, Morgan Stanley submits that it is appropriate to schedule the Motion to Amend for this date.

WHEREFORE, Morgan Stanley respectfully requests that this Court reschedule the hearing on the Motion to Amend together with such other and further relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 28th day of September, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

Counsel for Morgan Stanley Senior Funding, Inc.

CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368
E-mail: jianno@carltonfields.com

BY: Joseph Ianno Jr.
Joseph Ianno, Jr.
Florida Bar No. 655351

SERVICE LIST

Jack Scarola
SEARCY, DENNEY, SCAROLA, BARNHARDT & SHIPLEY, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy
Michael Brody
JENNER & BLOCK, LLC
One IBM Plaza, Suite 400
Chicago, IL 606119

FAX TRANSMITTAL

JENNER & BLOCK

Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611
Tel 312 222-9350
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Chicago
Dallas
Washington, DC

Date: September 29, 2004

To: Thomas A. Clare, Esq. Fax: (202) 879-5200
Voice: (202) 879-5993

Joseph Ianno, Jr., Esq. Fax: (561) 659-7368
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From: Michael T. Brody
312 923-2711

Employee Number: Client Number: 41198-10003

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
et al.,
Defendants.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITIONS

To: Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates, times, and locations set forth below:

DEPONENT	DATE AND TIME	LOCATION
Mitch Petrick	October 6, 2004, at 9:30 a.m.	Esquire Deposition Services 216 E. 45th St., 8th Floor New York, NY 10017
Michael Rankowitz	October 25, 2004, at 9:30 a.m.	Esquire Deposition Services 216 E. 45th St., 8th Floor New York, NY 10017

The depositions will be recorded by stenographic and audio-visual means and will be taken before a person authorized to administer oaths and will continue day to day until completed. The videographer will be Esquire Deposition Services in New York.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 29th day of September, 2004.

Dated: September 29, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Michael T. Brody
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

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West Palm Beach, Florida 33409
(561) 686-6300

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CARLTON FIELDS, P.A.
222 Lake View Avenue, Suite 1400
West Palm Beach, FL 33401

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
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CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
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_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
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_____/

ORDER FOLLOWING CASE MANAGEMENT CONFERENCE

THIS CAUSE came before the Court September 23, 2004 for a case management conference, with all parties well represented by counsel. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that trial in this action shall begin no later than February 22, 2005. Counsel are advised that the Court may summon jurors beginning Friday, February 18, 2005, for purposes of determining preliminary hardship challenges. Counsel shall confer and attempt to agree on modification of the implicated dates contained in the March 19, 2004 Agreed Order Concerning Pretrial Schedule to accommodate the trial setting. The parties shall provide the undersigned at least seven days prior to the case management conference set October 14, 2004 either a proposed Agreed Order modifying the implicated dates, or each shall provide a proposed order, indicating that party's position on

appropriate modifications.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 29 day of September, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
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One IBM Plaza, Suite 4400
Chicago, Il 60611

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH, COUNTY,
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CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

PLAINTIFF COLEMAN (PARENT) HOLDINGS INC.'S SEVENTH REQUEST FOR PRODUCTION OF DOCUMENTS TO MORGAN STANLEY & CO., INC.

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys Searcy Denney Scarola Barnhart & Shipley P.A. and Jenner & Block LLP, hereby serves its Sixth Request for Production of Documents upon Morgan Stanley & Co., Inc. ("MS&Co."), and, except as otherwise provided, requests responses and the production of documents at the office of Searcy Denney Scarola Barnhart & Shipley P.A., 2139 Palm Beach Lakes Blvd., West Palm Beach, Florida, within thirty (30) days from the date of service.

DEFINITIONS AND INSTRUCTIONS

Except as otherwise provided below, CPH incorporates by reference its Definitions and Instructions set forth in CPH's First Request for Production of Documents, served on MS&Co. on May 9, 2003. In addition, CPH defines the following terms as follows:

1. "MS&Co." means Morgan Stanley & Co., Inc. or any of its affiliates, subsidiaries, divisions, predecessors, successors, present and former employees, representatives, agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

DOCUMENTS REQUESTED

1. All MS&Co.'s balance sheets and income statements for MS&Co.'s most recent fiscal year and for each of MS&Co.'s last six quarters.

2. Documents sufficient to show MS&Co.'s net worth, income, revenue, profits, losses, and global holdings for each fiscal year between and including 1998-2004.

3. All MS&Co.'s balance sheets, income statements, and any other financial statements relating to MS&Co.'s net worth, revenues, profits, losses, and global holdings that are created or edited during the time period between today's date through the date of trial in this

matter. Documents responsive to this request must be tendered by MS&Co. on the first day of trial.

Dated: September 30, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____

John Scarola
SEARCY DENNEY SCAROLA BARNHART
& SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a copy of the foregoing has been furnished by U.S. Mail and facsimile to the following counsel of record on this 30th day of September, 2004:

Joseph Ianno, Jr.
CARLTON FIELDS
222 Lake View Avenue
Suite 1400
West Palm Beach, Florida 33401
Tel.: (561) 659-7070
Fax: (561) 659-7368

Thomas A. Clare
KIRKLAND & ELLIS
655 15th Street, N.W.
Suite 1200
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Tel.: (202) 879-5000
Fax: (202) 879-5200

Deirdre E. Connell

FAX TRANSMITTAL

JENNER&BLOCK

Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611
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Chicago
Dallas
Washington, DC

Date: September 30, 2004

To: Thomas A. Clare, Esq. Fax: (202) 879-5200
Voice: (202) 879-5993

Joseph Ianno, Jr., Esq. Fax: (561) 659-7368
Voice: (561) 659-7070

From: Michael T. Brody
312 923-2711

Employee Number: Client Number: 41198-10003

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,

vs

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
et al.,
Defendants.
_____/

MACANDREWS & FORBES HOLDINGS INC.'S AND COLEMAN (PARENT) HOLDINGS INC.'S VERIFIED MOTION TO PERMIT FOREIGN ATTORNEY TO APPEAR

MacAndrews & Forbes Holdings, Inc. ("MAFCO") and Coleman (Parent) Holdings Inc. ("CPH"), joined by their Florida counsel, Jack Scarola, move this Court pursuant to Rule 2.061(b) of the Florida Rules of Judicial Administration, for an Order permitting Joanne H. Sweeney to appear *pro hac vice* in this action on their behalf. In support of the motion, MAFCO and CPH state:

1. MAFCO and CPH have retained attorney Jack Scarola and the firm of Searcy Denney Scarola Barnhart & Shipley, P.A., 2139 Palm Beach Lakes Boulevard, West Palm Beach, Florida, as Florida counsel to assist in this matter.

2. MAFCO and CPH and their Florida counsel seek the assistance of Joanne H. Sweeney of Jenner & Block LLP, One IBM Plaza, Chicago, Illinois, in this matter. MAFCO and

CPH have previously retained the above-named law firm to provide legal representation in connection with this matter in 2001.

3. Joanne H. Sweeney is a member in good standing of the following bars: the United States District Court for the Northern District of Illinois, the Illinois Supreme Court and the Commonwealth of Massachusetts. Outside of this case, Ms. Sweeney has not filed an application in any Florida state court to appear as counsel under Florida Rule of Judicial Administration 2.061 in the last five years. Ms. Sweeney has never been disciplined, suspended, or disbarred by any court.

4. Ms. Sweeney has read all applicable provisions of the Florida Rules of Judicial Administration and the Rules Regulating the Florida Bar, and this motion complies with those rules.

5. Jack Scarola has been a member of the Florida Bar since 1973, Florida Bar No. 169440, and consents to act as co-counsel with the foreign attorney in this action.

WHEREFORE, MAFCO and CPH move this Court for an Order permitting Joanne H. Sweeney to appear on their behalf in this action.

Under penalty of perjury, I declare that I have read the foregoing motion and with respect to my credentials the facts stated in it are true.

Respectfully submitted,

Joanne H. Sweeney

By: _____
John Scarola
Fla. Bar No. 169440

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a copy of the foregoing has been furnished by U.S. Mail and facsimile to the following counsel of record on this 30th day of October, 2004.

Joseph Ianno, Jr
CARLTON FIELDS
222 Lake View Avenue, Suite 1400
West Palm Beach, FL 33401
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Thomas D. Yannucci, P.C.
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John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409
Tel.: (561) 686-6300

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

C OLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,

vs.

M ORGAN ST EY & CO., INC.,
Defendant.
_____/

M ORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,

v.

M ACANDREWS & FORBES HOLDINGS, INC.,
e. a .,
Defendants.
_____/

MACANDREWS & FORBES HOLDINGS INC.'S AND COLEMAN (PARENT) HOLDINGS INC.'S VERIFIED MOTION TO PERMIT FOREIGN ATTORNEY TO APPEAR

MacAndrews & Forbes Holdings, Inc. ("MAFCO") and Coleman (Parent) Holdings Inc. ("CPH"), joined by their Florida counsel, Jack Scarola, move this Court pursuant to Rule 2.061(b) of the Florida Rules of Judicial Administration, for an Order permitting Timothy J. Chorvat to appear *pro hac vice* in this action on their behalf. In support of the motion, MAFCO and CPH state:

1. MAFCO and CPH have retained attorney Jack Scarola and the firm of Searcy Denney Scarola Barnhart & Shipley, P.A., 2139 Palm Beach Lakes Boulevard, West Palm Beach, Florida, as Florida counsel to assist in this matter.

2. MAFCO and CPH and their Florida counsel seek the assistance of Timothy J. Chorvat of Jenner & Block LLP, One IBM Plaza, Chicago, Illinois, in this matter. MAFCO and

(P I have previously retained the above-named law firm to provide legal representation in connection with this matter in 2001.

3. Timothy J. Chorvat is a member in good standing of the following bars: the United States Supreme Court, the United States Court of Appeals for the Seventh Circuit, the United States District Court for the Northern District of Illinois, the United States District Court for the District of Arizona, and the Illinois Supreme Court. Outside of this case, Mr. Chorvat has not filed an application in any Florida state court to appear as counsel under Florida Rule of Judicial Administration 2.061 in the last five years. Mr. Chorvat has never been disciplined, suspended, or disbarred by any court.

4. Mr. Chorvat has read all applicable provisions of the Florida Rules of Judicial Administration and the Rules Regulating the Florida Bar, and this motion complies with those rules.

5. Jack Scarola has been a member of the Florida Bar since 1973, Florida Bar No. 169440, and consents to act as co-counsel with the foreign attorney in this action.

WHEREFORE, MAFCO and CPH move this Court for an Order permitting Timothy J. Chorvat to appear on their behalf in this action.

Under penalty of perjury, I declare that I have read the foregoing motion and with respect to my credentials the facts stated in it are true.

Timothy J. Chorvat

Respectfully submitted,

By:

John Scarola
Fla. Bar No. 169440

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a copy of the foregoing has been furnished by U.S. Mail and facsimile to the following counsel of record on this 30th day of September, 2004.

Joseph Ianno, Jr
CARLTON FIELDS
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Tel.: (202) 879-5000
Fax: (202) 879-5200

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409
Tel.: (561) 686-6300

THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH CO NTY,
FLORIDA

C.. EMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,

v ..

M.ORGAN STANLEY & CO., I C.,
Defendant.
_ _ _____/

M ORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,

v :.

M.A CANDREWS & FORBES HOLDINGS, NC.,
e, a .,
Defendants.
_ _ _____/

MACANDREWS & FORBES HOLDINGS INC.'S AND COLEMAN (PARENT) HOLDINGS INC.'S VERIFIED MOTION TO PERMIT FOREIGN ATTORNEY TO APPEAR

MacAndrews & Forbes Holdings, Inc. ("MAFCO") and Coleman (Parent) Hol lings Inc. ("CPH"), joined by their Florida counsel, Jack Scarola, move this Court pursuant tc F ule 2.061(b) of the Florida Rules of Judicial Administration, for an Orde:r permitting Robert L Byman to appear *pro hac vice* in this action on their behalf. In support of the motion, M.AFCO and CPH state:

1. MAFCO and CPH have retained attorney Jack Scarola and the firm of Searcy Der ney Scarola Barnhart & Shipley, P.A., 2139 Palm Beach Lakes Boulevard, West Palm Bea :h, Florida, as Florida counsel to assist in this matter.

2. MAFCO and CPH and their Florida counsel seek the assistance of Robert L. Byr ian of Jenner & Block LLP, One IBM Plaza, Chicago, Illinois, in this matter. MAFCO and

CPI have previously retained the above-named law firm to provide legal representation in connection with this matter in 2001.

3. Robert L. Byman is a member in good standing of the following bars: the United States Supreme Court, the United States Court of Appeals for the Federal Circuit, the United States Court of Appeals for the Second Circuit, the United States Court of Appeals for the Sixth Circuit, the United States Court of Appeals for the Seventh Circuit, the United States Court of Appeals for the Ninth Circuit, the United States Court of Appeals for the Eleventh Circuit, the United States Court of Appeals for the District of Columbia Circuit, the United States District Court for the Northern District of Illinois, and the Illinois Supreme Court. Outside of this case, Mr. Byman has not filed an application in any Florida state court to appear as counsel under Florida Rule of Judicial Administration 2.061 in the last five years. Mr. Byman has never been disciplined, suspended, or disbarred by any court.

4. Mr. Byman has read all applicable provisions of the Florida Rules of Judicial Administration and the Rules Regulating the Florida Bar, and this motion complies with those rules.

5. Jack Scarola has been a member of the Florida Bar since 1973, Florida Bar No. 169440, and consents to act as co-counsel with the foreign attorney in this action.

WHEREFORE, MAFCO and CPH move this Court for an Order permitting Robert L. Byman to appear on their behalf in this action.

Under penalty of perjury, I declare that I have read the foregoing motion and with respect to my credentials the facts stated in it are true.

Robert L. Byman

Respectfully submitted,

By:

John Scarola
Fla. Bar No. 169440

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a copy of the foregoing has been furnished by U.S. Mail and facsimile to the following counsel of record on this 30th day of September, 2004.

Joseph Ianno, Jr
CARLTON FIELDS
222 Lake View Avenue, Suite 1400
West Palm Beach, FL 33401
Tel.: (561) 659-7070
Fax: (561) 659-7368

Thomas D. Yannucci, P.C.
Thomas A. Clare
KIRKLAND & ELLIS
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
Tel.: (202) 879-5000
Fax: (202) 879-5200

John Scarola
SEARCY DENNEY SCAROLA
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Tel.: (561) 686-6300

FAX TRANSMITTAL

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Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611
Tel 312 222-9350
www.jenner.com

Chicago
Dallas
Washington, DC

Date: September 30, 2004

To: Thomas A. Clare, Esq. Fax: (202) 879-5200
Voice: (202) 879-5993

Joseph Ianno, Jr., Esq. Fax: (561) 659-7368
Voice: (561) 659-7070

From: Michael T. Brody
312 923-2711

Employee Number: Client Number: 41198-10003

Important: This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is attorney work product, privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notifiedthat any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received thiscommunication in error, please notify us immediately by telephone, and return the original message to us at the above address via postal service. Thank you.

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.

NOTICE OF TAKING VIDEOTAPED DEPOSITIONS

To: Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

PLEASE TAKE NOTICE that Plaintiff/Defendant Coleman (Parent) Holdings Inc. ("CPH") requests the deposition upon oral examination of Plaintiff Morgan Stanley Senior Funding, Inc. and Defendant Morgan Stanley & Co., Inc. pursuant to Florida Rule of Civil Procedure 1.310 on the date and times set forth below:

Morgan Stanley Senior Funding, Inc.	October 29, 2004 at 9:30 a.m.
Morgan Stanley & Co., Inc.	October 29, 2004 at 1:30 p.m.

The depositions will be recorded by stenographic and videographic means at the offices of Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017-3004. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until complete.

The depositions are being taken with respect to the topics described on the attached Exhibits A (topics for Morgan Stanley Senior Funding, Inc.) and B (topics for Morgan Stanley & Co., Inc.). Please designate one or more officers, directors, managing agents, or other

persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 30th day of September, 2004.

Dated: September 30, 2004

COLEMAN (PARENT) HOLDINGS INC.

By:
One of Its Attorneys

Jerold S. Solovy
Michael T. Brody
Deirdre E. Connell
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART
& SHIPLEY P.A.
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West Palm Beach, Florida 33409
(561) 686-6300

Exhibit A

CORPORATE DEPOSITION TOPICS FOR MSSF

1. The authenticity, creation, use, maintenance, and business purpose of documents produced by Morgan Stanley and Morgan Stanley Senior Funding, Inc. at Bates Nos. Morgan Stanley Confidential 0084771-0085783 and Morgan Stanley Confidential 0094003-0094032.

Exhibit B

CORPORATE DEPOSITION TOPICS FOR MS&Co.

1. The authenticity, creation, use, maintenance, and business purpose of documents produced by Morgan Stanley and Morgan Stanley Senior Funding, Inc. at Bates Nos. Morgan Stanley Confidential 0084771-0085783 and Morgan Stanley Confidential 0094003-0094032.

SERVICE LIST

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Chicago
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Washington, DC

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Voice: (202) 879-5993

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From: Michael T. Brody
312 923-2711

Employee Number: Client Number: 41198-10003

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FLORIDA

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

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Washington, D.C. 20005

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CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

PLEASE TAKE NOTICE that Plaintiff/Defendant Coleman (Parent) Holdings Inc. ("CPH") requests the deposition upon oral examination of Plaintiff Morgan Stanley Senior Funding, Inc. and Defendant Morgan Stanley & Co., Inc. pursuant to Florida Rule of Civil Procedure 1.310 on the date and times set forth below:

Morgan Stanley Senior Funding, Inc.	October 13, 2004 at 9:30 a.m.
Morgan Stanley & Co., Inc.	October 13, 2004 at 1:30 p.m.

The depositions will be recorded by stenographic and videographic means at the offices of Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017-3004. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until complete.

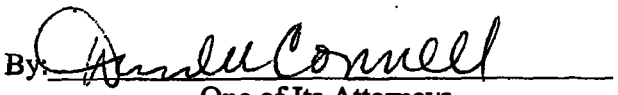
The depositions are being taken with respect to the topics described on the attached Exhibits A (topics for Morgan Stanley Senior Funding, Inc.) and B (topics for Morgan Stanley & Co., Inc.). Please designate one or more officers, directors, managing agents, or other

persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 30th day of September, 2004.

Dated: September 30, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: 
One of Its Attorneys

Jerold S. Solovy
Michael T. Brody
Deirdre E. Connell
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One IBM Plaza, Suite 4400
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Jack Scarola
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Exhibit A

CORPORATE DEPOSITION TOPICS FOR MSSF

1. All of the procedures of, rules for, and activities of the Equity Commitment Committee in 1997 and 1998.

2. The role of the Equity Commitment Committee in 1997 and 1998.

3. All documents typically or ordinarily generated by and for the Equity Commitment Committee in the course of a transaction in 1997 and 1998.

4. All of the procedures of, rules for, and activities of the Leveraged Finance Commitment Committee and/or the Leveraged Finance Committee from 1997 to the present.

5. The role of the Leveraged Finance Commitment Committee and/or the Leveraged Finance Committee in 1997 and 1998.

6. All documents typically or ordinarily generated by and for the Leveraged Finance Commitment Committee and/or the Leveraged Finance Committee in the course of a transaction in 1997 and 1998.

7. The process, procedures, and requirements for preparing, approving, or issuing "highly confident" letters in 1997 and 1998.

8. All non-transaction specific documents generated in connection with preparing, approving, or issuing "highly confident" letters in 1997 and 1998.

Exhibit B

CORPORATE DEPOSITION TOPICS FOR MS&Co.

1. All of the procedures of, rules for, and activities of the Equity Commitment Committee in 1997 and 1998.

2. The role of the Equity Commitment Committee in 1997 and 1998.

3. All documents typically or ordinarily generated by and for the Equity Commitment Committee in the course of a transaction in 1997 and 1998.

4. All of the procedures of, rules for, and activities of the Leveraged Finance Commitment Committee and/or the Leveraged Finance Committee from 1997 to the present.

5. The role of the Leveraged Finance Commitment Committee and/or the Leveraged Finance Committee in 1997 and 1998.

6. All documents typically or ordinarily generated by and for the Leveraged Finance Commitment Committee and/or the Leveraged Finance Committee in the course of a transaction in 1997 and 1998.

7. The process, procedures, and requirements for preparing, approving, or issuing "highly confident" letters in 1997 and 1998.

8. All non-transaction specific documents generated in connection with preparing, approving, or issuing "highly confident" letters in 1997 and 1998.

SERVICE LIST

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Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
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One IBM Plaza
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Chicago
Dallas
Washington, DC

Date: September 30, 2004

To: Thomas A. Clare, Esq. Fax: (202) 879-5200
Voice: (202) 879-5993

Joseph Ianno, Jr., Esq. Fax: (561) 659-7368
Voice: (561) 659-7070

From: Michael T. Brody
312 923-2711

Employee Number: Client Number: 41198-10003

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITIONS

To: Thomas A. Clare, Esq.
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655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

PLEASE TAKE NOTICE that Plaintiff/Defendant Coleman (Parent) Holdings Inc. ("CPH") requests the deposition upon oral examination of Plaintiff Morgan Stanley Senior Funding, Inc. and Defendant Morgan Stanley & Co., Inc. pursuant to Florida Rule of Civil Procedure 1.310 on the date and times set forth below:

Morgan Stanley Senior Funding, Inc.	October 27, 2004 at 9:30 a.m.
Morgan Stanley & Co., Inc.	October 27, 2004 at 1:30 p.m.

The depositions will be recorded by stenographic and videographic means at the offices of Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017-3004. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until complete.

The depositions are being taken with respect to the topics described on the attached Exhibits A (topics for Morgan Stanley Senior Funding, Inc.) and B (topics for Morgan Stanley & Co., Inc.). Please designate one or more officers, directors, managing agents, or other

persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 30th day of September, 2004.

Dated: September 30, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solov
Michael T. Brody
Deirdre E. Connell
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
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2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409
(561) 686-6300

Exhibit A

CORPORATE DEPOSITION TOPICS FOR MSSF

Rule 1.310 Topic

1. All fees, expenses, other compensation, or assets billed by or otherwise due to Morgan Stanley & Co., Inc. ("MS"), Morgan Stanley Senior Funding, Inc. ("MSSF"), or any of their affiliates concerning or on behalf of Sunbeam Corp. (including American Household, Inc.) and all fees, expenses, other compensation, or assets paid or provided by or on behalf of Sunbeam Corp. (including American Household, Inc.) to MS, MSSF, or any of their affiliates.

Exhibit B

CORPORATE DEPOSITION TOPICS FOR MS&Co.

Definitions

1. All fees, expenses, other compensation, or assets billed by or otherwise due to Morgan Stanley & Co., Inc. ("MS"), Morgan Stanley Senior Funding, Inc. ("MSSF"), or any of their affiliates concerning or on behalf of Sunbeam Corp. (including American Household, Inc.) and all fees, expenses, other compensation, or assets paid or provided by or on behalf of Sunbeam Corp. (including American Household, Inc.) to MS, MSSF, or any of their affiliates.

SERVICE LIST

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655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue, Suite 1400
West Palm Beach, FL 33401

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

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Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

PLEASE TAKE NOTICE that Defendant Coleman (Parent) Holdings, Inc. ("CPH") requests the deposition upon oral examination of Plaintiff Morgan Stanley Senior Funding, Inc. pursuant to Florida Rule of Civil Procedure 1.310 on the date and time set forth below:

Morgan Stanley Senior Funding, Inc. October 12, 2004 at 9:30 a.m.

The deposition will be recorded by stenographic and videographic means at the offices of Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017-3004. The videographer will be Esquire Deposition Services. The deposition will be taken before a person authorized to administer oaths and will continue day to day until complete.

The deposition is being taken with respect to the topics described on the attached Exhibit A. Please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 27th day of September, 2004.

Dated: September 27, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Michael T. Brody
Deirdre E. Connell
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART
& SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409
(561) 686-6300

Exhibit A

CORPORATE DEPOSITION TOPICS

1. The value of American Household, Inc. on the following dates: (a) February 6, 2001; and (b) September 20, 2004.

2. The value of Morgan Stanley Senior Funding, Inc.'s interest in American Household, Inc. on the following dates: (a) February 6, 2001; and (b) September 20, 2004.

SERVICE LIST

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655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue, Suite 1400
West Palm Beach, FL 33401

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Chicago
Dallas
Washington, DC

Date: September 30, 2004

To:	Thomas A. Clare, Esq.	Fax:	(202) 879-5200
		Voice:	(202) 879-5993
	Joseph Ianno, Jr., Esq.	Fax:	(561) 659-7368
		Voice:	(561) 659-7070
	John Scarola, Esq.	Fax:	(561) 684-5816 (before 5 PM)
		Voice:	(561) 686-6350, Ext. 140

From: Michael T. Brody
312 923-2711

Employee Number: Client Number: 41198-10003

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September 30, 2004

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Michael T. Brody
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mbrody@jenner.com

By Telecopy

Thomas A. Clare, Esq.
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Tom:

We accept your offer of October 26, 2004 for the Brooks Harris deposition, and we attach a corresponding notice of deposition. Further, based on your letter dated August 23, 2004, we understand that you and Mr. Harris's employer will accept the subpoena that we previously obtained for Mr. Harris with a return date of September 14, 2004, and will not require us to obtain a new subpoena. Please contact me immediately if this is not correct.

Very truly yours,

Michael T. Brody

Enclosure
cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

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MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

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CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates, times, and locations set forth below:

DEPONENT	DATE AND TIME	LOCATION
Brooks Harris	October 26, 2004, at 9:30 a.m.	Esquire Deposition Services 216 E. 45th St., 8th Floor New York, NY 10017

The depositions will be recorded by stenographic and audio-visual means and will be taken before a person authorized to administer oaths and will continue day to day until completed. The videographer will be Esquire Deposition Services in New York.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 30th day of September, 2004.

Dated: September 30, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Michael T. Brody
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
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From: Michael T. Brody
312 923-2711

Employee Number: Client Number: 41198-10003

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Message:

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Secretary: Caryn Jo Geisler Extension: 6490

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
et al.,
Defendants.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITIONS

To: Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following witness pursuant to Florida Rule of Civil Procedure 1.310 on the dates, times, and locations set forth below:

DEPONENT	DATE AND TIME	LOCATION
William Kourakas	October 26, 2004, at 9:30 a.m.	Esquire Deposition Services 216 E. 45th St., 8th Floor New York, NY 10017

The deposition will be recorded by stenographic and audio-visual means and will be taken before a person authorized to administer oaths and will continue day to day until completed. The videographer will be Esquire Deposition Services in New York.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 30th day of September, 2004.

Dated: September 30, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: Andre Cornell
One of Its Attorneys

Jerold S. Solovy
Michael T. Brody
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
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222 Lake View Avenue, Suite 1400
West Palm Beach, FL 33401

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff, Case No. CA 03-5045 AI

vs.
MORGAN STANLEY & CO., INC.,
Defendant,
_____/
MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff, Case No. CA 03-5165 AI

vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant,
_____/

RE-NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: October 7, 2004

TIME: 8:45 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

Coleman (Parent) Holdings Inc.'s Motion to Allow CPH in Excess of 30 Interrogatories

Moving counsel certifies that he or she contacted opposing counsel and attempted to resolve the discovery dispute without hearing.

Coleman Holdings, Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by FAX AND U.S. Mail to all Counsel on the attached list, this 30th day of Sept., 2004.

JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 478-0754
Attorney for CPH

Coler ıaı Holdings, Inc. vs Morgan Stanley & Company
Case Nc : 2003 CA 005045 AI
Notic : c `Hearing

COUNSEL LIST

Jose)h Ianno, Jr., Esquire
Carl oı Fields, et al.
222 ⊿ keview Avenue
Suit :1· 00
Wes : F alm Beach, FL 33401

Tho: na s D. Yannucci, P.C.
Tho: na s A. Clare
Bret : McGurk
Kirk la ıd and Ellis
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Wash i ıgton, DC 20005

Jero d S. Solovy, Esq.
Jenr er & Block LLP
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Suit : ‹ 400
Chi ca ; o, IL 60611

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,

Defendant(s).

_____/

CASE NO: CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant(s).

_____/

NOTICE OF VIDEOTAPED DEPOSITION

PLEASE TAKE NOTICE that Morgan Stanley & Company Incorporated and Morgan Stanley Senior Funding, Inc. will take the videotaped deposition of Glenn Dickes, pursuant to Florida Rules of Civil Procedure 1.280 and 1.310. The oral examination will take place on November 2, 2004 at 1:00 pm and continue from day to day until completed at the offices of Carlton Fields, P.A., 222 Lakeview Ave., Suite 1400, West Palm Beach, Florida 33401. The deposition will be taken before a person authorized to administer oaths and recorded by stenographic and videographic means. The video operator will be Esquire Deposition Services Courthouse Tower, 44 West Flagler Street, 14th Floor, Miami, Florida. The witness is instructed to bring all books, papers, and other things in his possession or under his control relevant to this lawsuit (and not previously produced in discovery) to the examination.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and federal express on this 30th day of September, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar # 618349)
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Zhonette M. Brown
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BY: _____

SERVICE LIST

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SEARCY, DENNEY, SCAROLA,
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West Palm Beach, Florida 33409

Jerold S. Solovy
JENNER & BLOCK, LLC
One IBM Plaza, Suite 4400
Chicago, Illinois 60611

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,

Defendant(s).

_____/

CASE NO: CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant(s).

_____/

NOTICE OF VIDEOTAPED DEPOSITION

PLEASE TAKE NOTICE that Morgan Stanley & Company Incorporated and Morgan Stanley Senior Funding, Inc. will take the videotaped deposition of Howard Gittis, pursuant to Florida Rules of Civil Procedure 1.280 and 1.310. The oral examination will take place on November 1, 2004 at 9:30 a.m. and November 2, 2004 at 9:30 a.m. and continue from day to day until completed at the offices of Carlton Fields, P.A., 222 Lakeview Ave., Suite 1400, West Palm Beach, Florida 33401. The deposition will be taken before a person authorized to administer oaths and recorded by stenographic and videographic means. The video operator will be Esquire Deposition Services Courthouse Tower, 44 West Flagler Street, 14th Floor, Miami, Florida. The witness is instructed to bring all books, papers, and other things in his possession or under his control relevant to this lawsuit (and not previously produced in discovery) to the examination.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and federal express on this 30th day of September, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar # 618349)
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Facsimile: (561) 659-7368
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West Palm Beach, Florida 33409

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JENNER & BLOCK, LLC
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Chicago, Illinois 60611

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,

Defendant(s).

_____/

CASE NO: CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant(s).

_____/

NOTICE OF VIDEOTAPED DEPOSITION

PLEASE TAKE NOTICE that Morgan Stanley & Company Incorporated and Morgan Stanley Senior Funding, Inc. will take the videotaped deposition of Ronald Perelman, pursuant to Florida Rules of Civil Procedure 1.280 and 1.310. The oral examination will take place on November 4, 2004 at 9:30 a.m. and November 5, 2004 at 9:30 a.m. and continue from day to day until completed at the offices of Carlton Fields, P.A., 222 Lakeview Ave., Suite 1400, West Palm Beach, Florida 33401. The deposition will be taken before a person authorized to administer oaths and recorded by stenographic and videographic means. The video operator will be Esquire Deposition Services Courthouse Tower, 44 West Flagler Street, 14th Floor, Miami, Florida. The witness is instructed to bring all books, papers, and other things in his possession or under his control relevant to this lawsuit (and not previously produced in discovery) to the examination.

16div-006922

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and federal express on this 30th day of September, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar # 618349)
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Chicago, Illinois 60611

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,

Defendant(s).

_____/

CASE NO: CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant(s).

_____/

NOTICE OF VIDEOTAPED DEPOSITION

PLEASE TAKE NOTICE that Morgan Stanley & Company Incorporated and Morgan Stanley Senior Funding, Inc. will take the videotaped deposition of Lawrence Winoker, pursuant to Florida Rules of Civil Procedure 1.280 and 1.310. The oral examination will take place on December 6, 2004 at 9:30 am and continue from day to day until completed at the offices of Kirkland & Ellis, LLP, 153 East 53rd Street, New York, New York, 10022. The deposition will be taken before a person authorized to administer oaths and recorded by stenographic and videographic means. The video operator will be Esquire Deposition Services of 216 E. 45th Street in New York, New York. The witness is instructed to bring all books, papers, and other things in his possession or under his control relevant to this lawsuit (and not previously produced in discovery) to the examination.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and federal express on this 30th day of September, 2004.

Thomas D. Yannucci, P.C.
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e-mail: jianno@carltonfields.com

BY: _____

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BARNHARDT & SHIPLEY, P.A.
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CARLTON FIELDS, P.A.

ATTORNEYS AT LAW

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West Palm Beach, Florida 33401-6149

MAILING ADDRESS
P.O. Box 150, West Palm Beach, FL 33402-0150
Tel 561.659.7070 Fax 561.659.7368

FAX COVER SHEET

		Phone Number	Fax Number
Date:	September 30, 2004		
To:	Jack Scarola, Esq.	(561) 689-6300	(561) 684-5816
	Jerold Solovy, Esq	(312) 923-2711	(312) 840-7671
	Michael Brody, Esq.		(312) 840-7711
	Thomas Clare, Esq.		(202) 879-5200
From:	Joseph Ianno, Jr.	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:**

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****

If there are any problems or complications, please notify us immediately at:
561.659.7070

Telecopier operator: _____

WPB#567902.8

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

v. CASE NO: CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.
_____/

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a hearing has been set in the above-styled case as follows:

DATE:	October 6, 2004
TIME:	8:45 a.m.
PLACE:	Palm Beach County Courthouse, Courtroom 11A 205 North Dixie Highway West Palm Beach, Florida 33401
BEFORE:	Judge Elizabeth T. Maass
CONCERNING:	Morgan Stanley's Amended Motion for Enlargement of Time to File Amended Affirmative Defenses.

KINDLY GOVERN YOURSELVES ACCORDINGLY.

The undersigned counsel hereby certifies that a good faith attempt to resolve the issues contained in the foregoing motions or matters will be made with opposing counsel prior to hearing on these matters on the Court's Motion Calendar.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no costs to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-2431 within two (2) working days of your receipt of this notice; if you are hearing or voice impaired, call 1-800-955-8771.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 30th day of September, 2004.

Thomas D. Yannucci, P.C.
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Counsel for Defendant
Morgan Stanley & Co. Incorporated

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BY: Joseph Ianno, Jr.
Florida Bar No: 655351

WPB#571076.17

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CARLTON FIELDS, P.A.

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FAX COVER SHEET

Date:	September 30, 2004	**Phone Number**	**Fax Number**
To:	Jack Scarola, Esq.	(561) 689-6300	(561) 684-5816
	Jerold Solovy, Esq	(312) 923-2711	(312) 840-7671
	Michael Brody, Esq.		(312) 840-7711
	Thomas Clare, Esq.		(202) 879-5200
From:	Joseph Ianno, Jr.	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 4

Message: Notice of Hearing re: Morgan Stanley's Verified Motion to Admit Mar C. Hansen, Pro Hac Vice; Verified Motion to Admit James M. Webster, III, Pro Hac Vice; Verified Motion to Admit Rebecca A. Beynon, Pro Hac Vice and Motion to Rest Hearing.

☐ **Original to follow Via Regular Mail** ☐ **Original will Not be Sent** ☑ **Original will follow via Overnight Courier**

****

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (if long distance, please call collect) and return the original message to us at the above address via the U.S. Postal Service. Thank you.

****

If there are any problems or complications, please notify us immediately at:
561.659.7070

Telecopier operator: _____

WPB#567902.8

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

v. CASE NO: CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.
_____/

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a hearing has been set in the above-styled case as follows:

DATE:	October 5, 2004
TIME:	8:45 a.m.
PLACE:	Palm Beach County Courthouse, Courtroom 11A 205 North Dixie Highway West Palm Beach, Florida 33401
BEFORE:	Judge Elizabeth T. Maass
CONCERNING:	Morgan Stanley's Verified Motion to Admit Mark C. Hansen, Pro Hac Vice;

Morgan Stanley's Verified Motion to Admit James M. Webster, III, Pro Hac Vice;

Morgan Stanley's Verified Motion to Admit Rebecca A. Beynon, Pro Hac Vice

Morgan Stanley's Motion to Reset Hearing

KINDLY GOVERN YOURSELVES ACCORDINGLY.

The undersigned counsel hereby certifies that a good faith attempt to resolve the issues contained in the foregoing motions or matters will be made with opposing counsel prior to hearing on these matters on the Court's Motion Calendar.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no costs to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-2431 within two (2) working days of your receipt of this notice; if you are hearing or voice impaired, call 1-800-955-8771.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 30th day of September, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
Zhonette M. Brown
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Facsimile: (202) 879-5200

Counsel for Defendant
Morgan Stanley & Co. Incorporated

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e-mail: jianno@carltonfields.com

BY: Joseph Ianno, Jr.
Florida Bar No: 655351

WPB#571076.14

SERVICE LIST

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West Palm Beach, FL 33409

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Michael Brody
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One IBM Plaza, Suite 400
Chicago, IL 60611

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER ON COLEMAN (PARENT) HOLDINGS, INC. AND MACANDREWS & FORBES HOLDINGS, INC.'S MOTION TO COMPEL COMPLETE ANSWERS TO INTERROGATORY NOS. 1 AND 3 IN MAFCO'S FIRST SET OF INTERROGATORIES TO MORGAN STANLEY SENIOR FUNDING, INC.

THIS CAUSE came before the Court September 23, 2004 on Coleman (Parent) Holdings, Inc. and MacAndrews & Forbes Holdings, Inc.'s Motion to Compel Complete Answers to Interrogatory Nos. 1 and 3 in Mafco's First Set of Interrogatories to Morgan Stanley Senior Funding, Inc., with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Coleman (Parent) Holdings, Inc. and MacAndrews & Forbes Holdings, Inc.'s Motion to Compel Complete Answers to Interrogatory Nos. 1 and 3 in Mafco's First Set of Interrogatories to Morgan Stanley Senior Funding, Inc. is Granted, in part. MSSF shall (i) provide a more complete answer to interrogatory 1, which fairly meets the question posed, and (ii) review its answer to

interrogatory 3 to determine whether it has sufficient information to determine whether any listed individual did, as opposed to "may have" done, a listed act and, supplement its answer to show the result of its review, within 20 days.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 30 day of September, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci
655 15th Street, NW, Suite 1200
Washington DC 20005

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West Palm Beach, FL 33409

Jerold S. Solovy, Esq.
One IBM Plaza, Suite 4400
Chicago, Il 60611

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff, Case No. CA 03-5045 AI

vs.
MORGAN STANLEY & CO., INC.,
Defendant,
_____/
MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff, Case No. CA 03-5165 AI

vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant,
_____/

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: October 5, 2004

TIME: 8:45 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

(1) CPH and MAFCO's Verified Motion to Permit Foreign Attorney to Appear (Robert L. Byman);
(2) CPH and MAFCO's Verified Motion to Permit Foreign Attorney to Appear (Timothy J. Chorvat);
(3) CPH and MAFCO's Verified Motion to Permit Foreign Attorney to Appear (Joanne H. Sweeney).

Coleman Holdings, Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

Moving counsel certifies that he or she contacted opposing counsel and attempted to resolve the discovery dispute without hearing.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by FAX AND U.S. Mail to all Counsel on the attached list, this 30th day of Sept, 2004.

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Coleman Holdings, Inc. vs Morgan Stanley & Company
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Notice of Hearing

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

COLEMAN (PARENT) HOLDINGS, INC., CASE NO. 03 CA 5045 AI

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

v.

MACANDREWS & FORBES HOLDING, INC., et al.,

Defendants.

_____/

NON-PARTY SUNBEAM'S MOTION FOR PROTECTIVE ORDER AND MEMORANDUM OF LAW IN OPPOSITION TO MORGAN STANLEY'S MOTION TO COMPEL DOCUMENTS

Non-Party, Sunbeam Corporation, n/k/a American Household, Inc. ("Sunbeam"), by and through its counsel and pursuant to Rule 1.280 of the Florida Rules of Civil Procedure and this Court's Orders dated August 28, 2004 and September 20, 2004, hereby submits its Motion for Protective Order and Memorandum of Law in opposition to Defendant Morgan Stanley & Co., Inc.'s and Plaintiff Morgan Stanley Senior Funding, Inc.'s (collectively "Morgan Stanley") motion to compel the production of a certain privileged report prepared by the law firm of Skadden, Arps, Meagher & Flom, LLP for the Board of Directors of Sunbeam (the "Report").

PRELIMINARY STATEMENT

The Report is quintessential work product, protected from discovery under Rule 1.280(b)(3) of the Florida Rules of Civil Procedure. The Report was prepared by counsel for Sunbeam at the direction of its Board of Directors specifically to aid the Board in understanding the legal implications of events that occurred at Sunbeam during the tenure of its former Chairman and CEO, Al Dunlap. Sunbeam has consistently asserted that the Report is protected by both the attorney-client and work product privileges and, contrary to Morgan Stanley's assertions, the privileges have never been waived. Accordingly, Sunbeam requests that this Court enter an order denying Morgan Stanley's motion to compel production of the privileged document.

Sunbeam is not a party to this action. However, because the Report is subject to a privilege belonging to Sunbeam and its counsel, and Sunbeam has a continuing interest protecting that privilege, Sunbeam sought and was granted leave to submit papers in opposition to Morgan Stanley's motion to compel the Report's production from Plaintiff Coleman (Parent) Holdings, Inc. ("CPH").[1] More specifically, Sunbeam was asked to address the issues of whether the Report is privileged and whether the privilege has been waived as a result of the fact that a copy of the Report was allegedly provided to CPH and MacAndrews and Forbes Holdings, Inc. ("MAFCO").[2]

In support of its motion, Sunbeam is submitting the Affidavit of Steven R. Isko, Executive Vice President, Chief Legal Officer, and Secretary of American Household, Inc., f/k/a

[1] At the August 27, 2004 hearing on Morgan Stanley's motion to compel, the Court asked Sunbeam to consent to the jurisdiction of the Court "solely to determine whether the subject Report, its exhibits, and the transmittal letter to MAFCO are privileged and whether the privilege has been waived." *See* Court's August 28, 2004 Order. Sunbeam waived the formality of subpoenas as to these items.

[2] MAFCO is the parent company of CPH.

Sunbeam, who has knowledge regarding the relationship between Sunbeam and CPH and MAFCO and Sunbeam's continuous assertion of the privilege over the Report. *See* Affidavit of Steven R. Isko ("Isko Aff."), attached hereto as Exhibit A.

FACTUAL BACKGROUND

A. Coleman/Sunbeam Merger in 1998.

In March, 1998, Sunbeam acquired an 82% majority interest in The Coleman Company ("Coleman"). *See In re The Coleman Company, Inc. Shareholders Litigation*, 750 A.2d 1202, 1204-1206 (Del. Chan. 1999).[3] Contemporaneous with that transaction, the Board of Directors of Coleman approved a merger with Sunbeam, pursuant to which the minority shareholders of Coleman received cash and Sunbeam stock in exchange for their Coleman stock. *See* Affidavit of Charles M. Elson ("Elson Aff."), ¶ 2, attached hereto as Exhibit B.

In the ensuing three months, the price of Sunbeam stock began to drop precipitously and issues regarding the accuracy of its financial statements arose. In June 1998, Sunbeam's then CEO Albert Dunlap and CFO Russell Kersh were terminated. *See* June 13, 1998 and June 16, 1998 Minutes of Special Meeting of the Board of Directors of Sunbeam Corporation, attached hereto as Exhibits C and D. At the request of Sunbeam's Board, two senior executives from MAFCO, Paul E. Shapiro and Jerry W. Levin, who had experience at Coleman were brought in as senior executives of Sunbeam to stabilize its business and rebuild the company. Elson Aff., ¶ 2, Exhibit B.

Shortly thereafter, as a result of the decline in the value of Sunbeam's stock, MAFCO advised Sunbeam that it wished to rescind the Coleman/Sunbeam transaction and that it was prepared to commence litigation seeking rescission and/or money damages. *See* June 29, 1998

[3] The Coleman transactions and the litigation relating thereto are described in the Delaware Chancery Court's published opinion approving a settlement with Coleman's public shareholders.

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Minutes of Meeting of the Board of Directors of Sunbeam Corporation, attached hereto as Exhibit E. On June 29, 1998, in response to threatened litigation by MAFCO and CPH, the Executive Committee of Sunbeam's board established a Special Committee which was charged with investigating the facts, assessing the litigation risks and, if it deemed it appropriate, negotiating a settlement with MAFCO and CPH. *See* Exhibit E; Isko Aff., ¶ 3, Exhibit A.

B. CPH and MAFCO settle their claims with Sunbeam and develop a common interest in defending themselves against various derivative claims.

On August 12, 1998, Sunbeam and CPH entered into a settlement agreement ("Settlement Agreement") whereby CPH released certain claims against Sunbeam in exchange for a five-year warrant to buy additional shares of Sunbeam stock. Isko Aff., ¶ 4, Exhibit A. A copy of the Settlement Agreement is attached hereto as Exhibit F. Once the settlement was executed, Sunbeam, CPH, and MAFCO ceased to be adversaries. Under Section 3, "Provision of Management Services" of the Settlement Agreement, CPH, and MAFCO agreed to continue to provide management services, including litigation and other legal support to Sunbeam. *See* Settlement Agreement, pp. 6-7, Exhibit F; Isko Aff., ¶ 5, Exhibit A.

Beginning on August 13, 1998, derivative suits were commenced in Delaware and Florida against MAFCO and/or CPH and their directors, and Sunbeam and its Special Committee members, alleging that the August 12, 1998 Settlement Agreement was unfair to Sunbeam, and gave too much value to MAFCO and CPH. See Affidavit of Barry F. Schwartz ("Schwartz Aff."), ¶ 5, attached hereto as Exhibit G; Isko Aff., ¶ 6, Exhibit A.

In addition to the relationship formed by the Settlement Agreement, MAFCO, CPH, and Sunbeam also had a joint interest in defending against the derivative suits challenging the Settlement Agreement. *See* Isko Aff., ¶ 7, Exhibit A. As such, the defendants, including Sunbeam and the Special Committee members, and CPH and MAFCO and their directors,

cooperated with each other in opposing the litigation. *Id.* For example, on January 19, 1999 MAFCO and two of its directors, Howard Gittis and Jerry W. Levin, and Sunbeam and two of its directors, including Charles M. Elson and Howard G. Kristol, filed the Joint Reply Memorandum of Law in Support of Their Motion to Dismiss, or in the Alternative, to Stay Proceedings in the Florida derivative action, *Shallal v. Elson, et al.*, CA 98-8739, filed in the United States District Court for the Southern District of Florida. *Id; see also* Joint Reply Memorandum of Law in Support of Their Motion to Dismiss, or in the Alternative, to Stay Proceedings, attached hereto as Exhibit "C" to Exhibit H. During the course of litigating the derivative claims, MAFCO, CPH, the Special Committee and Sunbeam had a joint interest in defeating the derivative suits. *Id.*

In addition to the derivative suits, there was an onslaught of law suits filed against Sunbeam. *See* Isko Aff., ¶ 8, Exhibit A. Sunbeam was sued in various actions involving shareholders claims, bond claims, insurance claims, and claims dealing with the termination of Al Dunlap and Russell Kersh. *Id.* Pursuant to the August 12, 1998 Settlement Agreement, and the joint interest in defending the various litigations, CPH and MAFCO provided legal services to Sunbeam in connection with the various cases pending against Sunbeam. *Id.* at ¶ 9. In that regard, Sunbeam sought legal counsel and advice from Barry F. Schwartz, Esq. and other members of MAFCO's legal department. *Id.* at ¶ 9. Sunbeam vigorously defended and prosecuted these cases until Sunbeam's bankruptcy in February 2001.

C. Sunbeam's Board of Directors requested that Skadden create the Report.

As part of its defense to the derivative actions, Sunbeam hired its outside counsel Skadden to defend the various lawsuits and respond to the Securities and Exchange Commission's ("SEC") inquiry regarding Sunbeam's accounting practices. Skadden was also

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specifically retained by the Board of Directors of Sunbeam to investigate the events which had occurred at Sunbeam and to provide a report including the legal implications of certain past practices at the company. *Id.* On or about February 4, 1999, Skadden orally presented its initial findings and recommendations to the Board of Directors and provided the members with a draft copy of the Report.

D. Transmittal of the Report to MAFCO.

On or about April 22, 1999, Skadden, as attorneys for Sunbeam, provided a copy of the Report and its exhibits to attorneys for MAFCO as well as Mark F. Bideau, Esq., and Mike Mitchell, Esq., who were outside counsel for Sunbeam. As the transmittal letter itself states, the documents were protected by the attorney-client and work product privileges. The documents were sent by Skadden to Sunbeam's counsel with the understanding that the privileged Report and exhibits would remain privileged and be used solely by Sunbeam's attorneys to assist in defending the claims pending against Sunbeam. Isko Aff., ¶ 12, Exhibit A. Providing the Report and exhibits to MAFCO is not inconsistent with protecting Sunbeam's privilege as MAFCO had been providing legal services to Sunbeam since the August 12, 1998 Settlement Agreement. Sunbeam understood that it was receiving legal advice and services from MAFCO and, pursuant to that relationship, disclosed privileged documents and communications with MAFCO's legal department. *Id.* As explained in more detail in Subsection F, a Florida court has already determined that Sunbeam's transmittal of a similar privileged document to MAFCO does not constitute a waiver of its privilege.

E. Sunbeam has consistently maintained that the Report is protected by the attorney client and work product privileges and has, accordingly, kept the Report strictly confidential.

Sunbeam has always maintained that the Skadden Report to the Board of Directors is protected by the attorney client and work product privileges. Isko Aff., ¶ 11, Exhibit A. The Report has never voluntarily been produced in any law suit, has never been ordered to be produced by any court, and it was not produced to the SEC. *Id.* Sunbeam has not taken any action that is inconsistent with preserving the protection of the attorney client and work product privileges afforded to the Report. In fact, Sunbeam is still actively litigating some of its cases and it would be unfairly prejudiced if this Court were to order production of the privileged Report and allow Sunbeam's counsel's work product and opinions to become available to its adversaries. *Id.* at ¶ 13.

F. Another Florida court has already determined that providing MAFCO with a privileged document does not constitute a waiver of the privilege.

In a remarkably similar case, *Coleman (Parent) v. Andersen*, CA 01-06062-AN, Judge Rapp was required to determine whether or not the production of a Sunbeam privileged document to MAFCO constituted a waiver of Sunbeam's privilege. In that case, Arthur Andersen sought the production of the Blackstone Report, a report that was prepared by Sunbeam's financial consultant The Blackstone Group at the direction of Weil, Gotshal & Manges, counsel to the Special Committee of the Board of Directors of Sunbeam. *See* Non-Party Sunbeam Corporation's Memorandum of Law In Opposition to "Defendant Arthur Andersen LLP'S Motion to Compel The Production of a Non-Privileged Coleman Parent Document," attached hereto as Exhibit H.

Andersen made the same arguments as those now being made by Morgan Stanley in its motion, that because Sunbeam shared the privileged document with MAFCO, which at one point

in time had been Sunbeam's adversary, the privilege had been waived. *See* Defendant Arthur Andersen LLP'S Motion to Compel The Production of a Non-Privileged Coleman Parent Document, Plaintiff Coleman Parent's Memorandum in Opposition to Defendant Arthur Andersen LLP's Motion to Compel the Production of a Non-Privileged Coleman Parent Document, Anderson's Reply to Coleman Parent's Memorandum in Opposition to Defendant Arthur Andersen LLP's Motion to Compel the Production of a Non-Privileged Coleman Parent Document, and Andersen's Supplemental Memorandum In Support of Its Motion to Compel the Production of The E&Y Memo and the Blackstone Report, attached hereto as Cumulative Exhibit I. After hearing arguments of counsel, relying on affidavits submitted, and reviewing the case law cited within the memoranda, Judge Rapp denied the motion to compel, rejecting the arguments set forth by Andersen. *See* September 6, 2002 Order denying Arthur Andersen LLP's Motion to Compel the Production of Blackstone Report and Ernst & Young Memo attached hereto as Exhibit J.

Morgan Stanley has raised no new issues with regard to its position in this case that Sunbeam waived its privilege by providing MAFCO with a copy of the Report. Therefore, as Judge Rapp held in *Coleman v. Andersen*, this Court should deny Coleman's Motion to Compel production of the Report as it is protected by both the attorney client and work product privileges and such privileges have never been waived.

G. Paul Shapiro did not waive, nor could he waive, Sunbeam's privilege over the Report during his deposition.

On or about June 8, 2004 and on July 28, 2004, Paul E. Shapiro's deposition was taken in this action. During the deposition, Mr. Shapiro acknowledged the existence of the Report and explained that it was the subject to "all kinds of issues regarding confidentiality and privilege." *See* July 28, 2004 Shapiro deposition, p. 363, Exhibit K. Contrary to the assertions in Morgan

Stanley's Motion, Mr. Shapiro "*did not discuss the document in detail,*" nor did he "*testif[y] extensively about the internal investigation undertaken by Sunbeam in 1998, including the substance of the written report issued by the Special Committee, as well as the oral presentation of the [R]eport's findings to the Sunbeam Board.*" Morgan Stanley's Motion, pp. 1, 3. Instead, Mr. Shapiro acknowledged the existence of the Report and provided his vague recollection of its subject matter. He certainly did not discuss the document in detail as suggested by Morgan Stanley, indeed, he testified he did not recall many of the details. *See* Excerpt of Paul Shapiro's July 28, 2004 Deposition Testimony, p. 360, ln. 25 – p. 362, ln. 7, attached hereto as Exhibit K.

Mr. Shapiro's deposition testimony did not in any way waive Sunbeam's privilege over the Report. While it appears from the transcript of the August 27, 2004 hearing that Morgan Stanley may have abandoned its argument that Paul Shapiro's testimony was a waiver of Sunbeam's privilege, Sunbeam submits that Mr. Shapiro did not waive Sunbeam's privilege and could not have waived the privilege as it was not a privilege he possessed.

ARGUMENT

A. Courts have broad discretion in granting protective orders.

Florida courts have the authority to issue protective orders to prevent the disclosure of privileged information. Fla. R. Civ. P. 1.280 (b) and (c). Florida trial courts have broad discretion in issuing protective orders. *SCI Funeral Services of Florida, Inc. v. Light*, 811 So. 2d 796, 798 (Fla. 4th DCA 2002), *citing Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984). Since the Report is protected by the attorney client and work product privileges, this Court should enter a protective order denying Morgan Stanley access to this document.

B. The Report is protected by the attorney-client privilege.

"Under Florida law, information is protected from disclosure by the attorney-client privilege when it is a communication between a lawyer and client not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of legal services to the client, or those reasonably necessary for the transmission of the communication." *Tyne v. Time Warner Entertainment Co.*, 212 F.R.D. 596, 598 (M.D.Fla. 2002), *citing* Fla. Stat. § 90.502 (1)(c).

The Report constitutes a privileged attorney client communication under the test established by the Florida Supreme Court case *Southern Bell Telephone and Telegraph Co. v. Deason*, 632 So.2d 1377, 1383 (Fla. 1994).[4] The Report was prepared by Skadden at the request of the Board of Directors of Sunbeam specifically for the purpose of securing legal advice, the Board did so with the proper authority, the subject matter of the legal communication was within the scope of the Board's corporate duties, and, as will be explained in greater detail below, the communication was not disseminated beyond those persons who, because of the corporate structure, needed to know its contents. *Id.*

C. The Report and its exhibits are also protected by the work product privilege.

Florida law provides that a "court shall protect against the disclosure of the mental impressions, conclusions, opinions, or legal theories of any attorney or other representative of a

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[4] In order to determine the applicability of the attorney client privilege in the corporate context, the Florida Supreme Court created a five prong test:

(1) the communication would not have been made but for the contemplation of legal services;
(2) the employee making the communication did so at the direction of his or her corporate superior;
(3) the superior made the request of the employee as part of the corporation's effort to secure legal advice or services;
(4) the content of the communication relates to the legal services being rendered, and the subject of the communication is within the scope of the employee's duties, and;
(5) the communication is not disseminated beyond those person who, because of the corporate structure, need to know its contents.

party concerning . . . litigation." Fla. R. Civ. P. 1.280(b)(3).[5] *See Tyne v. Time Warner Entertainment Co.*, 212 F.R.D. 596, 598 (M.D.Fla. 2002); *Federal Express Corp. v. Cantway*, 778 So.2d 1052, 1053 (Fla. 4th DCA 2001).

"[I]nvestigative materials of a party, when prepared in anticipation of litigation constitute work product and are not subject to discovery . . . . Such reports need not be ordered by an attorney in order to be considered work product, . . . and they can constitute work product even if they are prepared before a claim is filed." *Federal Express Corp. v. Cantway*, 778 So.2d 1052, 1053 (Fla. 4th DCA 2001) (internal citation and punctuation omitted). Here, it is unquestionable that the Report sought by Morgan Stanley qualifies as privileged work product material because it was prepared by Skadden at the direction of the Board in response to the SEC investigation and the many lawsuits then pending against Sunbeam. The Board of Directors instructed its attorneys to conduct an investigation and provide a report summarizing the events that occurred at Sunbeam, and provide an analysis of the legal implications of those facts to Sunbeam's practices. The Report clearly contains the mental impressions of Sunbeam's attorneys and, as such, the information is protected by the work product privilege.

Furthermore, the exhibits attached to the Report are protected by the work product privilege because the selection of the documents reveals the thought processes and mental impressions of Sunbeam's counsel. *Smith v. State*, 873 So. 2d 585, 588 (Fla. 3rd DCA 1994) (internal punctuation omitted) ("The act alone of compelling an attorney to disclose a group of documents invariably reveals the counsel's assessment of the relative importance of each of those documents, and of their significance as a collection.") *See also Northup v. Acken*, 865

Southern Bell Telephone and Telegraph Co. v. Deason, 632 So.2d 1377, 1383 (Fla. 1994).

[5] Florida courts look to federal case law for guidance when interpreting the scope of the work product privilege because Fla. R. Civ. P. 1.280(b) closely resembles the analogous federal rule. *See Cotton States Mut. Ins. Co. v. Turtle Reef Assoc., Inc.*, 444 So.2d 595, 596 (Fla. 4th DCA 1984).

So.2d 1267 (Fla. 2004) (holding that an attorney's compilation of particular documents is protected by the work product privilege as long as the documents themselves are not intended to be used at trial). Therefore, based on the law of the Florida Supreme Court, the Report as well its exhibits are protected by the work product privilege and are absolute immune from discovery.

D. Disclosure of the Report to MAFCO does not constitute a waiver of Sunbeam's privilege.

There is no merit to Morgan Stanley's argument that disclosure of the report to MAFCO constitutes a waiver of the attorney client or work product privileges because Sunbeam and MAFCO had a common legal interest at the time the Report was produced to MAFCO in April 1999. While MAFCO and Sunbeam were adversaries for a short period of time in late June and July of 1998, by August 12, 1998 they had settled their differences. On August 12, 1998, Sunbeam and CPH entered into a Settlement Agreement where CPH released its claims against Sunbeam and agreed to provide management services to the company. Under the terms of the Settlement Agreement, CPH and its affiliated company MAFCO agreed to "provide assistance and support to Sunbeam" on "compliance, litigation, insurance, regulatory and other legal matters." *See* Settlement Agreement, ¶ 3 (d)(v).

Florida law provides that no waiver occurs when privileged information is shared amongst those with a common interest. Under similar circumstances, a plaintiff argued that the defendant, Warner Bros., waived its attorney client privilege by disclosing certain documents to employees of co-defendant studios Radiant and Baltimore during the course of filming a movie. *Tyne, supra.* Although the privileged documents were shared with those outside the direct employ of Warner Bros., the court, applying Florida law, held:

> While the employees of Radiant and Baltimore may not be clients of the Warner Bros. legal department, Warner Bros required their cooperation with regard to the production of *A Perfect Storm*. Radiant and Baltimore were involved in a project

> akin to a "joint venture" with Warner Bros, and the actions of Radiant and Baltimore employees regarding improper clearance could subject Warner Bros. to liability. The advice of the Warner Bros. legal department would be useless to Warner Bros. if the advice could not be disseminated to the few key individuals who were intimately involved in the joint production of *The Perfect Storm.* Therefore, ***disclosure to these individuals who have a common legal interest does not constitute a waiver of privilege.***

Tyne, *supra,* 212 F.R.D. 596, 600 (emphasis added). *See also Celotex Corp. v. Jasper Corp.*, 196 B.R. 596, 600-601 (Bankr. M.D. Fla. 1996) (holding that no waiver of privilege occurred when privileged documents were shared with a third party because they shared common legal interests); *In re United Mine Workers of America Employee Benefit Plans Litig.*, 159 F.R.D. 307, 313 (D.D.C. 1994) ("The 'common interest rule' provides that parties with shared interests in actual or potential litigation against a common adversary may share privileged information without waiving their right to assert the privilege.")

Here, Morgan Stanley claims that providing the Report to certain lawyers employed by MAFCO constituted a waiver of Sunbeam's privileges. This is simply not true. The only persons employed by MAFCO who obtained the Report were those were providing legal services to Sunbeam. Even if they were not lawyers, which they were, the Report would remain privileged under *Tyne* and *Celotex*.

The rationale for protecting the privilege is simple – it is in the public's interest to promote sharing of such information. *See District Bd. Of Trs. Of Miami-Dade County. Coll. V. Chao*, 739 So. 2d 105 (Fla. 3rd DCA 1999).[6] It was in Sunbeam's best interest to share the Report with counsel for MAFCO because MAFCO's legal department was providing advice to Sunbeam regarding the numerous lawsuits pending against the company.

[6] In *Chao,* in which the plaintiff filed a complaint for an injury caused by a slip-and-fall, the court held that disclosure of work product privileged accident reports to departments other than the company's legal department did not constitute waiver of the privilege: "[The company] should not be penalized for advising other departments so that remedial measures can be taken where called for. To say that such distribution would eliminate the work product immunity would be contrary to public policy." *Chao, supra,* 739 So.2d at 107.

"The common interests privilege relates not only to attorney-client materials . . . but also to an attorney's work product." *Visual Scene, Inc. v. Pilkington Brothers, PLC,* 508 So.2d 437, 442 (Fla. 3rd DCA 1987). Holding that disclosure made in preparation for trial does not waive the work product privilege, the court explained:

> Thus, a disclosure made in preparation for trial does not waive the work product privilege unless it is inconsistent with the maintenance of secrecy from the disclosing party's adversary . . . that is, that it substantially increases the possibility of an opposing party obtaining the information.

Id. at p. 442 (internal citation and punctuation omitted). Here, the disclosure of the Report to attorneys employed by MAFCO is not at all inconsistent with Sunbeam's maintenance of secrecy from Sunbeam's adversaries. In fact, MAFCO was providing legal services to Sunbeam for the very purpose of extricating Sunbeam from the lawsuits pending against it.

The Florida Supreme Court recognized that in determining the applicability of privilege in the corporate context, it is important to note that disclosure of privileged information to key corporate employees does not result in a waiver of the privilege because to hold otherwise would violate a corporation's right to use the information for "internal business use":

> Counsel ultimately shared the employees' statement with managers in Southern Bell's human resources department . . . . ***Counsel's decision to share these privileged communications with managers in the company who had a "need to know" the information does not strip the information of its privileged status.*** Counsel had a duty to render legal services to the company, and in turn, the company has a right to internal business use of privileged documents generated by its own company employees. Thus, these statements remain privileged.

Southern Bell Telephone and Telegraph Co. v. Deason, 632 So. 2d 1377, 1386 (Fla. 1994) (emphasis added). Accordingly, no waiver resulted from disclosure of the report to MAFCO.

E. The mere fact that MAFCO and Sunbeam were adversaries at one point in time does not result in a waiver of the privileges.

Morgan Stanley's argument that because MAFCO and Sunbeam were adverse to each other at some point in time, the disclosure of the Report to attorneys employed by MAFCO automatically constitutes a waiver is without merit. As long as both parties had a common interest at the time that they shared confidences, the privilege remains even if they were previously antagonistic to one another or later become adversarial:

> [E]ven if the corporation and its accountants later became antagonists in the litigation – aligned in part on opposite sides – they would nonetheless be able to protect their prior shared confidences from disclosure to third parties.

Visual Scene, 508 So. 2d at 441.

The proper inquiry is whether the party seeking work product protection disclosed the document to a third party that was an adversary "***at the time*** that the confidential information is disclosed." *In re United Mine Workers of America Employee Benefit Plans Litig.*, 159 F.R.D. 307, 314 (D.D.C. 1994) (emphasis added) (holding that "the fact that the parties' interests have diverged" at another point in time is irrelevant if the parties had common interest when disclosure was made). At the time that Sunbeam shared the Report with MAFCO, there was no adversarial relationship between Sunbeam and MAFCO. In fact, MAFCO had committed itself to providing legal advice and business support to Sunbeam at the time Sunbeam provided the Report to MAFCO, and the sole reason that Sunbeam provided the Report to MAFCO was to obtain legal services. Thus, no waiver occurred as result of the production of the Report to MAFCO in April 1999.

F. Non-parties, such as Sunbeam, have the right to assert work product privilege.

Even non-parties, such as Sunbeam, have the right to assert work product privilege. *Zaban v. McCombs,* 568 So.2d 87 (Fla. 1st DCA 1990). In *Zaban,* an employer, at the advice of

its counsel, hired an investigator to conduct interviews of witnesses after the death of an employee. Even though the employer was not named a party to the wrongful death litigation that ensued, the employer nevertheless objected to producing the investigator's report on grounds of work product privilege. The appellate court held that a non-party could assert work product privilege because "work product privilege would be circumvented if by simply suing a party closely involved in the subject incident, an adverse party could obtain privileged documents merely because the entity who actually produced the work product materials was not a named party." *Id.* at p. 89.

Requiring a non-party to compromise its position in a separate litigation by ordering production of its work product would be an "intolerable" result. Charles A. Wright, *et al., Federal Practice & Procedure* § 2024 (1994). Thus, even if a literal reading of the work product rule does not provide protection to non-parties, the fact that a document is subject to the work product doctrine in a separate litigation involving the non-party is grounds for issuing a protective order to "vindicate the purposes of the work product rule." *Id.*; *see also In re Polyporpylene Carpet Antitrust Litig.*, 181 F.R.D. 680, 691-692 (N.D.Ga. 1998) (issuing a protective order requiring the return of documents to a non-party where documents would be protected work product if non-party were a party to case); *Genevit Creations v. Underwriters at Lloyd's*, 166 F.R.D. 281, 282 (E.D.N.Y. 1996) (holding that a court may issue a protective order to protect non-party's work product).

Thus, for purposes of asserting its work product privilege, it is irrelevant that Sunbeam is not a party to this litigation. *See Tyne, supra*, ("the definition of 'common interests' should not be construed as narrowly limited to co-parties"); *Visual Scene,* 508 So. 2d. at 441. At the time that the Report was shared by Sunbeam, Sunbeam and MAFCO had the same goal – to defend

Sunbeam against the various litigation pending against it. As evidenced by Sunbeam's privilege logs in the various litigations, the confidentiality of the Report has always been maintained and there has never been any disclosure to adverse parties. Sunbeam's communications with its attorneys are protected by the attorney client privilege regardless of the existence of litigation.

G. The privilege afforded to the Report is not lost merely because some of the litigation giving rise to its creation has terminated.

The work product protection afforded to the Report survives the resolution of the litigation giving rise to its creation. Documents protected by the work product privilege maintain that privilege not only in conjunction with the litigation in which such documents were created, but in subsequent litigations as well. *See Toward v. Cooper*, 634 So. 2d 760, 761 (Fla. 4th DCA 1994); *Alchua Gen. Hospital v. Zimmer USA, Inc.*, 403 So. 2d 1087, 1089 (Fla. 1st DCA 1999), *citing In re Murphy*, 560 F.2d 326, 334 (8th Cir. 1997) ("The work product privilege would be attenuated if it were limited to documents that were prepared in the case for which discovery is sought.") Therefore, despite the resolution of some of the lawsuits giving rise to the creation of the Report, Sunbeam nevertheless retains its work product privilege over the Report and its exhibits. Moreover, Sunbeam is still actively litigating some of the cases. Sunbeam would suffer undue hardship and be unfairly prejudiced if this Court were to order the production of its privileged Report that could fall in the hands of its adversaries. *See* Isko Aff., ¶ 13, Exhibit A.

H. Failure to object at Mr. Shapiro's deposition does not constitute waiver of the privilege.

Morgan Stanley's argument that the failure to object on the basis of privilege at the time of Mr. Shapiro's deposition constitutes a waiver is without merit:

> The failure of the plaintiff below to make a timely objection or a motion to limit discovery in regard to Hildreth's testimony did not constitute a waiver of a work product privilege as to matters clearly outside the scope of permissible discovery.

> An attorney's mental impressions, conclusions, opinions or theories concerning the client's case are opinion work product and are absolutely privileged.

5500 North Corp. v. Willis, 729 So. 2d 508, 512 (Fla. 5th DCA 1999) (internal citations omitted). Here, the Report, which contains the mental impressions, conclusions, and opinions of Sunbeam's legal counsel is clearly outside the scope of permissible discovery and constitutes absolutely privileged work product that cannot be waived by a failure to object to its disclosure.

I. Mr. Shapiro did not have the authority to waive a privilege belonging to Sunbeam and thus his previous deposition testimony cannot constitute a waiver.

There is no support under Florida law for Morgan Stanley's argument that Mr. Shapiro waived the privilege by testifying regarding the Report at his deposition. The attorney client and work product privileges belong to Sunbeam and they cannot be waived by Mr. Shapiro, a former executive of Sunbeam. Fla. Stat. § 90.507. In the corporate context, the power to exercise the attorney-client privilege rests with the corporation's management. *See Tail of the Pup, Inc. v. Webb*, 528 So.2d 506, 507 (Fla. 2d DCA 1988). Moreover, as the United States Supreme Court explained in *Commodity Futures Trading Commission v. Weintraub*, 471 U.S. 343, 349 (1985), "when control of a corporation passes to new management, the authority to assert and waive the corporation's attorney-client privilege passes as well"); *see generally Scottsdale Ins. Co. v. Camara De Comercio Latino-Americana de los Estados Unidos, Inc.*, 813 So.2d 250 (Fla. 3d DCA 2002) (standing for the proposition that the work product privilege cannot be asserted by someone other than the holder of the privilege). Therefore, Mr. Shapiro, a former executive of Sunbeam, is without authority to waive the attorney client or work product privilege on behalf of Sunbeam.

J. While Mr. Shapiro does not possess authority to waive Sunbeam's privilege, Mr. Shapiro did not reveal the substance of the report and thus, even if he did have the authority, no waiver resulted from his prior testimony.

Waiver occurs only where "[a] person who has a privilege against the disclosure of a confidential matter or communication waives the privilege if the person . . . ***while holder of the privilege***, voluntarily discloses . . . or consents to disclosure of, any ***significant*** part of the matter or communication." Fla. Stat. §90.507 (2004) (emphasis added). Mr. Shapiro's deposition testimony demonstrates that he did not disclose "any ***significant*** part of the matter or communication." In fact, Mr. Shapiro indicated that the Report was privileged and confidential. *See* July 28, 2004 Shapiro Deposition, p. 363, Exhibit K. Clearly, Mr. Shapiro's deposition testimony did not waive Sunbeam's privileges.

Even if Mr. Shapiro's testimony is somehow found to constitute a waiver of the privilege, the waiver extends only to what Mr. Shapiro actually revealed:

> We reject respondent's contention that petitioner's prior disclosure of the expert's written report constituted a waiver of the work product privilege as to the facts known and opinions held by the expert that were not previously disclosed.

Morgan v. Tracy, 604 So.2d 15, 15 (Fla. 4th DCA 1992).

Mr. Shapiro's testimony establishes that he only had a vague recollection of the Report. Despite Morgan Stanley's assertions to the contrary, Mr. Shapiro certainly did not testify as to the ***substance*** of report at his deposition and, in fact, explained that the report was subject to "all kinds of issues regarding confidentiality and privilege." *See* July 28, 2004 Shapiro Deposition, p. 363, Exhibit K. Indeed, Morgan Stanley concedes in its Motion to Compel that "Mr. Shapiro could not recall . . . the substance of the report as it relates to Morgan Stanley," which is the information it now seeks to compel. *See* Morgan Stanley's Motion to Compel, p. 5. Therefore, even if Mr. Shapiro had the authority to waive the privilege, which he clearly did not, he could

not have waived any privilege by making a reference to the Report because he did not reveal the substance of the report, nor did he reveal the information that Morgan Stanley now seeks.

CONCLUSION

It is unquestionable that the Report and its exhibits are protected by the attorney client and work product privileges. Sunbeam has always maintained that the Report is privileged, it has never been disclosed to adverse parties, and the privileges have never been waived. WHEREFORE Sunbeam respectfully requests that this Court grant Sunbeam's Motion for Protective Order and deny Morgan Stanley's Motion to Compel.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via facsimile and mail to the addressees on the attached Service List, this 4 day of October, 2004.

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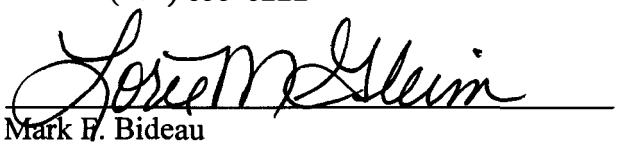
Telephone: (561) 650-7900
Facsimile: (561) 655-6222

By: 
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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC., CASE NO. 03 CA 5045 AI

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

v.

MACANDREWS & FORBES HOLDING, INC., et al

Defendants.
_____/

AFFIDAVIT OF STEVEN R. ISKO

STATE OF NEW YORK)
) ss.:
COUNTY OF New York)

BEFORE ME, the undersigned authority, personally appeared **STEVEN R. ISKO**, who after being duly sworn, states as follows:

1. I am Executive Vice President, Chief Legal Officer, and Secretary of American Household, Inc., f/k/a/ Sunbeam Corporation.

2. I have knowledge of the facts set forth below. If called to testify as a witness, I would be competent to testify to the facts set forth in this affidavit.

3. On June 29, 1998, in response to the threatened litigation by Mafco and Coleman (Parent), the Executive Committee of Sunbeam's board established a Special Committee which was charged with investigating the facts, assessing the litigation risks and, if it deemed it appropriate, negotiating a settlement with Mafco and Coleman (Parent). See June 29, 1998 Minutes of Special Meetings of the Executive Committee and of the Audit Committee of the Board of Directors of Sunbeam Corporation.

4. On August 12, 1998, Sunbeam and Coleman (Parent) entered into a Settlement Agreement with Coleman (Parent) in which Coleman (Parent) released certain claims against Sunbeam. See August 12, 1998 Minutes of the Meeting of the Board of Directors of Sunbeam Corporation.

5. Under Section 3. "Provision of Management Services" of the Settlement Agreement, Coleman (Parent) agreed to provide assistance and support to Sunbeam including legal services. See August 12, 1998 Settlement Agreement.

6. Shortly thereafter, derivative suits were commenced in Delaware and Florida against MacAndrews & Forbes, and/or Coleman (Parent) and their directors, and Sunbeam and its Special Committee members, alleging that the August 12, 1998 Settlement Agreement was unfair to Sunbeam, and gave too much value to Mafco and Coleman (Parent).

7. The defendants, including Sunbeam and the Special Committee members, and Coleman (Parent) and MacAndrews & Forbes and their directors, cooperated with each other in opposing the litigation. For example, on January 19, 1999, MacAndrews & Forbes and two of its directors, Howard Gittis and Jerry W. Levin, and Sunbeam and two of its directors, including Charles M. Elson and Howard G. Kristol, filed a Joint Reply Memorandum of Law in Support of Their Motions to Dismiss or, in the Alternative, to Stay Proceedings in the Florida derivative

action, Shallal v. Elson et al., CA 98-8739, filed in the U.S. District Court for the Southern District of Florida. During the course of litigating the derivative claims, Mafco, Coleman (Parent), the Special Committee and Sunbeam had a joint interest in defeating the derivative Suits.

8. In addition to the derivative suits, Sunbeam was sued in various actions involving shareholder claims, bond claims, insurance claims and claims dealing with the termination of Al Dunlap and Russell Kersh. These cases were actively defended until Sunbeam's bankruptcy in February 2001.

9. Pursuant to the August 12, 1998 Settlement Agreement, and the joint interest in defending the various litigations, Coleman (Parent) and Mafco provided legal services to Sunbeam in connection with the various cases pending against Sunbeam. In that regard, Sunbeam sought legal counsel and advice from Barry F. Schwartz, Esq. and other members of Mafco's legal department.

10. Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden") was retained by the Board of Directors of Sunbeam to investigate the events which had occurred at Sunbeam and to provide a report including the legal implications of certain accounting practices at the company (the "Report").

11. Sunbeam has always maintained that the Skadden Report to the Board of Directors is protected by the attorney work product and the attorney client privileges. The Report has never voluntarily been produced in any lawsuit, has never been ordered to be produced, and it was not produced to the Securities and Exchange Commission.

12. To the extent that the Skadden Report to the Board of Directors was provided to the Mafco legal department, it would have only been provided to them in their capacity as

attorneys providing legal services to Sunbeam. As set for the previously, from August 12, 1998, Mr. Schwartz and others in the Ma co legal department were serving as counsel to Sunbeam. Further, it is my understanding that Sunbeam's counsel understood that the document was privileged and was to remain privileged.

13. Additionally, Sunbeam is still actively litigating cases since emerging from bankruptcy. As such, Sunbeam would be unfairly prejudiced if this Court were to order production of the privileged Report and allow Sunbeam's opposing counsel access to its attorney opinions and work product.

FURTHER AFFIANT SAYETH NOT.

Steven R. Isko, Affiant

SWORN TO AND SUBSCRIBED before me, by **STEVEN R. ISKO**, who is personally known to me, on this 4th day of October, 2004.

Print Name: Amalia Salais
Notary Public – State of New York
My Commission Expires: 10-26-05

AMALIA SALAIS
Notary Public, State of New York
No. 24-4909383
Qualified in Kings County
Commission Expires Oct. 26, 2005

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiffs,

-against-

ARTHUR ANDERSEN LLP (a United States Partnership); ANDERSEN WORLDWIDE, SOCIÉTÉ COOPERATIVE (a Swiss Cooperative); ARTHUR ANDERSEN & CO. (a Canadian company); ARTHUR ANDERSEN & CO. (a Hong Kong Company); RUIZ, URQUIZA Y CIA, S.C. (a Mexican company); PIERNAVIEJA, PORTA, CACHAFEIRO & AVOCADOS (a Venezuela company); ARTHUR ANDERSEN (a United Kingdom company); and PHILLIP E. HARLOW,

Defendants.

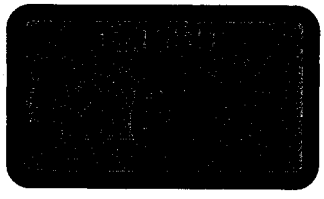
Case No.: CA 01-06062 AN

Judge Stephen A. Rapp

AFFIDAVIT OF CHARLES M. ELSON

Charles M. Elson, being duly sworn, deposes and says:

1. I am the director of the Center for Corporate Governance and the Edgar S. Woolard Professor of Corporate Governance at the University of Delaware. I have been a member of the board of directors and of the audit committee of Sunbeam Corporation ("Sunbeam") since 1996. In 1998, I served on the Special Committee created by the Executive Committee of the Sunbeam board, and whose work is at issue in the instant motion. I submit this affidavit to present to the Court facts relevant to the creation and privilege of a report (the "Blackstone Report") created by the Blackstone Group, LLP ("Blackstone") for the Special Committee and Weil, Gotshal and Manges LLP ("Weil Gotshal") for the purpose of assisting the Special Committee and Weil



Gotshal in structuring, negotiating and advising concerning the settlement of threatened litigation.

2. In early 1998 there was a merger between Sunbeam and Coleman Company, Inc. ("Coleman") pursuant to which Sunbeam acquired Coleman from Coleman (Parent) Holdings, Inc. ("Coleman (Parent)"). Coleman (Parent), which was owned by MacAndrews & Forbes Holdings Inc. ("MacAndrews") and ultimately, Mafco Holdings Inc. (MacAndrews and Mafco Holdings Inc. referred to collectively as "Mafco"), received various forms of consideration, including cash and Sunbeam stock, in this transaction. In the ensuing three months, the price of Sunbeam stock dropped precipitously and issues arose regarding the accuracy of its financial statements. In June 1998, Sunbeam's CEO Al Dunlap and CFO Russell Kersh were terminated. At the request of Sunbeam's board, two executives at Mafco who had experience at Coleman stepped in as senior executives of Sunbeam to stabilize its business and rebuild the company. A few weeks later, Arthur Andersen LLP ("Arthur Andersen"), Sunbeam's auditor, eventually took the position that Sunbeam's financial statements could not be relied upon. As a result of the decline in the value of Sunbeam's stock, Mafco advised Sunbeam that it desired to rescind the Coleman/Sunbeam transaction; and that it was prepared to commence litigation seeking rescission and/or money damages.

3. On June 29, 1998, in response to the threatened litigation by Mafco and Coleman (Parent), the Executive Committee of Sunbeam's board established a Special Committee which was charged with investigating the facts, assessing the litigation risks and, if it deemed it appropriate, negotiating a settlement with Mafco and

Coleman (Parent). The Executive Committee gave the Special Committee the authority to engage whatever legal, financial or other advisors it deemed necessary and/or appropriate. The Special Committee retained Weil Gotshal as special counsel and after an intensive expedited investigation by such counsel, the parties undertook settlement negotiations. The Special Committee also engaged Blackstone as financial advisor in connection with inter alia, development and assessment of possible settlement structures to resolve the Mafco and Coleman (Parent) claims. In particular, Blackstone analyzed and evaluated the financial implications of potential resolution of the Mafco claims utilizing warrants in lieu of cash as payment to Mafco, and created a report valuing, structuring and evaluating possible settlements to assist the Special Committee and Weil Gotshal in negotiations and potential settlement decision-making. Among other things, negotiations in fact focused on settlement in which Sunbeam would issue securities instead of cash; and ultimately, a settlement providing for, among other things, Sunbeam's issuance of warrants (but not the payment of cash) to Mafco and Coleman (Parent) was agreed upon.

4. The structuring of the settlement -- including the determination of the recommended number of warrants, their duration, their exercise price and other terms -- was developed by Blackstone, working with Weil Gotshal. While the Special Committee not only authorized, but closely monitored the negotiations for the settlement, including the provisions for warrants, and assessed the value of the warrants, it relied heavily upon Blackstone's financial analysis, including as set forth in the Blackstone Report, which was discussed at Special Committee meetings with counsel in early August 1998. To the best of my knowledge, before the settlement was executed, the Blackstone Report was

under extremely limited circulation and it was not circulated beyond counsel (including special Delaware counsel, Richards, Layton & Finger) and the Special Committee.

5. The Special Committee approved the settlement on August 11, 1998 and it was executed and publicly announced on August 12, 1998. Beginning on August 13, 1998, derivative suits were commenced in Delaware and Florida against MacAndrews & Forbes, and/or Coleman (Parent) and their directors, and Sunbeam and its Special Committee members, alleging that the settlement was unfair to Sunbeam, and gave too much value to Mafco and Coleman (Parent). The Special Committee believed the suits were meritless and frivolous and intended to defend them vigorously. Starting in late 1998, the Delaware litigations were withdrawn voluntarily by the plaintiffs. The Florida litigation initially was dismissed on forum non conviens grounds; it thereafter was refiled, and I was informed, ultimately dismissed in January 2001.

6. The defendants, including Sunbeam and the Special Committee members, and Coleman (Parent) and MacAndrews & Forbes and their directors, cooperated with each other in opposing the litigation. They successfully persuaded plaintiffs' counsel in Delaware to withdraw their claims against all defendants. And, on January 19, 1999, MacAndrews & Forbes and two of its directors, Howard Gittis and Jerry W. Levin, and Sunbeam and two of its directors, including myself and Howard G. Kristol, filed a Joint Reply Memorandum of Law in Support of Their Motions to Dismiss or, in the Alternative, to Stay Proceedings in the Florida derivative action, Shallal v. Elson et al., CA 98-8739, filed in the U.S. District Court for the Southern District of Florida. During the course of litigating the derivative claims, Mafco, Coleman (Parent),

the Special Committee and Sunbeam had a joint interest in defeating the derivative suits. Not only were the suits meritless in challenging the substance of the settlement and the process by which it had been reached, but overturning the settlement would have had dramatic adverse consequences to Sunbeam: It once more could have faced potentially ruinous litigation claims; it would potentially have lost its new senior executive team; and it would have been forced to devote substantial financial, management and employee resources to litigation at a time when all of its resources needed to be focused on rebuilding. Thus, Sunbeam cooperated with Mafco and Coleman (Parent) to defend these suits.

Charles M. Elson

Sworn to before me this
31 day of August 2002

Notary Public

DAWN A. MUZOLESKI
NOTARY PUBLIC
My Commission Expires May 12, 2004

EXECUTION COPY

COPY

SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT, dated as of August 12, 1998, by and between Sunbeam Corporation, a Delaware corporation ("Sunbeam" or the "Company"), and Coleman (Parent) Holdings Inc., a Delaware corporation ("Coleman Parent").

For the purposes of this Agreement, Sunbeam, together with each direct or indirect parent, subsidiary, division, or affiliated corporation or entity, and each employee, agent, attorney, representative, administrator, executor, receiver, officer, director, or stockholder of any such corporation or entity, and any other person, firm, corporation or entity now or hereafter affiliated in any manner with any of them or claiming through or in the right of any of them and all of their respective predecessors, successors, assigns, heirs, executors and administrators (but excluding for all purposes under this Agreement, Mr. Albert J. Dunlap, former Chief Executive Officer of Sunbeam, Mr. Russell A. Kersh, former Executive Vice President of Sunbeam, Arthur Andersen LLP, Sunbeam's independent auditors, PriceWaterhouseCoopers, consultants to Sunbeam, and any financial advisor to Sunbeam, and each employee, agent, attorney, representative, administrator, executor, receiver, officer, director, or stockholder of any such corporation or entity, and any other person, firm, corporation or entity now or hereafter affiliated in any manner with any of them or claiming through or in the right of any of them and all of their respective predecessors, successors, assigns, heirs, executors and administrators), are collectively hereinafter referred to as the "Sunbeam Group"; and Coleman Parent, together with each direct or indirect parent, subsidiary, division, or affiliated corporation or entity, and each employee, agent, attorney, representative, administrator, executor, receiver, officer, director, or stockholder of any such corporation or entity, and any other person, firm, corporation or entity now or hereafter affiliated in any manner with any of them or claiming through or in the right of any of them and all of their respective predecessors, successors, assigns, heirs, executors and administrators, are collectively hereinafter referred to as the "Coleman Group".

WITNESSETH

WHEREAS, CLN Holdings Inc., a Delaware corporation ("CLN Holdings"), was the indirect beneficial owner of approximately 82% of the outstanding common stock, par value $.01 per share (the "Coleman Common Stock"), of The Coleman Company, Inc., a Delaware corporation ("Coleman"); and

WHEREAS, pursuant to an Agreement and Plan of Merger, dated as of February 27, 1998 (the "Holdings Merger Agreement"), by and among Sunbeam, Laser Acquisition Corp., a Delaware corporation and, as of such date, a wholly owned subsidiary of Sunbeam ("Laser Acquisition"), CLN Holdings, as of such date, a wholly owned subsidiary of Coleman Parent, and Coleman Parent, CLN Holdings was merged with and into Laser Acquisition (the "Holdings Merger"), with the surviving corporation becoming an indirect wholly owned subsidiary of Sunbeam, and pursuant to which Coleman Parent received certain shares of common stock, par value $.01 per share, of Sunbeam ("Sunbeam Common Stock"); and

[redacted]

WHEREAS, pursuant to an Agreement and Plan of Merger, dated as of February 27, 1998 (the "Coleman Merger Agreement"), by and among Sunbeam, Camper Acquisition Corp., a Delaware corporation anda wholly owned subsidiary of Sunbeam ("Camper Acquisition"), and Coleman, Camper Acquisition is to be merged with and into Coleman (the "Coleman Merger"), with the surviving corporation becoming an indirect wholly owned subsidiary of Sunbeam; and

WHEREAS, as a result of the Holdings Merger, Sunbeam acquired an indirect approximately 82% interest in Coleman (the "Coleman Acquisition"); and

WHEREAS, Sunbeam and Coleman Parent are parties to a Registration Rights Agreement, dated as of March 29, 1998 (the "Registration Rights Agreement"), pursuant to which Sunbeam agreed to provide certain registration rights to Coleman Parent; and

WHEREAS, following the dismissal by Sunbeam of certain of its executive officers in mid-June 1998, Coleman Parent has made available to Sunbeam certain senior officers employed by members of the Coleman Group to serve as senior executive officers of Sunbeam (the "Senior Executives") and has provided certain other management support to Sunbeam, and Sunbeam desires to continue the service of the Senior Executives and such management support; and

WHEREAS, Coleman Parent and Sunbeam believe it is desirable that Sunbeam put in place as promptly as possible a permanent management team to prevent jeopardizing the ongoing operations and financial viability of Sunbeam; and

WHEREAS, Coleman Parent believes that it possesses legal and equitable claims against Sunbeam arising out of the Coleman Acquisition and out of what it contends were certain breaches of contract and fraudulent and negligent or other misrepresentations and omissions made to Coleman Parent and its representatives in connection therewith (the "Claims"), and Sunbeam disputes such Claims; and

WHEREAS, there are also now pending or may be filed putative class actions in which Sunbeam is named as a defendant and in which Coleman Parent is a class member (the "Class Actions"), and Sunbeam denies liability with respect to and intends to contest the claims that have been asserted in the Class Actions; and

WHEREAS, the accountants who audited Sunbeam's 1997 financial statements, assisted by another firm of accountants, are in the process of reviewing those financial statements, and believe, as has been publicly announced, that it will be necessary to restate those financial statements by reflecting a variety of adjustments the magnitude of which has not yet been determined; and

WHEREAS, Sunbeam and Coleman Parent desire to terminate the disputes between them, and desire to assure one another that Coleman Parent will not prosecute the Claims or any related or potential claims arising out of or relating to the Coleman Acquisition, directly or indirectly in any capacity, against the Sunbeam Group, so as to avoid the substantial burdens and expense of litigation and the interference with the business and operations of Sunbeam and with the work of its management and employees and to obtain the continued services of certain executives

and employees of the Coleman Group, and in accordance with the terms and provisions hereof, that Coleman Parent and Sunbeam each forever release, waive and discharge any and all manner of actions, causes of action, proceedings, suits, claims, demands, liens, debts, accounts, obligations, rights, costs, contracts, agreements, promises, controversies, judgments, expenses, demands, damages and liabilities, of any nature whatsoever, in law or in equity, whether or not now foreseen, known, suspected, matured, accrued or claimed, and whether or not asserted in litigation, including court costs and attorneys' fees (each an "Action and Liability" and collectively, "Actions and Liabilities"), which any member of the Coleman Group controlling, controlled by or under common control with Coleman Parent (such persons, together with Coleman Parent, the "Coleman Controlled Group") may have against any member of the Sunbeam Group and which any member of the Sunbeam Group controlled by Sunbeam (such persons, together with Sunbeam, the "Sunbeam Controlled Group") may have against any member of the Coleman Group as of the effective date hereof or prior thereto in any manner arising out of or relating to the Coleman Acquisition, irrespective of any present lack of knowledge on the part of either of them of any such possible Action and Liability, but excluding any claim for breach of this Agreement or the agreements and documents entered into or delivered pursuant hereto;

NOW, THEREFORE, in consideration of the respective covenants, agreements and conditions hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be bound hereby, the parties hereto agree as follows:

1. Issuance of Warrants; Closing.

(a) On the basis of the representations, warranties, covenants and agreements and subject to the satisfaction or waiver (to the extent permitted) of the applicable conditions expressly set forth herein, at the closing of the transactions contemplated by this Section 1 (the "Closing"):

(i) Sunbeam shall issue to Coleman Parent certain warrants to purchase shares of Sunbeam Common Stock (the "Warrants") by duly executing and delivering to Coleman Parent a Warrant Agreement in the form attached as Exhibit A hereto (the "Warrant Agreement");

(ii) Sunbeam and Coleman Parent shall enter into an amendment to the Registration Rights Agreement, in the form attached as Exhibit B hereto (as so amended, the "Amended Registration Rights Agreement");

(iii) Sunbeam and Coleman Parent agree to be bound by the releases and covenants set forth in Section 2 of this Agreement;

(iv) Coleman Parent agrees to supply management services of the Senior Executives, and to the covenants and provisions of Section 3 of this Agreement; and

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(v) Sunbeam and Coleman Parent agree to be bound by the provisions regarding the restrictions on transfer on the shares of Sunbeam Common Stock received by Coleman Parent in the Holdings Merger and the Warrants set forth in Section 4 of this Agreement.

(b) The Closing shall take place on the first day when all conditions thereto set forth herein shall be satisfied or waived or such other date as Sunbeam and Coleman Parent may agree in writing (the "Closing Date"), but in no event sooner than the tenth day following the mailing of the letter to Sunbeam shareholders contemplated by Section 7. The Closing shall take place on the Closing Date at 10:00 a.m., New York City time, at the offices of Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York and shall be deemed effective as of the opening of business on the Closing Date.

(c) At the Closing, Sunbeam shall deliver or cause to be delivered to Coleman Parent, in addition to the Warrant Agreement, such other instruments or documents as Coleman Parent may reasonably request.

2. Granting of Releases and Indemnification.

(a) At the Closing, simultaneously with receipt by Coleman Parent of the Warrants, and without any further action by any of the parties hereto, each of the following shall be fully and legally effective:

(i) Coleman Parent shall, on behalf of itself and on behalf of each other member of the Coleman Controlled Group, remise, release and forever discharge the Sunbeam Group of and from all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, and any and all claims, demands and liabilities whatsoever of every name and nature, both in law and in equity, against any of the Sunbeam Group or any of their predecessors, successors or assigns, which Coleman Parent or any other member of the Coleman Controlled Group has or ever had from the beginning of the world to the Closing with respect to or arising out of the Coleman Acquisition or any alleged misrepresentations and omissions and/or breach of contract by any member of the Sunbeam Group and parties acting on behalf of any member of the Sunbeam Group in connection with the Coleman Acquisition, including with respect to the Actions and Liabilities; provided that neither the foregoing release nor the dismissals or withdrawals described in this Section 2(a) shall apply to the rights of Coleman Parent and any other member of the Coleman Controlled Group under Article IX of the Holdings Merger Agreement, any breach or failure to comply with this Agreement, the Warrant, the Amended Registration Rights Agreement or the transactions contemplated hereby or thereby, the transactions contemplated by the Coleman Merger Agreement (including the Coleman Merger), which shall not be terminated or amended in any respect hereby, or shall otherwise affect Coleman Parent's right to enforce this Agreement, the Warrant or the Amended Registration Rights Agreement in accordance with its or their terms.

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(ii) In the event any member of the Coleman Controlled Group pursues a claim against any person(s) not released hereby involving the matters that are the subject of the release set forth in Section 2(a)(i) and it is finally judicially determined that such person(s) are entitled directly or indirectly to indemnification or contribution from any member of the Sunbeam Controlled Group for any amounts they are required to pay to any member of the Coleman Controlled Group in connection with such claims, or to reimbursement of litigation expenses solely attributable to such claims of any member of the Coleman Controlled Group (each a "Sunbeam Group Indemnification Obligation"), Coleman Parent will indemnify and hold harmless each member of the Sunbeam Controlled Group against such Sunbeam Group Indemnification Obligation. No member of the Sunbeam Controlled Group will enter into any settlement of a Sunbeam Group Indemnification Obligation without the prior written consent of Coleman Parent, which shall not be unreasonably withheld. Any amounts so paid by a member of the Sunbeam Controlled Group in a settlement so consented to by Coleman Parent shall be treated for purposes hereof as a Sunbeam Group Indemnification Obligation.

(iii) Sunbeam, on behalf of itself and on behalf of each other member of the Sunbeam Controlled Group, shall remise, release and forever discharge the Coleman Group of and from all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, and any and all claims, demands and liabilities whatsoever of every name and nature, both in law and in equity, against any of the Coleman Group or any of their predecessors, successors or assigns, which Sunbeam or any member of the Sunbeam Controlled Group has or ever had from the beginning of the world to the Closing with respect to or arising out of the Coleman Acquisition or any alleged misrepresentations and omissions and/or breach of contract by any member of the Coleman Group and parties acting on behalf of any member of the Coleman Group in connection with the Coleman Acquisition, including with respect to the Actions and Liabilities; provided that neither the foregoing release nor the dismissals or withdrawals described in this Section 2(a) shall apply to the rights of Sunbeam and any other member of the Sunbeam Controlled Group under Article IX of the Holdings Merger Agreement, any breach or failure to comply with this Agreement, the Warrant, the Amended Registration Rights Agreement or the transactions contemplated hereby or thereby, the transactions contemplated by the Coleman Merger Agreement (including the Coleman Merger), which shall not be terminated or amended in any respect hereby, or shall otherwise affect Sunbeam's right to enforce this Agreement, the Warrant or the Amended Registration Rights Agreement in accordance with its or their terms.

(iv) In the event any member of the Sunbeam Controlled Group pursues a claim against any person(s) not released hereby involving the matters that are the subject of the release set forth in Section 2(a)(iii) and it is finally judicially determined that such person(s) are entitled directly or indirectly to indemnifica-

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tion or contribution from any member of the Coleman Controlled Group for any amounts they are required to pay to any member of the Sunbeam Controlled Group in connection with such claims, or to reimbursement of litigation expenses solely attributable to such claims of any member of the Sunbeam Controlled Group, (each, a "Coleman Group Indemnification Obligation"), Sunbeam will indemnify and hold harmless each member of the Coleman Controlled Group against such Coleman Group Indemnification Obligation. No member of the Coleman Controlled Group will enter into any settlement of a Coleman Group Indemnification Obligation without the prior written consent of Sunbeam, which shall not be unreasonably withheld. Any amounts so paid by a member of the Coleman Controlled Group in a settlement so consented to by Sunbeam shall be treated for purposes hereof as a Coleman Group Indemnification Obligation.

(v) Sunbeam, on behalf of itself, and on behalf of each other member of the Sunbeam Controlled Group, and Coleman Parent, on behalf of itself and on behalf of each other member of the Coleman Controlled Group, agree to indemnify and hold harmless one another from and against any and all Actions and Liabilities arising from, or in connection with, any action or proceeding, brought by, or prosecuted by, or on the initiative of, either of them, or by any of their predecessors, successors or assigns, contrary to the provisions of this Agreement. It is further agreed that this agreement of indemnity shall be deemed breached and a cause of action shall be deemed to have accrued thereon immediately upon the commencement of any action contrary to this Agreement, and that in any such action this Agreement may be pleaded by either of them as a defense, or either of them may assert this Agreement by way of counterclaim or cross-claim in any such action.

(vi) This Agreement shall inure to the benefit of and shall be binding upon Sunbeam and Coleman Parent, and to the benefit of and shall be binding upon each person or entity in the Sunbeam Group and the Coleman Group.

(b) Coleman Parent agrees that it shall opt out, as to and only as to any claims against any member of the Sunbeam Group, of any class that may be certified in any of the Class Actions or in any other action that may be certified as a class action with respect to or arising out of any other matter released hereby.

3. Provision of Management Services.

(a) The parties hereto acknowledge that Coleman Parent has caused other members of the Coleman Group to make available to Sunbeam the services of certain employees and Senior Executives and has encouraged such persons to continue to provide services to Sunbeam as employees of Sunbeam.

(b) Coleman Parent agrees that it shall, and it shall use its reasonable efforts to cause the other members of the Coleman Group to, continue to, for a minimum period of 36 months from the date hereof, make available to Sunbeam the services of Coleman

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Group's employees who are Senior Executives, or who become Senior Executives, for so long as they remain employees of a member of the Coleman Group and otherwise to continue to provide advice and assistance to Sunbeam in connection with the business and operations of Sunbeam consistent with that provided to date; provided, however, that, other than pursuant to the employment arrangements currently in place between such employees and members of the Coleman Group, no member of the Coleman Group shall be required bear any incremental expense with respect to any Senior Executive in order to comply with the foregoing.

(c) Sunbeam agrees to pay the compensation of any such persons who become employees of Sunbeam in accordance with the terms of the employment arrangements entered into by Sunbeam with such persons. This Agreement shall not prevent any of the Senior Executives from continuing to perform services for members of the Coleman Group to the extent that the provision of such services does not materially interfere with the performance of services by the Senior Executive for Sunbeam under his employment arrangements with Sunbeam.

(d) Coleman Parent agrees to use its reasonable efforts to cause the other members of the Coleman Group to continue, for a period of 36 months from the date hereof, to provide assistance and support to Sunbeam on a basis consistent with the manner in which such assistance and support are generally provided to other companies in which members of the Coleman Group have a substantial interest (and without the payment of additional consideration by Sunbeam to Coleman Parent, other than with respect to the reimbursement of out-of-pocket expenses paid to third parties) and of a similar nature to those which have been so provided to Sunbeam from time to time from mid-June 1998 through the date hereof, including as to the following matters:

(i) financings, and dealings with financing sources and the capital markets;

(ii) investor and public relations;

(iii) acquisitions, divestitures and other extraordinary transactions;

(iv) executive benefits and compensation and other personnel matters; and

(v) compliance, litigation, insurance, regulatory and other legal matters.

4. Restrictions on Transfer of Securities. Coleman Parent hereby agrees not to, directly or indirectly, for a period of three (3) years from the date hereof, Transfer (as such term is defined in Section 7.1 of the Holdings Merger Agreement) (A) any shares of Sunbeam Common Stock received pursuant to the terms of the Holdings Merger Agreement or (B) any of the Warrants or the Warrant Shares (as defined in the Warrant Agreement), in either case in whole or in part, other than to one of its Affiliates (as such term is de-

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fined in the Holdings Merger Agreement) who agrees in writing to be bound by the terms of this Section 4, except that (A) the holder or holders of such shares of Sunbeam Common Stock may at any time or from time to time Transfer so many of such shares of Sunbeam Common Stock as represent in the aggregate seventy-five percent (75%) of such shares of Sunbeam Common Stock, and (B) the holder or holders of the Warrants or the Warrant Shares may at any time or from time to time Transfer so many of the Warrants or the Warrant Shares as represent in the aggregate fifty (50%) of the Warrant Shares Amount (as defined in the Warrant Agreement). The provisions of this Section 4 shall not be applicable, and Coleman Parent shall be free to Transfer any and all shares of Sunbeam Common Stock, Warrants and Warrant Shares, (i) following any change of control of Sunbeam or (ii) in connection with any transaction in which the holders of all of the outstanding shares of Sunbeam Common Stock have the opportunity to Transfer at least 50% of their shares of Sunbeam Common Stock on the same terms. The provisions of this Section 4 shall supersede any and all other restrictions on Transfer that Coleman Parent or any of its Affiliates may have agreed to with Sunbeam or any of its Affiliates.

5. Representations and Warranties of Sunbeam. Sunbeam hereby represents and warrants to Coleman Parent as follows:

(a) Due Authorization. This Agreement has been duly authorized by all necessary corporate action on the part of Sunbeam, and no other corporate actions or proceedings on the part of Sunbeam (including any action on the part of its stockholders) are necessary to authorize this Agreement or the transactions contemplated hereby. This Agreement has been duly executed by a duly authorized officer of Sunbeam and constitutes a valid and binding agreement of Sunbeam enforceable against it in accordance with its terms. The Audit Committee of the Board of Directors of Sunbeam (the "Audit Committee") has expressly approved the transactions contemplated hereby as contemplated by Paragraph 312 ("Paragraph 312") of the New York Stock Exchange ("NYSE") Listed Company Manual and has determined that delay in securing shareholder approval of the transactions contemplated hereby would seriously jeopardize the financial viability of the Company. Upon application duly made by Sunbeam, the NYSE has advised that it has accepted Sunbeam's reliance on the exception to the shareholder approval policy of Paragraph 312 as contained therein in connection with the transactions contemplated hereby (the "Exception").

(b) Due Organization. Sunbeam is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has the requisite corporate power to enter into and perform this Agreement and to carry on its business as it is now being conducted.

(c) No Conflicts. No filing with, and no permit, authorization, consent or approval of, any governmental or regulatory authority is necessary for the consummation by Sunbeam of the transactions contemplated hereby, other than as may be required under the Hart-Scott-Rodino Antitrust Improvements Act with respect to the exercise of the Warrants. Neither the execution and delivery of this Agreement by Sunbeam nor the

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consummation by Sunbeam of the transactions contemplated hereby, nor compliance by Sunbeam with any of the provisions hereof, will (i) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of Sunbeam; (ii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any material contract or of any material license, franchise, permit, concession, certificate of authority, order, approval, application or registration of, from or with any governmental authority to which Sunbeam is a party or by which it or any of its properties or assets may be bound; or (iii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Sunbeam or any of its properties or assets.

(d) Validity of Warrants and Underlying Shares. At the Closing, the issuance of the Warrants will have been duly authorized and, upon their issuance pursuant to the terms of this Agreement, the Warrants will be validly issued and will not be subject to any preemptive or similar right other than the rights and obligations under the Warrant Agreement. All shares of Sunbeam Common Stock to be issued upon the exercise of the Warrants, when issued, will be duly authorized and validly issued, fully paid and nonassessable and will not be subject to any preemptive or similar right.

(e) Capitalization. The authorized capital stock of Sunbeam consists of 500,000,000 shares of Sunbeam Common Stock, and 2,000,000 shares of preferred stock, par value $.01 per share, of Sunbeam. As of the date hereof, (i) 100,860,129 shares of Sunbeam Common Stock were issued and outstanding (excluding any shares of Sunbeam Common Stock issued upon the exercise of Sunbeam Stock Options (as defined below) since August 6, 1998); (ii) 7,199,452 shares of Sunbeam Common Stock were issuable upon the consummation of the Coleman Merger Agreement; (iii) 13,242,050 shares of Sunbeam Common Stock were issuable in accordance with the terms of the Zero Coupon Convertible Senior Subordinated Debentures due 2018 of the Company; and (iv) no shares of Sunbeam preferred stock were issued and outstanding. As of the date hereof, not more than 9,000,000 shares of Sunbeam Common Stock were issuable upon exercise of vested and unvested employee and non-employee stock options (the "Sunbeam Stock Options") outstanding under all stock option plans of Sunbeam or granted pursuant to employment agreements (although Sunbeam is contesting the validity of certain of such Sunbeam Stock Options). As of the date hereof, no shares of Sunbeam Common Stock were held as treasury shares. All of the issued and outstanding shares of Sunbeam Common Stock are validly issued, fully paid and nonassessable and free of preemptive rights. As of the date hereof, except as set forth above, there are no shares of capital stock of Sunbeam issued or outstanding or, except as set forth above, any options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating Sunbeam to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities, or the capital stock or securities of Sunbeam. There are no notes, bonds, debentures or other indebtedness of Sunbeam having the right to vote (or convertible into or exchangeable for securities having the right to vote) on any matters upon which stockholders of Sunbeam may vote.

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(f) Brokers. Other than Blackstone Financial Group, which has acted as financial advisor to the Special Committee of the Sunbeam Board, no broker, investment banker or other person is entitled to any broker's, finder's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Sunbeam or any member of the Sunbeam Group.

6. Representations and Warranties of Coleman Parent. Coleman Parent hereby represents and warrants to Sunbeam as follows:

(a) Due Authorization. This Agreement has been duly authorized by all necessary corporate action on the part of Coleman Parent, and no other corporate actions or proceedings on the part of the Coleman Parent (including any action on the part of its stockholders) are necessary to authorize this Agreement or the transactions contemplated hereby. This Agreement has been duly executed by a duly authorized officer of Coleman Parent and constitutes a valid and binding agreement of Coleman Parent enforceable against it in accordance with its terms.

(b) Due Organization. Coleman Parent is a corporation duly organized, validly existing and in good standing under the laws of State of Delaware and has the requisite corporate power to enter into and perform this Agreement.

(c) No Conflicts. No filing with, and no permit, authorization, consent or approval of, any governmental or regulatory authority is necessary for the consummation by Coleman Parent of the transactions contemplated hereby, other than as may be required under the Hart-Scott-Rodino Antitrust Improvements Act with respect to the exercise of the Warrants. Neither the execution and delivery of this Agreement by Coleman Parent nor the consummation by Coleman Parent of the transactions contemplated hereby, nor compliance by Coleman Parent with any of the provisions hereof, will (i) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of Coleman Parent; (ii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any material contract or of any material license, franchise, permit, concession, certificate of authority, order, approval, application or registration of, from or with any governmental authority to which Coleman Parent is a party or by which it or any of its properties or assets may be bound; or (iii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Coleman Parent or any of its properties or assets.

(d) Acquisition of Warrants for Investment. Coleman Parent is acquiring the Warrants (and will acquire any Warrant Shares upon exercise of the Warrants) for its own account for investment purposes only and not with a view toward or for a sale in connection with, any distribution thereof, or with any present intention of distributing or selling any of such in violation of federal or state securities laws.

(e) Brokers. No broker, investment banker or other person is entitled to any broker's, finder's or other similar fee or commission in connection with the transactions

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contemplated by this Agreement based upon arrangements made by or on behalf of Coleman Parent or any member of the Coleman Group.

7. Covenants.

(a) Within one day following the date hereof, Sunbeam shall cause to be mailed to all shareholders of Sunbeam a letter informing them of the transactions contemplated hereby as contemplated and required by Paragraph 312 of the NYSE Listed Company Manual and indicating that the Audit Committee has expressly approved the Exception in light of the Audit Committee's determination that delay in securing shareholder approval of the transactions contemplated hereby would seriously jeopardize the financial viability of the Company and that the NYSE has accepted the Company's reliance on the Exception .

(b) The anti-dilution provisions of the Warrant shall be given retroactive effect to the date hereof.

8. Specific Performance. The parties acknowledge that money damages are an inadequate remedy for breach of this Agreement. Therefore, the parties agree that each of them has the right, in addition to (and not in lieu of) any other right they may have under this Agreement or otherwise, to specific performance of this Agreement in the event of any breach hereof by any other party.

9. Conditions to the Obligations of both Parties. The obligations of each of Sunbeam and Coleman Parent to effect the transactions contemplated hereby shall be conditioned on the non-existence of any order, decree or injunction of a court of competent jurisdiction which restrains the consummation of the transactions contemplated by this Agreement.

10. Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by mutual agreement of the Boards of Directors of Coleman Parent and Sunbeam; or

(b) by Coleman Parent if the Warrants to be issued to Coleman Parent pursuant hereto have not been issued or will not be issued at the Closing or if there has been a material violation or breach by Sunbeam of any agreement, representation or warranty contained in this Agreement which has rendered the satisfaction of any condition to the obligations of Coleman Parent impossible and such violation or breach has not been waived by Coleman Parent; or

(c) by Sunbeam if there has been a material violation or breach by Coleman Parent of any agreement, representation or warranty contained in this Agreement which has rendered the satisfaction of any condition to the obligations of Sunbeam impossible and such violation or breach has not been waived by Sunbeam.

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In the event of termination and abandonment of this Agreement by Coleman Parent or Sunbeam or both of them pursuant to the terms of this Section 10, written notice thereof shall forthwith be given to the other party and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned, without further action by any of the parties hereto.

11. Expenses. All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby will be paid by the party incurring such costs and expenses.

12. Tax Matters. Coleman Parent shall in good faith provide to Sunbeam information concerning the tax treatment under the Internal Revenue Code of 1986, as amended (the "Code"), of the transactions contemplated hereby. Sunbeam shall report such transactions for all tax purposes consistent with such information and take no position with any taxing authority inconsistent therewith. Coleman Parent and Sunbeam shall report the Holdings Merger as a reorganization within the meaning of Code Section 368(a) for all tax purposes.

13. Best Efforts. Each of the parties hereto agrees to use its best efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement. In case at any time after the Closing any further action is necessary or desirable to carry out the purposes of this Agreement, the proper officers and directors of each corporation which is a party to this Agreement shall take all such necessary action.

14. Parties in Interest; Assignments. This Agreement is binding upon and is solely for the benefit of the parties hereto, the Sunbeam Group and the Coleman Group and their respective successors and legal representatives.

15. Entire Agreement. This Agreement and the agreements to be entered into and delivered pursuant hereto constitutes the entire agreement between Sunbeam and Coleman Parent with respect to the subject matter hereof, and it is expressly understood and agreed that this Agreement may not be altered, amended, modified, or otherwise changed in any respect or particular whatsoever, except by a writing duly executed by authorized representatives of both Sunbeam and Coleman Parent. No party to this Agreement has relied upon any representation or warranty, written or oral, except as expressly included herein.

16. Amendments. This Agreement may not be modified, amended, altered or supplemented except upon the execution and delivery of a written agreement executed by the parties hereto.

17. Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in person, by telecopy or other standard form of telecommunication, or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

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If to Coleman Parent:

Coleman (Parent) Holdings Inc.
c/o MacAndrews & Forbes Holdings Inc.
35 East 62nd Street
New York, New York 10021
Attention: Barry F. Schwartz, Esq.
Facsimile: (212) 572-5056

with a copy to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Attention: Adam O. Emmerich, Esq.
Facsimile: (212) 403-2000

If to Sunbeam:

Sunbeam Corporation
1615 South Congress Avenue, Suite 200
Delray Beach, Florida 33445
Attention: Corporate Secretary
Facsimile: (561) 243-2191

with copies to:

Skadden, Arps, Slate, Meagher & Flom LLP
919 Third Avenue
New York, New York 10022
Attention: Blaine V. Fogg, Esq.
Facsimile: (212) 735-3597

and

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10152
Attention: Stephen E. Jacobs, Esq.
Facsimile: (212) 310-8007

or to such other address as any party may have furnished to the other parties in writing in accordance herewith.

18. Governing Law; Forum.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to its conflict of law rules.

(b) The parties hereto irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the courts of the State of Delaware and/or of the United States of America located in the State of Delaware for any actions, suits or proceedings out of or relating to this Agreement and the transactions contemplated hereby.

19. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute but one agreement.

20. Effect of Headings. The descriptive headings contained herein are for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

21. Interpretation. When a reference is made in this Agreement to an Article or Section, such reference shall be to an Article or Section of this Agreement unless otherwise indicated. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. References to a person are also to its permitted successors and assigns and, in the case of an individual, to his heirs and estate, as applicable.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the day and year first above written.

COLEMAN (PARENT) HOLDINGS INC.

By: _____
Name: Barry F. Schwartz
Title: Executive Vice President and General Counsel

SUNBEAM CORPORATION

By: _____
Name: Howard Kristol
Title: Chairman of the Special Committee

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IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the day and year first above written.

COLEMAN (PARENT) HOLDINGS INC.

By: _____
Name: Barry F. Schwartz
Title: Executive Vice President and General Counsel

SUNBEAM CORPORATION

By: _____
Name: Howard Kristol
Title: Chairman of the Special Committee

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EXHIBIT A

SUNBEAM CORPORATION

WARRANT FOR THE PURCHASE OF SHARES OF
COMMON STOCK OF SUNBEAM CORPORATION

ISSUE DATE: August__, 1998

Warrant No. W-1 23,000,000 Warrant Shares

THIS WARRANT AND THE SHARES OF COMMON STOCK PURCHASEABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION AND MAY NOT BE SOLD OR OTHERWISE TRANSFERRED OR DISPOSED OF UNLESS REGISTERED OR QUALIFIED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAWS OR UNLESS SUCH REGISTRATION, QUALIFICATION OR OTHER SUCH ACTIONS ARE NOT REQUIRED UNDER ANY SUCH LAWS.

FOR VALUE RECEIVED, SUNBEAM CORPORATION, a Delaware corporation (the "Company"), hereby certifies that Coleman (Parent) Holdings Inc., its successor or permitted assigns (the "Holder"), is entitled, subject to the provisions of this Warrant, to purchase from the Company, at the times specified herein, a number of the fully paid and non-assessable shares of Common Stock of the Company, par value $.01 per share (the "Common Stock"), equal to the Warrant Share Amount (as hereinafter defined) at a purchase price per share equal to the Exercise Price (as hereinafter defined).

SECTION 1. DEFINITIONS. (a) The following terms, as used herein, have the following meanings:

"Affiliate" shall have the meaning given to such term in Rule 12b-2 promulgated under the Securities and Exchange Act of 1934, as amended.

"Business Day" means any day except a Saturday, Sunday or other day on which commercial banks in The City of New York are authorized by law to close.

"Certificate of Incorporation" means the Restated Certificate of Incorporation of the Company.

"**Closing Price**" on any day means (1) if the shares of Common Stock then are listed and traded on the New York Stock Exchange, Inc. ("**NYSE**"), the Closing Price on such day as reported on the NYSE Composite Transactions Tape; (2) if shares of Common Stock then are not listed and traded on the NYSE, the Closing Price on such day as reported by the principal national securities exchange on which the shares of Common Stock are listed and traded; (3) if the shares of Common Stock then are not listed and traded on any such securities exchange, the last reported sale price on such day on the National Market of The National Association of Securities Dealers, Inc. Automated Quotation System ("**NASDAQ**"); or (4) if the shares of Common Stock then are not traded on the NASDAQ National Market, the average of the highest reported bid and the lowest reported asked price on such day as reported by NASDAQ.

"**Common Share Equivalent**" means, with respect to any security of the Company and as of a given date, a number which is, (i) in the case of a share of Common Stock, one, (ii) in the case of all or a portion of any right, warrant or other security which may be exercised for a share or shares of Common Stock, the number of shares of Common Stock receivable upon exercise of such security (or such portion of such security), and (iii) in the case of any security convertible or exchangeable into a share or shares of Common Stock, the number of shares of Common Stock that would be received if such security were converted or exchanged on such date.

"**Common Stock**" shall have the meaning set forth in the first paragraph hereof.

"**Company**" shall have the meaning set forth in the first paragraph hereof.

"**Convertible Securities**" shall have the meaning set forth in Section 7(d).

"**Determination Date**" shall have the meaning set forth in Section 7(f).

"**Exercise Price**" means a price per Warrant Share equal to $7.00.

"**Expiration Date**" means 5:00 p.m. New York City time on August __, 2003 [the fifth anniversary of the date of this Warrant].

"**Fair Market Value**" as at any date of determination means, as to shares of the Common Stock, if the Common Stock is publicly traded at such time, the average of the daily Closing Prices of a share of Common Stock for the ten (10) consecutive trading days ending on the most recent trading day prior to the date of determination. If the shares of Common Stock are not publicly traded at such time, and as to all things other than the Common Stock, Fair Market Value shall be determined in good faith by an independent nationally recognized investment banking firm selected by the Company and acceptable to a majority of the Holders and which shall have no other substantial relationship with the Company.

"**Holder**" shall have the meaning set forth in the first paragraph hereof.

"**Options**" shall have the meaning set forth in Section 7(d).

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"Person" means an individual, partnership, corporation, limited liability company, trust, joint stock company, association, joint venture, or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Securities Act" means the Securities Act of 1933, as amended.

"Subsidiary" means, with respect to any Person, any corporation or other entity of which a majority of the capital stock or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person.

"Warrant Share Amount" means 23,000,000 (Twenty Three Million) shares of Common Stock as such number may be adjusted pursuant to Sections 7 and 8.

"Warrant Shares" means the shares of Common Stock deliverable upon exercise of this Warrant, as adjusted from time to time.

SECTION 2. EXERCISE OF WARRANT. (a) The Holder is entitled to exercise this Warrant in whole or in part at any time, or from time to time, until the Expiration Date or, if such day is not a Business Day, then on the next succeeding day that shall be a Business Day. To exercise this Warrant, the Holder shall deliver to the Company this Warrant, including the Warrant Exercise Subscription Form forming a part hereof duly executed by the Holder, together with payment of the applicable Exercise Price. Upon such delivery and payment, the Holder shall be deemed to be the holder of record of the number of Warrant Shares equal to the Warrant Share Amount (or, in the case of a partial exercise of this Warrant, a ratable number of such shares), notwithstanding that the stock transfer books of the Company shall then be closed or that certificates representing such shares shall not then be actually delivered to the Holder.

(b) At the option of the Holder, the Exercise Price may be paid in cash (including by wire transfer of immediately available funds) or by certified or official bank check or bank cashier's check payable to the order of the Company or by any combination of such cash or check. At the option of the Holder, the Exercise Price may in the alternative be paid in whole or in part by reducing the number of shares of Common Stock issuable to the Holder by a number of shares of Common Stock that have a Fair Market Value equal to the Exercise Price which otherwise would have been paid (so that the net number of shares of Common Stock issued in respect of such exercise shall equal the number of shares of Common Stock that would have been issuable had the Exercise Price been paid entirely in cash, less a number of shares of Common Stock with a Fair Market Value equal to the portion of the Exercise Price paid in kind); provided that this option shall be available only with respect to the exercise of this Warrant with respect to not more than one-half of the total number of Warrant Shares. The Company shall pay any and all documentary, or similar issue or transfer taxes payable in respect of the issue or delivery of the Warrant Shares. The Company shall not, however, be required to pay any transfer tax which may be payable in respect of any transfer involved in the issue or delivery of Warrants or Warrant Shares (or other securities or assets) in a name other than that in which the Warrants so exercised were registered, and no such issue or delivery shall be made unless and until the person requesting such

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issue has paid to the Company the amount of such transfer tax or has established, to the satisfaction of the Company, that such transfer tax has been paid.

(c) If the Holder exercises this Warrant in part, this Warrant shall be surrendered by the Holder to the Company and a new Warrant of the same tenor and for the unexercised number of Warrant Shares shall be executed by the Company. The Company shall register the new Warrant in the name of the Holder or in such name or names of its transferee pursuant to Section 6 as may be directed in writing by the Holder and deliver the new Warrant to the Person or Persons entitled to receive the same.

(d) Upon surrender of this Warrant in conformity with the foregoing provisions, the Company shall, subject to the expiration of any applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act, transfer to the Holder of this Warrant appropriate evidence of ownership of the shares of Common Stock or other securities or property (including any money) to which the Holder is entitled, registered or otherwise placed in, or payable to the order of, the name or names of the Holder or such transferee as may be directed in writing by the Holder, and shall deliver such evidence of ownership and any other securities or property (including any money) to the Person or Persons entitled to receive the same, together with an amount in cash in lieu of any fraction of a share as provided in Section 5, subject to any required withholding.

SECTION 3. RESTRICTIVE LEGEND. Each certificate representing shares of Common Stock issued pursuant to this Warrant, unless at the time of exercise such shares are registered under the Securities Act, shall bear a legend substantially in the form of the legend set forth on the first page of this Warrant.

SECTION 4. RESERVATION OF SHARES. The Company hereby agrees that at all times there shall be reserved for issuance and delivery upon exercise of this Warrant such number of its authorized but unissued shares of Common Stock or other securities of the Company from time to time issuable upon exercise of this Warrant as will be sufficient to permit the exercise in full of this Warrant. The Company hereby represents and agrees that all such shares shall be duly authorized and, when issued upon such exercise, shall be validly issued, fully paid and non-assessable, free and clear of all liens, security interests, charges and other encumbrances or restrictions on sale and free and clear of all preemptive or similar rights, except to the extent imposed by or as a result of the status, act or omission of, the Holder.

SECTION 5. FRACTIONAL SHARES. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant and in lieu of delivery of any such fractional share upon any exercise hereof, the Company shall pay to the Holder an amount in cash equal to such fraction multiplied by the Fair Market Value thereof; provided, however, that, in the event that the Company combines or reclassifies the outstanding shares of its Common Stock into a smaller number of shares, it shall be required to issue fractional shares to the Holder if the Holder exercises all or any part of its Warrants, unless the Holder has consented in writing to such reduction and provided the Company with a written waiver of its right to receive fractional shares in accordance with this Section 5.

SECTION 6. TRANSFER, EXCHANGE OR ASSIGNMENT OF WARRANT. (a) Each taker and holder of this Warrant by taking or holding the same, consents and agrees that the registered holder hereof may be treated by the Company and all other persons dealing with this Warrant as the absolute owner hereof for any purpose and as the person entitled to exercise the rights represented hereby.

(b) Subject to the requirements of state and federal securities laws, the Holder of this Warrant shall be entitled, without obtaining the consent of the Company to assign and transfer this Warrant, at any time in whole or from time to time in part, to any Person or Persons. Subject to the preceding sentence, upon surrender of this Warrant to the Company, together with the attached Warrant Assignment Form duly executed, the Company shall, without charge, execute and deliver a new Warrant in the name of the assignee or assignees named in such instrument of assignment and, if the Holder's entire interest is not being assigned, in the name of the Holder and this Warrant shall promptly be canceled.

(c) Upon receipt by the Company of evidence satisfactory to it (in the exercise of its reasonable discretion) of the loss, theft, destruction or mutilation of this Warrant, and (in the case of loss, theft or destruction) of indemnification or security reasonably required by the Company, and upon surrender and cancellation of this Warrant, if mutilated, the Company shall execute and deliver a new Warrant of like tenor and date.

(d) The Company shall pay all expenses, taxes (other than transfer taxes) and other charges payable in connection with the preparation, issuance and delivery of Warrants hereunder.

SECTION 7. ANTI-DILUTION PROVISIONS. So long as any Warrants are outstanding, the Warrant Share Amount shall be subject to change or adjustment as follows:

(a) *Common Stock Dividends, Subdivisions, Combinations.* In case the Company shall (i) pay or make a dividend or other distribution to all holders of its Common Stock in shares of Common Stock, (ii) subdivide or split the outstanding shares of its Common Stock into a larger number of shares, or (iii) combine the outstanding shares of its Common Stock into a smaller number of shares (which shall not in any event be done without the express written approval of Holders of a majority of the outstanding Warrants), then in each such case the Warrant Share Amount shall be adjusted to equal the number of such shares to which the holder of this Warrant would have been entitled upon the occurrence of such event had this Warrant been exercised immediately prior to the happening of such event or, in the case of a stock dividend or other distribution, prior to the record date for determination of shareholders entitled thereto. An adjustment made pursuant to this Section 7(a) shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event.

(b) *Reorganization or Reclassification.* In case of any capital reorganization or any reclassification of the capital stock of the Company (whether pursuant to a merger or consolidation or otherwise), or in the event of any similar transaction, this Warrant shall thereafter be exercisable for the number of shares of stock or other securities or property receivable upon such capital reorganization or reclassification of capital stock or other transaction, as the case may be, by a holder of the number of shares of Common Stock into which this Warrant was exercisable im-

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mediately prior to such capital reorganization or reclassification of capital stock; and, in any case, appropriate adjustment (as determined in good faith by the Board of Directors of the Company) shall be made for the application of the provisions herein set forth with respect to the rights and interests thereafter of the Holder of this Warrant to the end that the provisions set forth herein shall thereafter be applicable, as nearly as reasonably practicable, in relation to any shares of stock or other securities or property thereafter deliverable upon the exercise of this Warrant. An adjustment made pursuant to this Section 7(b) shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event.

(c) *Distributions of Assets or Securities Other than Common Stock.* In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock shares of any class of its capital stock (other than Common Stock), or other debt or equity securities or evidences of indebtedness of the Company, or options, rights or warrants to purchase any of such securities, cash or other assets, then in each such case the Warrant Share Amount shall be adjusted by multiplying the Warrant Share Amount immediately prior to the date of such dividend or distribution by a fraction, of which the numerator shall be the Fair Market Value per share of Common Stock at the record date for determining shareholders entitled to such dividend or distribution, and of which the denominator shall be such Fair Market Value per share less the Fair Market Value of the portion of the securities, cash, other assets or evidences of indebtedness so distributed applicable to one share of Common Stock. An adjustment made pursuant to this Section 7(c) shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event.

(d) *Below Market Issuances of Common Stock and Convertible Securities.* In case the Company shall issue Common Stock (or options, rights or warrants to purchase shares of Common Stock (collectively, "Options") or other securities convertible into or exchangeable or exercisable for shares of Common Stock (such other securities, collectively, "Convertible Securities")) at a price per share (or having an effective exercise, exchange or conversion price per share together with the purchase price thereof) less than the Fair Market Value per share of Common Stock on the date such Common Stock (or Options or Convertible Securities), is sold or issued (provided that no sale of securities pursuant to an underwritten public offering shall be deemed to be for less than Fair Market Value), then in each such case the Warrant Share Amount shall thereafter be adjusted by multiplying the Warrant Share Amount immediately prior to the date of issuance of such Common Stock (or Options or Convertible Securities) by a fraction, the numerator of which shall be (x) the sum of (i) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such issuance and (ii) the number of additional Common Share Equivalents represented by all securities so issued multiplied by (y) the Fair Market Value of a share of Common Stock immediately prior to the date of such issuance, and the denominator of which shall be (x) the product of (A) the Fair Market Value of a share of Common Stock immediately prior to the date of such issuance and (B) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such issuance plus (y) the aggregate consideration received by the Company for the total number of securities so issued plus, (z) in the case of Options or Convertible Securities, the additional consideration required to be received by the Company upon the exercise, exchange or conversion of such securities; provided that no adjustment shall be required in respect of issuances of Common Stock (or

options to purchase Common Stock) pursuant to stock option or other employee benefit plans in effect on the date hereof, or approved by the Board of Directors of the Company after the date hereof. Notwithstanding anything herein to the contrary, (1) no further adjustment to the Warrant Share Amount shall be made upon the issuance or sale of Common Stock pursuant to (x) the exercise of any Options or (y) the conversion or exchange of any Convertible Securities, if in each case the adjustment in the Warrant Share Amount was made as required hereby upon the issuance or sale of such Options or Convertible Securities or no adjustment was required hereby at the time such Option or Convertible Security was issued, and (2) no adjustment to the Warrant Share Amount shall be made upon the issuance or sale of Common Stock upon the exercise of any Options existing on the original issue date hereof, without regard to the exercise price thereof. Notwithstanding the foregoing, no adjustment to the Warrant Share Amount shall be made pursuant to this paragraph upon the issuance or sale of Common Stock, Options, or Convertible Securities in a *bona fide* arm's-length transaction to any Person or group that, at the time of such issuance or sale, is not an Affiliate of the Company (including any possible issuance of Common Stock, Options, or Convertible Securities to the public stockholders of The Coleman Company, Inc. ("Coleman") in connection with the acquisition of their shares of Coleman common stock pursuant to the Agreement and Plan of Merger, dated as of February 27, 1998 (the "Coleman Merger Agreement"), by and among Sunbeam, Camper Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Sunbeam, and Coleman, or otherwise). An adjustment made pursuant to this Section 7(d) shall become effective immediately after such Common Stock, Options or Convertible Securities are sold.

(e) *Below Market Distributions or Issuances of Preferred Stock or Other Securities.* In case the Company shall issue non-convertible and non-exchangeable preferred stock (or other debt or equity securities or evidences of indebtedness of the Company (other than Common Stock or Options or Convertible Securities) or options, rights or warrants to purchase any of such securities) at a price per share (or other similar unit) less than the Fair Market Value per share (or other similar unit) of such preferred stock (or other security) on the date such preferred stock (or other security) is sold (provided that no sale of preferred stock or other security pursuant to an underwritten public offering shall be deemed to be for less than its fair market value), then in each such case the Warrant Share Amount shall thereafter be adjusted by multiplying the Warrant Share Amount immediately prior to the date of issuance of such preferred stock (or other security) by a fraction, the numerator of which shall be the product of (i) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such issuance and (ii) the Fair Market Value of a share of Common Stock immediately prior to the date of such issuance, and the denominator of which shall be (x) the product of (A) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such issuance and (B) the Fair Market Value of a share of the Common Stock immediately prior to the date of such issuance minus (y) the difference between (1) the aggregate Fair Market Value of such preferred stock (or other security) and (2) the aggregate consideration received by the Company for such preferred stock (or other security). Notwithstanding the foregoing, no adjustment to the Warrant Share Amount shall be made pursuant to this paragraph upon the issuance or sale of preferred stock (or other securities of the Company other than common Stock or Options or Convertible Securities) in a *bona fide* arm's-length transaction to any Person or group that, at the time of such issuance or sale, is not an Affiliate of the Company (including any possible issuance

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of preferred stock (or other securities of the Company other than common Stock or Options or Convertible Securities) to the public stockholders of Coleman in connection with the acquisition of their shares of Coleman common stock pursuant to the Coleman Merger Agreement, or otherwise). An adjustment made pursuant to this Section 7(e) shall become effective immediately after such preferred stock (or other security) is sold.

(f) *Above Market Repurchases of Common Stock.* If at any time or from time to time the Company or any Subsidiary thereof shall repurchase, by self-tender offer or otherwise, any shares of Common Stock of the Company (or any Options or Convertible Securities) at a purchase price in excess of the Fair Market Value thereof, on the Business Day immediately prior to the earliest of (i) the date of such repurchase, (ii) the commencement of an offer to repurchase, or (iii) the public announcement of either (such date being referred to as the "Determination Date"), the Warrant Share Amount shall be determined by multiplying the Warrant Share Amount immediately prior to such Determination Date by a fraction, the numerator of which shall be the product of (1) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such Determination Date minus the number of Common Share Equivalents represented by the securities repurchased or to be purchased by the Company or any Subsidiary thereof in such repurchase and (2) the Fair Market Value of a share of Common Stock immediately prior to such Determination Date, and the denominator of which shall be (x) the product of (A) the number of Common Share Equivalents represented by all securities outstanding immediately prior to the Determination Date and (B) the Fair Market Value of a share of Common Stock immediately prior to such Determination Date minus (y) the sum of (1) the aggregate consideration paid by the Company in connection with such repurchase and (2) in the case of Options or Convertible Securities, the additional consideration required to be received by the Company upon the exercise, exchange or conversion of such securities. Notwithstanding the foregoing, no adjustment to the Warrant Share Amount shall be made pursuant to this paragraph upon the repurchase, by self-tender offer or otherwise, of Common Stock (or any Options or Convertible Security) in a *bona fide* arm's-length transaction from any Person or group that, at the time of such repurchase, is not an Affiliate of the Company.

(g) *Above Market Repurchases of Preferred Stock or Other Securities.* If at any time or from time to time the Company or any Subsidiary thereof shall repurchase, by self-tender offer or otherwise, any shares of non-convertible and non-exchangeable preferred stock (or other debt or equity securities or evidences of indebtedness of the Company (other than Common Stock or Options or Convertible Securities) or options, rights or warrants to purchase any of such securities), at a purchase price in excess of the Fair Market Value thereof, on the Business Day immediately prior to the Determination Date, the Warrant Share Amount shall be determined by multiplying the Warrant Share Amount immediately prior to the Determination Date by a fraction, the numerator of which shall be the product of (i) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such Determination Date and (ii) the Fair Market Value of a share of Common Stock immediately prior to such Determination Date, and the denominator of which shall be (x) the product of (A) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such Determination Date and (B) the Fair Market Value of a share of Common Stock immediately prior to such Determination Date minus (y) the difference between (1) the aggregate consideration paid by the

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Company in connection with such repurchase and (2) the aggregate Fair Market Value of such preferred stock (or other security). Notwithstanding the foregoing, no adjustment to the Warrant Share Amount shall be made pursuant to this paragraph upon the repurchase, by self-tender offer or otherwise, of non-convertible and non-exchangeable preferred stock (or other securities of the Company other than Common Stock or Options or Convertible Securities) in a *bona fide* arm's-length transaction from any Person or group that, at the time of such repurchase, is not an Affiliate of the Company.

(h) *Readjustment of Warrant Share Amount.* If (i) the purchase price provided for in any Option or the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities or the rate at which any Convertible Securities, in each case as referred to in paragraphs (b) and (f) above, are convertible into or exchangeable for Common Stock shall change at any time (other than under or by reason of provisions designed to protect against dilution upon an event which results in a related adjustment pursuant to this Section 7), or (ii) any of such Options or Convertible Securities shall have irrevocably terminated, lapsed or expired, the Warrant Share Amount then in effect shall forthwith be readjusted (effective only with respect to any exercise of this Warrant after such readjustment) to the Warrant Share Amount which would then be in effect had the adjustment made upon the issuance, sale, distribution or grant of such Options or Convertible Securities been made based upon such changed purchase price, additional consideration or conversion rate, as the case may be (in the case of any event referred to in clause (i) of this paragraph (h)) or had such adjustment not been made (in the case of any event referred to in clause (ii) of this paragraph (h)).

(i) *Exercise Price Adjustment.* Upon each adjustment of the Warrant Share Amount pursuant to this Section 7, the Exercise Price of each Warrant outstanding immediately prior to such adjustment shall thereafter be equal to an adjusted Exercise Price per Share determined (to the nearest cent) by multiplying the Exercise Price for the Warrant immediately prior to such adjustment by a fraction, the numerator of which shall be the Warrant Share Amount in effect immediately prior to such adjustment and the denominator of which shall be the Warrant Share Amount in effect immediately after such adjustment.

(j) *Consideration.* If any shares of Common Stock, Options or Convertible Securities shall be issued, sold or distributed for cash, the consideration received in respect thereof shall be deemed to be the amount received by the Company therefor, before deduction therefrom of any reasonable, customary and adequately documented expenses incurred in connection therewith. If any shares of Common Stock, Options or Convertible Securities shall be issued, sold or distributed for a consideration other than cash, the amount of the consideration other than cash received by the Company shall be deemed to be the Fair Market Value of such consideration, before deduction of any reasonable, customary and adequately documented expenses incurred in connection therewith. If any shares of Common Stock, Options or Convertible Securities shall be issued in connection with any merger in which the Company is the surviving corporation, the amount of consideration therefor shall be deemed to be the Fair Market Value of such portion of the assets and business of the non-surviving corporation as shall be attributable to such Common Stock, Options or Convertible Securities, as the case may be. If any Options shall be issued in connection with the issuance and sale of other securities of the Company, together comprising one inte-

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gral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued without consideration.

(k) *No Impairment.* The Company will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Section 7 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the Holder against impairment. Without limiting the generality of the foregoing, the Company will not increase the par value of any shares of Common Stock receivable on the exercise of the Warrants above the amount payable therefor on such exercise.

(l) *Certificate as to Adjustments.* Upon the occurrence of each adjustment or readjustment of the Warrant Share Amount pursuant to this Section 7, the Company at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to the Holder a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Company shall, upon the written request at any time of the Holder, furnish or cause to be furnished to Holder a like certificate setting forth (1) such adjustments and readjustments and (2) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the exercise of this Warrant.

(m) *Proceedings Prior to Any Action Requiring Adjustment.* As a condition precedent to the taking of any action which would require an adjustment pursuant to this Section 7, the Company shall take any action which may be necessary, including obtaining regulatory approvals or exemptions, in order that the Company may thereafter validly and legally issue as fully paid and nonassessable all shares of Common Stock which the Holders are entitled to receive upon exercise thereof.

(n) *Notice of Adjustment.* Upon the record date or effective date, as the case may be, of any action which requires or might require an adjustment or readjustment pursuant to this Section 7, the Company shall forthwith file in the custody of its Secretary or an Assistant Secretary at its principal executive office and with its stock transfer agent or its warrant agent, if any, an officers' certificate showing the adjusted number of Warrant Shares determined as herein provided, setting forth in reasonable detail the facts requiring such adjustment and the manner of computing such adjustment. Each such officers' certificate shall be signed by the chairman, president or chief financial officer of the Company and by the secretary or any assistant secretary of the Company. Each such officers' certificate shall be made available at all reasonable times for inspection by the Holder or any Holder of a Warrant executed and delivered pursuant to Section 6(b) and the Company shall, forthwith after each such adjustment, mail a copy, by first-class mail, of such certificate to the Holder or any such holder.

(o) *Payments in Lieu of Adjustment.* The Holder shall, at its option, be entitled to receive, in lieu of the adjustment pursuant to Section 7(c) otherwise required thereof, on (but not

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prior to) the date of exercise of the Warrants, the evidences of indebtedness, other securities, cash, property or other assets which such Holder would have been entitled to receive if it had exercised its Warrants for shares of Common Stock immediately prior to the record date with respect to such distribution. The Holder may exercise its option under this Section 7(o) by delivering to the Company a written notice of such exercise simultaneously with its notice of exercise of this Warrant.

SECTION 8. CONSOLIDATION, MERGER OR SALE OF ASSETS. In case of any consolidation of the Company with, or merger of the Company into, any other Person, any merger of another Person into the Company (other than a merger which does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock) or any sale or transfer of all or substantially all of the assets of the Company to the Person formed by such consolidation or resulting from such merger or which acquires such assets, as the case may be, the Holder shall have the right thereafter to exercise this Warrant for the kind and amount of securities, cash and other property receivable upon such consolidation, merger, sale or transfer by a holder of the number of shares of Common Stock for which this Warrant may have been exercised immediately prior to such consolidation, merger, sale or transfer. Adjustments for events subsequent to the effective date of such a consolidation, merger, sale or transfer of assets shall be as nearly equivalent as may be practicable to the adjustments provided for in this Warrant. In any such event, effective provisions shall be made in the certificate or articles of incorporation of the resulting or surviving corporation, in any contract of sale, merger, conveyance, lease, transfer or otherwise so that the provisions set forth herein for the protection of the rights of the Holder shall thereafter continue to be applicable; and any such resulting or surviving corporation shall expressly assume the obligation to deliver, upon exercise, such shares of stock, other securities, cash and property. The provisions of this Section 8 shall similarly apply to successive consolidations, mergers, sales, leases or transfers.

SECTION 9. WARRANT AGENT. At the written request of the Holders of a majority of the outstanding Warrants, the Company shall as soon as is reasonably practicable:

(i) appoint a warrant agent to act as agent for the Company in connection with the issuance, transfer and exchange of the Warrants and shall enter into an agreement with such warrant agent reflecting the terms and conditions of such appointment, which terms and conditions shall be customary for such appointments, and such other matters as are customarily included in such agreements so as to facilitate the transfer and registration of the Warrants; and

(ii) use its reasonable best efforts to cause the Warrants to be eligible to be publicly traded, including, without limitation, amending this Warrant to provide terms and conditions necessary and appropriate for the Warrants to be publicly traded.

SECTION 10. NOTICES. Any notice, demand or delivery authorized by this Warrant shall be in writing and shall be given to the Holder or to the Company, as the case may be, at its address (or facsimile number) set forth below, or such other address (or facsimile number) as shall have been furnished to the party giving or making such notice, demand or delivery:

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If to the Company:	Sunbeam Corporation 1615 South Congress Avenue, Suite 200 Delray Beach, Florida 33445 Attention: Corporate Secretary Facsimile: (561) 243-2191
with copies to:	Skadden, Arps, Slate, Meagher & Flom LLP 919 Third Avenue New York, New York 10022 Attention: Blaine V. Fogg, Esq. Facsimile: (212) 735-3597
and to:	Weil, Gotshal & Manges LLP 767 Fifth Avenue New York, New York 10153 Attention: Stephen E. Jacobs, Esq. Facsimile: (212) 310-8007
If to the Holder:	Coleman (Parent) Holdings Inc. c/o MacAndrews & Forbes Holdings Inc. 35 East 62nd Street New York, New York 10021 Attention: Barry F. Schwartz, Esq. Facsimile: (212) 572-5056
with copies to:	Wachtell, Lipton, Rosen & Katz 51 West 52nd Street New York, New York 10019 Attention: Adam O. Emmerich, Esq. Facsimile: (212) 403-2000

Each such notice, demand or delivery shall be effective (i) if given by telecopy, when such telecopy is transmitted to the telecopy number specified herein and the intended recipient confirms the receipt of such telecopy, or (ii) if given by any other means, when received at the address specified herein.

SECTION 11. RIGHTS OF THE HOLDER Prior to the exercise of any Warrant, the Holder shall not, by virtue hereof, be entitled to any rights of a shareholder of the Company, including, without limitation, the right to vote, to receive dividends or other distributions, to exercise any preemptive right or to receive any notice of meetings of shareholders or any notice of any proceedings of the Company except as may be specifically provided for herein.

SECTION 12. GOVERNING LAW. THIS WARRANT AND ALL RIGHTS ARISING HEREUNDER SHALL BE CONSTRUED AND DETERMINED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF DELAWARE,

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AND THE PERFORMANCE THEREOF SHALL BE GOVERNED AND ENFORCED IN ACCORDANCE WITH SUCH LAWS.

SECTION 13. AMENDMENTS; WAIVERS. Any provision of this Warrant may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by the Holder and the Company, or in the case of a waiver, by the party against whom the waiver is to be effective. No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

SECTION 14. Interpretation. When a reference is made in this Warrant to a Section such reference shall be to a Section of this Warrant unless otherwise indicated. Whenever the words "include", "includes" or "including" are used in this Warrant, they shall be deemed to be followed by the words "without limitation". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Warrant shall refer to this Warrant as a whole and not to any particular provision of this Warrant. The definitions contained in this Warrant are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. References to a person are also to its permitted successors and assigns and, in the case of an individual, to his heirs and estate, as applicable.

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IN WITNESS WHEREOF, the Company has duly caused this Warrant to be signed by its duly authorized officer and to be dated as of the date first above written.

SUNBEAM CORPORATION

By: _____
Name:
Title:

Attest:

By: _____
Name:
Title:

ACKNOWLEDGED AND AGREED:

COLEMAN (PARENT) HOLDINGS INC.

By: _____
Name:
Title:

WARRANT EXERCISE SUBSCRIPTION FORM

(To be executed only upon exercise of the Warrant after delivery of the Warrant Exercise Notice)

To: Sunbeam Corporation

The undersigned irrevocably exercises the Warrant for the purchase of _____ shares (the "Shares") of Common Stock, par value $.01 per share, of Sunbeam Corporation (the "Company") ("Common Stock") at an exercise price of $_____ per Share and herewith makes payment of $_____ (such payment being made in cash or by certified or official bank or bank cashier's check payable to the order of the Company or by any permitted combination of such cash or check or by the reduction of the number of shares of Common Stock that otherwise would be issued upon this exercise by the number of shares of Common Stock that have a value equal to such exercise price), all on the terms and conditions specified in this Warrant, surrenders this Warrant and all right, title and interest therein to the Company and directs that the Shares deliverable upon the exercise of this Warrant be registered or placed in the name and at the address specified below and delivered thereto.

Date: _____ __, ____.

_____
(Name - Please Print)

_____
(Signature of Owner)

_____
(Street Address)

_____
(City) (State) (Zip Code)

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Securities and/or check to be issued to:

Please insert social security or identifying number:

Name:

Street Address:

City, State and Zip Code:

Any unexercised portion of the Warrant evidenced by the within Warrant to be issued to:

Please insert social security or identifying number:

Name:

Street Address:

City, State and Zip Code:

WARRANT ASSIGNMENT FORM

Dated _____ __, ____

FOR VALUE RECEIVED, _____ hereby sells, assigns and transfers unto _____ (the "Assignee"),

(please type or print in block letters)

_____

(insert address)

its right to purchase up to _____ shares of Common Stock represented by this Warrant and does hereby irrevocably constitute and appoint _____ Attorney, to transfer the same on the books of the Company, with full power of substitution in the premises.

Signature: _____

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EXHIBIT B

AMENDMENT TO REGISTRATION RIGHTS AGREEMENT

AMENDMENT, dated as of August ___, 1998 (this "Amendment"), to the REGISTRATION RIGHTS AGREEMENT, dated as of March 29, 1998 (the "Registration Rights Agreement"), by and among SUNBEAM CORPORATION, a Delaware corporation ("Laser" or "Sunbeam"), and COLEMAN (PARENT) HOLDINGS INC., a Delaware corporation ("Parent Holdings"). Capitalized terms used in this Amendment have the meanings ascribed to them in the Registration Rights Agreement unless otherwise defined herein. References to Articles and Sections shall, unless otherwise stated, be to the Articles and Sections of the Registration Rights Agreement. In all respects not inconsistent with the terms and provisions of this Amendment, the Registration Rights Agreement shall continue to be in full force and effect in accordance with the terms and conditions thereof, and is hereby ratified, adopted, approved and confirmed. From and after the date hereof, each reference to the Registration Rights Agreement therein or in any other instrument or document shall be deemed a reference to the Registration Rights Agreement as amended hereby, unless the context otherwise requires, and this Amendment and the Registration Rights Agreement shall for all purposes and matters be considered as one agreement, including that all of the ministerial and miscellaneous provisions of the Registration Rights Agreement shall apply equally thereto as so amended and to this Amendment.

WHEREAS, pursuant to the Holdings Merger Agreement, by and among Sunbeam, a subsidiary of Sunbeam, CLN HOLDINGS INC., a Delaware corporation and wholly owned subsidiary of Parent Holdings ("Holdings"), and Parent Holdings, the Holdings Merger was consummated on March 30, 1998 and Holdings became an indirect wholly owned subsidiary of Sunbeam; and

WHEREAS, following consummation of the Holdings Merger, the shares of Holdings Common Stock issued and outstanding immediately prior to the effective time of the Holdings Merger were converted into an aggregate of (A) 14,099,749 fully paid and nonassessable shares of common stock, par value $.01 per share, of Sunbeam ("Laser Common Stock") and (B) $159,956,756 in cash, without interest thereon; and

WHEREAS, following the dismissal by Sunbeam of certain of its executive officers in mid-June 1998, Sunbeam retained certain senior officers employed by Affiliates of Parent Holdings as executive officers of Sunbeam; and

WHEREAS, Sunbeam and Parent Holdings have entered into a Settlement Agreement (the "Settlement Agreement") pursuant to which Sunbeam will issue to Parent Holdings certain warrants to purchase shares of Laser Common Stock (the "Warrants") and has agreed to enter into this Agreement; and

WHEREAS, in order to induce Parent Holdings to enter into the Settlement Agreement, Sunbeam has agreed to amend the Registration Rights Agreement and modify the registration rights with respect to the shares of Laser Common Stock issued to Parent Hold-

ings in the Holdings Merger and to provide for registration rights with respect to the Warrants and Laser Common Stock issuable upon exercise of the Warrants.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 is amended with respect to certain of the definitions therein as follows:

The definition of the term "Agreement" is amended and restated in its entirety to mean the Registration Rights Agreement as amended by this Amendment.

The definition of the term "Registrable Securities" is amended and restated in its entirety to mean (i) the Holdings Merger Stock, (ii) the Warrants, and (iii) any shares of Laser Common Stock issued pursuant to the Warrants, and, in each case, any other securities issued or issuable upon or in respect of such securities by way of conversion, exchange, dividend, split or combination, recapitalization, merger, consolidation, other reorganization or otherwise. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when such securities have been sold or otherwise transferred by Parent Holdings pursuant to the Shelf Registration Statement or pursuant to Rule 144 under the Securities Act.

The following defined term shall be added to the list of definitions in their respective alphabetically ordered positions:

The term "Holdings Merger Stock" shall mean the shares of Laser Common Stock issued to Parent Holdings in the Holdings Merger.

The term "Warrants" shall mean the warrants to purchase 23,000,000 (Twenty-Three Million) shares of Laser Common Stock issued to Parent Holdings pursuant to Warrant No. W-1 dated August ___, 1998.

ARTICLE II

REQUIRED REGISTRATION

Sections 2.1, 2.2 and 2.3 of Article II are amended and restated to read in their entirety as follows:

Section 2.1 *Required Registration.*

(a) *Form S-3.* Promptly following a demand to such effect from any holder of Registrable Securities, Laser shall prepare and file with the SEC a registration statement (the "Shelf Registration Statement") on an appropriate form permitting registration of the Registrable Securities so as to permit the resale of the Registrable Securities pursuant to an offering on a delayed or continuous basis under the Securities Act and shall use reasonable best efforts to (i) cause the Shelf Registration Statement to be declared effective by the SEC as promptly as practicable thereafter and (ii) permit the Shelf Registration Statement to be used by Affiliates of Camper for resales of shares of Laser Common Stock held by such Affiliates ; provided, however, that any such Affiliate using the Shelf Registration Statement shall agree in writing to be bound by all of the restrictions, limitations and obligations of Parent Holdings contained in this Agreement.

(b) *Effectiveness.* Laser shall use reasonable best efforts to keep the Shelf Registration Statement continuously effective under the Securities Act until the date that is the earliest to occur of (i) the date by which all Registrable Securities have been sold and (ii) the date by which all Registrable Securities are eligible for immediate sale to the public without registration under Rule 144 under the Securities Act, with such sale not being limited by the volume restrictions thereunder or otherwise.

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

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

Section 2.2 *Holdback Agreement.*

From and after the Effective Date, upon the request of Laser, Parent Holdings shall not effect any public sale or distribution (including sales pursuant to Rule 144) of Registrable Securities that are equity securities of Laser, or any securities convertible into or ex-

changeable or exercisable for such securities, including the Warrants, (other than any such sale or distribution of such securities pursuant to registration of such securities on Form S-8 or any successor form) during the period commencing on the date on which Laser commences a Laser Offering through the sixty (60)-day period immediately following the closing date of such Laser Offering; provided, however, that Parent Holdings shall not be obligated to comply with this Section 2.2 on more than two (2) occasions in any twelve (12)-month period; and provided, further, that notwithstanding anything to the contrary in this Section 2.2 or Section 2.3, in no event shall Parent Holdings be disabled from effecting offers or sales of Registrable Securities for more than one-hundred-and-twenty (120) days during any twelve (12)-month period.

Section 2.3 *Blackout Provisions.*

In the event that, at any time while the Shelf Registration Statement remains effective, Laser determines in its reasonable judgment and in good faith that the sale of Registrable Securities would require disclosure of material information which Laser has a bona fide business purpose for preserving as confidential, Parent Holdings shall, upon receiving written notice from Laser of such good faith determination, suspend sales of the Registrable Securities for a period beginning on the date of receipt of such notice and expiring on the earlier of (i) the date upon which such material information is disclosed to the public or ceases to be material or (ii) forty-five (45) days after the receipt of such notice from Laser; provided, however, that Parent Holdings shall not be obligated to comply with this Section 2.3 on more than two (2) occasions in any twelve (12) month period; and provided, further, that notwithstanding anything to the contrary in this Section 2.3 or Section 2.2, in no event shall Parent Holdings be disabled from effecting offers or sales of Registrable Securities for more than one-hundred-and-twenty (120) days during any twelve (12)-month period.

* * *

Section 2.4(a) of Article II is hereby amended by deleting the word "and" from the end of paragraph (12) thereof, replacing the period at the end of paragraph (13) thereof with "; and" and adding the following additional paragraph:

(14) will enter into customary agreements (including an underwriting agreement in customary form) and take such actions as are reasonably required in order to expedite or facilitate the sale of such Registrable Securities, including, without limitation, cooperation, and causing its officers, employees and advisors to cooperate, with the sellers of such Registrable Securities and the underwriter(s), if any, including participation in meetings and road shows held in connection with such sale.

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ARTICLE III

TRANSFERS OF REGISTRABLE SECURITIES

Sections 3.1 and 3.2 of Article III are amended and restated to read in their entirety as follows:

Section 3.1 *Transferability of Registrable Securities.*

(a) Parent Holdings may not Transfer the Registrable Securities, other than

(1) pursuant to Rule 144;

(2) pursuant to the Shelf Registration Statement; or

(3) in any other Transfer exempt from registration under the Securities Act, and as to which Laser has received an opinion of counsel, reasonably satisfactory to Laser, that such Transfer is so exempt;

and shall in no event Transfer any Registrable Securities in violation of the Settlement Agreement.

Section 3.2 *Restrictive Legends.*

Parent Holdings hereby acknowledges and agrees that, during the term of this Agreement, all of the Registrable Securities shall include the legend set forth in Section 7.2 of the Holdings Merger Agreement, the legend set forth on the Warrants or as provided in the Warrants or as may otherwise be reasonably appropriate to reflect the fact that such Registrable Securities have not been issued in transactions registered under the Securities Act, unless at the time such Registrable Securities have been registered under the Securities Act.

ARTICLE IV

MISCELLANEOUS

Sections 4.5 and 4.11 of Article IV are amended and restated in their entirety to read as follows:

Section 4.5 *Binding Effect; Assignment.*

This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, successors and permitted assigns, but, except as expressly contemplated herein, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, directly or indirectly, by Laser or Parent Holdings without the prior written consent of the other (except in the case of

any assignment in whole or in part by Parent Holdings to any Affiliate, as to which no such consent shall be required); provided, that in connection with a bona fide pledge of any Registrable Securities to secure indebtedness or other obligations, Parent Holdings may assign its rights, interests and obligations hereunder to the beneficiary of such pledge in whole or in part. Upon any permitted assignment (other than in connection with any such bona fide pledge), this Agreement shall be amended to substitute or add the assignee as a party hereto in a writing reasonably acceptable to the other party.

Section 4.11 *Termination; Restrictive Legend.*

This Agreement shall terminate only following such time as Sunbeam shall have no further obligation under Section 2.1(b) to use its reasonable best efforts to keep the Shelf Registration Statement effective; provided, however, that the provisions of Section 2.6 hereof shall survive termination of this Agreement. It is understood and agreed that any restrictive legends set forth on any Registrable Securities shall be removed by delivery of substitute certificates without such legends and such Registrable Securities shall no longer be subject to the terms of this Agreement or upon the resale of such Registrable Securities in accordance with the terms of this Agreement.

ARTICLE V

OTHER

The following provisions shall also apply to this Amendment:

Section 5.1 Effectiveness of this Amendment. The provisions of this Amendment shall be effective as of the date hereof.

Section 5.2 Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 5.3 Governing Law. This Amendment shall be governed by the laws of the State of New York, without regard to the principles of conflicts of law thereof.

Section 5.4 No Waiver. The execution, delivery and performance of this Amendment shall not operate as a waiver of any condition, power, remedy or right exercisable in accordance with the Registration Rights Agreement, and shall not constitute a waiver of any provision of the Registration Rights Agreement, except as expressly provided herein.

Section 5.5 Descriptive Headings. The article and section headings contained in this Amendment are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Amendment.

IN WITNESS WHEREOF, the undersigned hereby agree to be bound by the terms and provisions of this Amendment as of the date first above written.

SUNBEAM CORPORATION

By:_____
Name:
Title:

COLEMAN (PARENT) HOLDINGS INC.

By:_____
Name:
Title:

STATE OF NEW YORK)
) ss
COUNTY OF NEW YORK)

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

COLEMAN (PARENT) HOLDINGS, INC., Plaintiff, v. ARTHUR ANDERSEN LLP, et al., Defendants.	Case No.: CA 01-06062AN Judge Stephen A. Rapp

AFFIDAVIT OF BARRY F. SCHWARTZ

Barry F. Schwartz, on oath deposes and states:

1. I am Executive Vice President and General Counsel of Plaintiff Coleman (Parent) Holdings, Inc. ("Coleman Parent") and its parent company, MacAndrews & Forbes Holdings, Inc. ("Mafco"). I submit this affidavit in support of Coleman Parent's Supplemental Memorandum in Opposition to Andersen's Motion to Compel the Production of a Non-Privileged Coleman Parent Document.

2. I have personal knowledge of the facts set forth below. If called to testify as a witness, I would be competent to testify to the facts set forth in this affidavit.

3. On March 30, 1998, Coleman Parent sold its interest in The Coleman Company to the Sunbeam Corporation ("Sunbeam") and received 14.1 million shares of Sunbeam stock. As a result of the sale, Coleman Parent became a 14% shareholder in Sunbeam.

4. On August 12, 1998, Sunbeam and Coleman Parent entered into a settlement agreement whereby Coleman Parent released certain claims against Sunbeam in exchange for a five-year warrant to buy additional shares of Sunbeam stock.

5. Beginning on August 13, 2002, Sunbeam; various officers and directors of Sunbeam,

[redacted]

including members of the Special Committee of Sunbeam's Board of Directors; Mafco; Howard Gittis, Vice Chairman and Chief Administrative Officer of Mafco; and Coleman Parent were named as co-defendants in actions challenging the settlement between Coleman Parent and Sunbeam. Those actions were as follows:

a. *Coletta v. MacAndrews & Forbes Group, Inc., Coleman (Parent) Holdings, Inc., Howard Kristol, Charles Elson, Peter Langerman, Faith Whittlesey, Larry Sondike, Jerry Levin, Howard Gittis and Sunbeam Corporation, Inc.*, C.A. 16751NC (Delaware Chancery Court, New Castle ounty). Derivative action filed on October 1, 1998;

b. *Goldstein v. Peter Langerman, Charles M. Elson, Howard G. Kristol, William T. Rutter, Faith Whittlesey, Larry Sondike, Howard Gittis, MacAndrews & Forbes Holdings, Inc. and Sunbeam Corp.*, C.A. 16587NC (Delaware Chancery Court, New Castle County). Derivative action filed on August 13, 1998;

c. *Harbor Finance Partners, Ltd. v. Howard Gittis, Howard G. Kristol, Charles M. Elson, Peter Langerman, William T. Rutter, Faith Whittlesey, Larry Sondike, MacAndrews & Forbes Holdings, Inc. and Sunbeam Corporation*, C.A. 16611NC (Delaware Chancery Court, New Castle County). Derivative action filed on August 26, 1998;

d. *McCall v. Peter Langerman, Charles M. Elson, Howard G. Kristol, William T. Rutter, Faith Whittlesey, Larry Sondike, Howard Gittis, MacAndrews & Forbes Holdings, Inc. and Sunbeam Corp.*, C.A.16679NC (Delaware Chancery Court, New Castle County). Derivative action filed on October 1, 1998;

e. *Ulfsson v. Peter Langerman, Charles M. Elson, Howard G. Kristol, William T. Rutter, Faith Whittlesey, Larry Sondike, Howard Gittis, MacAndrews & Forbes Holdings, Inc. and Sunbeam Corp.*, C.A.16609NC (Delaware Chancery Court, New Castle County). Derivative action filed on August 26, 1998;

f. *Joerger et al. v. Peter Langerman, Charles M. Elson, Howard G. Kristol, William T. Rutter, Faith Whittlesey, Larry Sondike, Howard Gittis, Jerry W. Levin, MacAndrews & Forbes Holdings, Inc., Coleman (Parent) Holdings, Inc. and Sunbeam Corporation*, C.A. 16600NC (Delaware Chancery Court, New Castle County). Class action filed on August 24, 1998; and

g. *Shallal v. Charles M. Elson, Howard G. Kristol, Peter A. Langerman, Faith Whittlesey, Jerry W. Levin, Howard Gittis, MacAndrews & Forbes Holdings, Inc. and Sunbeam Corporation*, Case No. 98-8739-CIV (United States District Court for the Southern District of Florida). Derivative action filed on October 20, 1998.

6. The complaints alleged that Coleman Parent breached a fiduciary duty it allegedly owed to Sunbeam shareholders when it entered into the settlement agreement with Sunbeam. The

complaints also challenged Sunbeam's issuance of the warrant as constituting a waste of assets by Sunbeam. Coleman Parent and Mafco had a common interest with Sunbeam in defending against the claims made in the above cases.

7. Business records at Mafco indicate that on or about November 16, 1998, I received a copy of a document prepared by The Blackstone Group, LP entitled "Presentation to the Special Committee of the Board of Directors of Sunbeam Corporation" dated August 12, 1998 (the "Blackstone report").

8. At the time I received the Blackstone report, I considered it to be protected by the work product doctrine, and understood that the report addressed matters pertinent to the defense of the above cases challenging the fairness of the settlement agreement of August 12, 1998. As stated above, Coleman Parent and Mafco had a joint interest with Sunbeam in defending against these claims and in maintaining the confidentiality of the Blackstone report.

9. Ernst & Young LLP, Mafco's accountant, reviewed the Blackstone report in connection with rendering accounting advice to Mafco.

FURTHER AFFIANT SAYETH NOT.

BARRY F. SCHWARTZ

Subscribed and Sworn to before me
this 7th day of August, 2002.

Notary Public

KAREN A. DeMECO
Notary Public, State of New York
No. 01DE4888502
Qualified in Queens County
Commission Expires March 30, 2003

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

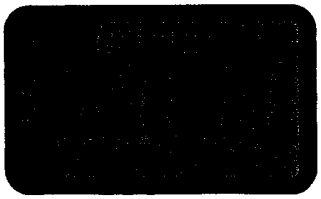
COLEMAN (PARENT) HOLDINGS, INC., Plaintiff, v. ARTHUR ANDERSEN LLP, et al., Defendants.	Case No.: CA 01-06062AN Judge Stephen Rapp

NON-PARTY SUNBEAM CORPORATION'S MEMORANDUM OF LAW IN OPPOSITION TO "DEFENDANT ARTHUR ANDERSEN LLP'S MOTION TO COMPEL THE PRODUCTION OF A NON-PRIVILEGED COLEMAN PARENT DOCUMENT"

With permission of this Court, non-party Sunbeam Corporation ("Sunbeam") respectfully submits this memorandum of law in opposition to Arthur Andersen LLP's ("Andersen") application to compel plaintiff to produce a certain document prepared by the Blackstone Group L.P. (the "Blackstone Report" or the "Report").

PRELIMINARY STATEMENT

The Blackstone Report is quintessential work product, protected from discovery under Rule 1.280(b)(3) of the Florida Rules of Civil Procedure. The Report was prepared by financial advisors, working with outside counsel, for a special committee of Sunbeam's board of directors (the "Special Committee") specifically to aid the Special Committee in, among other things, evaluating the possible settlement of claims that had been threatened against Sunbeam by



Coleman (Parent) Holdings, Inc. ("Coleman Parent"), the plaintiff in this action, and its parent corporation, MacAndrews and Forbes Holdings, Inc. ("MacAndrews"). In its motion, Andersen originally sought to compel plaintiff to produce a memorandum prepared by Ernst & Young, accountants working for MacAndrews, that allegedly summarized portions of the Blackstone Report. In its reply papers, Andersen claims that in reading plaintiff's opposition it learned for the first time that the Blackstone Report was provided to MacAndrews and now seeks to compel plaintiff to produce the Blackstone Report itself.

Sunbeam, which filed for protection under chapter 11 of the United States Bankruptcy Code in February 2001, is not a party to this action. However, because the Blackstone Report is subject to a privilege belonging to Sunbeam and its counsel,[1] and Sunbeam has a continuing interest in protecting that privilege, at the August 1, 2002 hearing on this motion, Sunbeam sought and was granted leave to submit papers in opposition to Andersen's motion, specifically on the issues of whether the Blackstone Report is privileged and whether the privilege has been preserved or waived as a result of MacAndrews having been provided a copy of the Report. Accompanying this memorandum, Sunbeam is submitting the affidavits of Charles M. Elson (the "Elson Aff.") and Faith Whittlesey (the "Whittlesey Aff."). Mr. Elson and Mrs. Whittlesey are Sunbeam directors and were members of the Special Committee. In their affidavits, they set forth the circumstances surrounding the preparation of the Blackstone Report

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[1] Andersen originally moved to obtain the E&Y Memorandum so Andersen could show it to Weil, Gotshal & Manges ("Weil Gotshal") who they subpoenaed to get the Blackstone Report, and who took and has maintained the position that the Blackstone Report is privileged work product.

and the subsequent settlement between Sunbeam and Coleman Parent and MacAndrews. Sunbeam also relies on the Affidavit of Barry F. Schwartz ("Schwartz Aff."), which has been submitted by plaintiff Coleman Parent. Mr. Schwartz is the Executive Vice President and General Counsel of Coleman Parent. In his affidavit, Mr. Schwartz explains that he obtained a copy of the Blackstone Report from Sunbeam only after Sunbeam settled with Coleman Parent and MacAndrews, and that at the time he was provided the Report he understood that it was privileged and that Sunbeam, Coleman Parent and MacAndrews had a joint interest in defending against litigation that had been commenced against Sunbeam, the members of the Special Committee, MacAndrews and Coleman Parent challenging the settlement. Given the circumstances under which Mr. Schwartz was provided the Report, there was no waiver of the work product protection afforded the Blackstone Report, as Andersen argues.

FACTUAL BACKGROUND

1. Preparation of the Blackstone Report

In March 1998, Sunbeam acquired an 82% majority interest in The Coleman Company ("Coleman") from plaintiff Coleman Parent for a combination of Sunbeam stock and cash. See In re The Coleman Company, Inc. Shareholders Litigation, 750 A.2d 1202, 1204-06 (Del. Chan. 1999).[2] Contemporaneous with that transaction, the board of directors of Coleman approved a merger with Sunbeam, pursuant to which the minority shareholders of Coleman

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[2] The Coleman transactions and the litigation relating thereto are described in the Delaware Chancery Court's published opinion approving a settlement with Coleman's public shareholders. A copy of the opinion is attached as Exhibit A.

would receive cash and Sunbeam stock in exchange for their Coleman stock. (Elson Aff. ¶ 2; Whittlesey Aff. ¶ 2.)

In the spring of 1998, the price of Sunbeam stock began to drop precipitously. Beginning in April 1998, a series of lawsuits were brought against Sunbeam by, among others, purchasers of Sunbeam common stock and purchasers of Sunbeam convertible debentures, alleging that Sunbeam had engaged in questionable accounting practices and had issued false financial statements and other misleading disclosures. In June of 1998, Sunbeam's then CEO, Albert Dunlap and CFO, Russell Kersh were terminated. Thereafter, Andersen, then Sunbeam's auditor, took the position that its opinion on Sunbeam's 1997 financial statements could no longer be relied upon. At the request of Sunbeam's board, two senior executives from MacAndrews who had experience at Coleman were brought in as senior executives of Sunbeam to stabilize its business and rebuild the company. (Elson Aff. ¶ 2; Whittlesey Aff. ¶ 2.)

Shortly thereafter, MacAndrews advised Sunbeam that it believed it had claims against Sunbeam for, among other things, the rescission of the Coleman acquisition or money damages. (Elson Aff. ¶ 2; Whittlesey Aff. ¶ 2). In addition, in late June 1998, class action lawsuits were filed in Delaware state court by minority shareholders of Coleman against Coleman, Sunbeam and some of Sunbeam's and Coleman's present and former officers and directors, alleging, in essence, that the existing exchange ratio for the proposed Coleman merger was no longer fair to Coleman public shareholders as a result of the decline in the market value

of Sunbeam common stock. See In re Coleman Company Shareholders Litigation, 750 A.2d at 1204-06.

In conjunction with the claims threatened by MacAndrews and Coleman Parent against Sunbeam, on June 29, 1998, the Executive Committee of Sunbeam's board formed the Special Committee, among other things, to investigate, assess the litigation risks and, if appropriate, negotiate a settlement with Coleman Parent and MacAndrews. (Elson Aff. ¶ 3; Whittlesey Aff. ¶ 3.) The Special Committee retained Weil, Gotshal & Manges LLP as its counsel. The Special Committee also engaged the Blackstone Group L.P. ("Blackstone") as its financial advisors to work with Weil Gotshal in connection with the development and assessment of possible settlement structures to resolve the MacAndrews and Coleman Parent claims. (Elson Aff. ¶ 3; Whittlesey Aff. ¶ 3.) In particular, Blackstone analyzed and evaluated the financial implications of potential resolution of the MacAndrews claims utilizing warrants in lieu of cash as payment to MacAndrews. The Blackstone Report was prepared in connection with Blackstone's efforts at valuing, structuring and evaluating possible settlements to assist the Special Committee and Weil Gotshal in negotiations and potential settlement decision-making. (Elson Aff. ¶ 3; Whittlesey Aff. ¶ 3.)

2. Coleman Parent and MacAndrews Settle Their Claims with Sunbeam

On August 12, 1998, Sunbeam and Coleman Parent and MacAndrews entered into a settlement agreement, which provided for, among other things, Sunbeam's issuance of warrants (but not the payment of cash) to MacAndrews and Coleman Parent. (A copy of the settlement

agreement is attached as Exhibit B.) Once the settlement was executed, Sunbeam and MacAndrews and Coleman Parent ceased to be adversaries. In the settlement agreement, Coleman Parent and its affiliates released Sunbeam and its affiliates from all claims relating to the acquisition of Coleman by Sunbeam, and MacAndrews and Coleman Parent agreed to continue to provide management services, including litigation and other legal support, to Sunbeam. (Ex. B §§ 2-3.)

In addition to the relationship formed by the settlement agreement, MacAndrews and Coleman Parent and Sunbeam also had a joint interest in defending against claims of Sunbeam shareholders challenging the settlement. Beginning on August 13, 2002, the day after the settlement between Sunbeam and MacAndrews and Coleman Parent was announced, Sunbeam, certain of its officers and directors, including the members of the Special Committee, MacAndrews, Coleman Parent and others were named as co-defendants in class action and shareholder derivative actions filed in Delaware state court and in the United States District Court for the Southern District of Florida challenging the settlement. (Schwartz Aff. ¶ 5; Elson Aff. ¶ 5; Whittlesey Aff. ¶ 5). Sunbeam, MacAndrews and Coleman Parent had a common interest in defeating these cases. Indeed, in the action filed in Florida District Court, Sunbeam, the named Sunbeam directors and MacAndrews filed a joint memorandum of law in support of their ultimately successful motion to dismiss or stay the action pending resolution of the similar Delaware state actions. (See Elson Aff. ¶ 6; Whittlesey Aff. ¶ 6; a copy of the joint memorandum is attached as Exhibit C).

3. **Sunbeam has Maintained the Blackstone Report as Confidential**

Since the Report's preparation, Sunbeam has done nothing inconsistent with maintaining work product protection for the Blackstone Report. Although Sunbeam has shown the Report to its auditors and to MacAndrews, it has done so in its best interest and with the expectation and understanding that the Report itself would not be revealed to Sunbeam's adversaries. Indeed, as noted in Mr. Schwartz's affidavit, Sunbeam provided MacAndrews a copy of the Blackstone Report in November 1998, at a time when Sunbeam's and MacAndrews' and Coleman Parent's interests were aligned as defendants in litigation challenging the settlement of claims which Sunbeam had entered into on the advice of counsel, utilizing the analysis in the Report. Moreover, in the various shareholder litigations and other actions, Sunbeam and the members of the Special Committee have consistently invoked the privilege with respect to the Blackstone Report.

Sunbeam has a continuing interest in protecting the privilege covering the Blackstone Report.[3] Although it settled its claims with MacAndrews and Coleman Parent, the analysis set forth in the Blackstone Report is still relevant to the defense of remaining claims against Sunbeam. Among other things, there is still litigation pending in Delaware state court

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[3] For precisely that reason, Sunbeam's counsel in connection with the original MacAndrews/Coleman dispute has steadfastly asserted work product privilege as to the Blackstone Report, including in response to a subpoena issued by a New York court at Andersen's request, which sought the Blackstone Report. Indeed, such assertion of privilege is what gave rise to the instant motion in the first place. See note 1, supra.

brought by Coleman shareholders seeking to exercise statutory appraisal rights under Delaware corporate law. (A copy of the petition in that action is attached as Exhibit D.)

ARGUMENT

1. The Blackstone Report is Privileged Attorney Work Product

Under Florida law, a "court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning [a] litigation." Fla. R. Civ. P. 1.280(b)(3) (emphasis added). Among the types of documents that have been determined to be privileged as work product in Florida are financial and valuation analyses, similar to the Blackstone Report, prepared by outside consultants.[4] See, e.g., In re Grand Jury Proceedings, 601 F.2d 162, 171 (5th Cir. 1979) (reversing holding of United States District Court for the Middle District of Florida); Celotex Corp. v. Jasper Corp., 196 B.R. 596 (Bankr. M.D. Fla. 1996). Where the "probability of litigation is substantial and imminent," such materials are protected as work product. Allstate Indemnity Co. v. Ruiz, 780 So.2d 239, 241 (Fla. 4th DCA 2001).

In this case, the Blackstone Report was prepared by the Blackstone Group, which was retained by the Special Committee to work with special counsel, Weil Gotshal, in order to provide financial expertise and advice in conjunction with a threatened litigation claim against Sunbeam. As in In re Grand Jury Proceedings and Celotex, such material is protected as work

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[4] Florida courts look to federal case law for guidance when interpreting the scope of the work product privilege, as Fla. R. Civ. P. 1.280 (b) closely resembles the analogous federal rule. See Cotton States Mut. Ins. Co. v. Turtle Reef Assocs., Inc., 444 So.2d 595, 596 (Fla. 4th DCA 1984).

product. The probability that MacAndrews' claims would result in litigation against Sunbeam was indeed substantial and imminent. By the time the Blackstone Report was issued in August 1998, securities fraud litigation had already been commenced against Sunbeam by its shareholders, and the Coleman public shareholders had filed suit challenging the consideration they were to receive in connection with the Coleman merger. MacAndrews' representatives had also so clearly communicated to Sunbeam a threat of litigation that a Special Committee of Sunbeam's board had been formed to address that threat, and that committee had retained special outside counsel, Weil Gotshal, to advise and represent it. (Elson Aff. ¶ 3; Whittlesey Aff. ¶ 3).

The work product protection afforded to the Blackstone Report survived the settlement of the MacAndrews claims. Documents covered by the work product privilege maintain that privilege not only in conjunction with the litigation, or threatened litigation, in which such documents were created, but in subsequent litigations as well. See Toward v. Cooper, 634 So.2d 760, 761 (Fla. 4th DCA 1994); Alachua Gen. Hosp. v. Zimmer USA, Inc., 403 So.2d 1087, 1088-89 (Fla. 1st DCA 1981). Such documents are privileged even if the subsequent litigation is unrelated to the initial litigation in which the document was originally created. See Toward, 634 So.2d at 761. As noted above, Sunbeam is still a party in at least one active case pending in Delaware Chancery Court, which addresses the statutory appraisal rights of Coleman's shareholders. (See Ex. D) If this Court orders Coleman Parent to produce the

Blackstone Report to Andersen, Sunbeam's ability to protect the document in litigation to which it is a party may be impaired.[5]

2. Sharing the Blackstone Report with MacAndrews Did Not Waive the Work Product Immunity

Sunbeam's sharing of the Blackstone Report with MacAndrews is not a waiver of the work product privilege associated with that document. The key to determining whether there has been a waiver of the work product immunity is whether the disclosure "is inconsistent with the maintenance of secrecy from the disclosing party's adversary." Visual Scene, Inc. v. Pilkington Bros., PLC, 508 So.2d 437, 442 (Fla. 3rd DCA 1987). "In determining whether the work product privilege has been waived, courts . . . have looked to whether the transferor and transferee share 'common interests' in litigation, and to whether the disclosure is consistent with 'maintaining secrecy against opponents.'" Id. The focus of the waiver test is not on the purpose for which the disclosure is made, but on the likely consequences of that disclosure, i.e., whether the disclosure "substantially increases the possibility of an opposing party obtaining the information." Id.

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[5] Requiring a non-party to compromise its position in a separate litigation by ordering production of its work product would be an "intolerable" result. Charles A. Wright, et al., Federal Practice & Procedure §2024 (1994). Thus, even if a literal reading of the work product rule does not provide protection to non-parties, the fact that a document is subject to the work product doctrine in a separate litigation involving the non-party is grounds for issuing a protective order to "vindicate the purposes of the work product rule." Id.; see also In re Polypropylene Carpet Antitrust Litig., 181 F.R.D. 680, 691-92 (N.D. Ga. 1998) (issuing protective order requiring return of documents to non-party where documents would be protected work product if non-party were a party to case); Genevit Creations v. Underwriters at Lloyd's, 166 F.R.D. 281, 282 (E.D.N.Y. 1996) (holding that court may issue a protective order to protect non-party's work product).

In this instance, at the time Sunbeam shared the Blackstone Report with MacAndrews they were joint defendants in litigations challenging the settlement between Sunbeam and MacAndrews and Coleman Parent. (Elson Aff. ¶ 6; Whittlesey Aff. ¶ 6; see also Tr. of Hearing, Aug.1, 2002 at 39-40 (counsel for Arthur Andersen admitting that "Coleman Parent and Sunbeam were joint defendants" in those subsequent litigations) (a copy of the relevant portion of this transcript is attached as Exhibit E)). MacAndrews had also agreed to provide certain management services to Sunbeam, including services relating to litigation and other matters. (See Ex. B § 3.) Moreover, having settled its own claims against Sunbeam, MacAndrews, if only as one of Sunbeam's largest shareholders, had an interest in seeing Sunbeam succeed in its remaining litigations. Mr. Schwartz, who was the recipient of the Report, understood that it was privileged and confidential and treated it accordingly. (Schwartz Aff. ¶ 8.) Under these circumstances, Sunbeam could have absolutely no reason to believe that disclosure of the Blackstone Report to MacAndrews would increase the likelihood that the Report would be disclosed to any of Sunbeam's remaining adversaries. Accordingly, the work product privilege with respect to the Blackstone Report has been maintained.[6]

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[6] That the Blackstone Report was shown by MacAndrews to its accountants at Ernst & Young and by Sunbeam to its auditors, including Arthur Andersen, does not constitute a waiver of the work product protection. The fact that protected information might later be used for a business purpose does not vitiate the work product protection and "[t]ransmittal of documents to a company's outside auditors does not waive the work product privilege, since there is an expectation that confidentiality of such information will be maintained by the recipient." Gutter v. E.I. Dupont de Nemours and Co., No. 95-CV-2152, 1998 WL 2017926, at 5 (S.D. Fla. May 18, 1998); see also Samuels v. Mitchell, 155 F.R.D. 195, 201 (N.D. Cal. 1994); Gramm v. Horsehead Indus., Inc., No. 87 CIV. 5122 (MJL), 1990 WL 142404, at * 5-6 (S.D.N.Y. Jan. 25,

(continued...)

Andersen's argument appears to be that because Sunbeam and MacAndrews and Coleman Parent were adversaries prior to their settlement, they are adversaries for purposes of the waiver rule. However, the proper focus is on whether the party seeking work product protection disclosed the document to a third party that was an adversary "at the time that the confidential information is disclosed." In re United Mine Workers of America Employee Benefit Plans Litig., 159 F.R.D. 307, 314 (D.D.C. 1994) (holding that "the fact that the parties' interests have diverged" at another point in time is irrelevant if parties had common interests when disclosure was made). At the time of the disclosure, there was no adversarial relationship between Sunbeam and MacAndrews or Coleman Parent and therefore no waiver of the privilege.

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[6](...continued)
1990). In other words, disclosure of a protected document to a company's outside auditors does not pose a danger that the document will be released to an adversary.

CONCLUSION

On the basis of the foregoing and the accompanying Affidavit of Charles M. Elson, Affidavit of Faith Whittlesey, and the Affidavit of Barry Schwartz, Andersen's motion to compel the production of the Blackstone Report should be denied.

Dated: West Palm Beach, Florida
August 8, 2002

Respectfully submitted,

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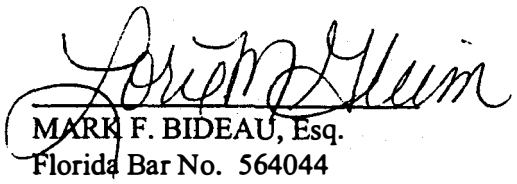
By: 
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via fax and regular U.S. Mail this 8 day of August, 2002, to:

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LORIE GLEIM

Court of Chancery of Delaware.

In re The COLEMAN COMPANY, INC. SHAREHOLDERS LITIGATION.

Civil Action No. 16486.

Submitted: Sept. 29, 1999.
Decided: Nov. 12, 1999.
Revised: Nov. 22, 1999.

Minority shareholders brought action against parent corporation and subsidiary's directors to recover for breach of fiduciary duty in connection with parent's acquisition of the subsidiary. The Chancery Court, New Castle County, Chandler, Chancellor, held that: (1) the settlement was fair and reasonable and in the best interests of the class, and (2) the attorneys were entitled to ten, not 30% of the settlement fund.

So ordered.

West Headnotes

[1] Compromise and Settlement ⇐56.1
89k56.1

When reviewing proposed settlements of class actions, the superior court considers six factors: (1) probable validity of the claims, (2) apparent difficulties in enforcing the claims through the courts, (3) the collectibility of any judgment recovered, (4) the delay, expense, and trouble of litigation, (5) the amount of the compromise as compared with the amount and collectibility of a judgment, and (6) the views of the parties, pro and con.

[2] Compromise and Settlement ⇐63
89k63

Proposed settlement of minority shareholders' class action alleging breach of fiduciary duty by parent corporation in connection with merger was fair and reasonable and in the best interests of the class; even though the shareholders raised colorable claims, the delay, expense, and trouble of litigation coupled with serious collectibility problems supported the agreement, warrants to purchase shares in the parent corporation were adequate consideration, and even though the release was broad, a money judgment was likely uncollectible.

[3] Compromise and Settlement ⇐68
89k68

Notice of hearing to settle class action was timely provided between 30 and 45 days prior to the settlement hearing.

[4] Compromise and Settlement ⇐63
89k63

Warrants which were valued at approximately $2.50 each and allowed the holders to purchase stock in the parent corporation were a benefit from the settlement of minority shareholders' class action against the parent corporation following a merger, and, thus, the settlement conferred a benefit for waiver of claims and appraisal rights.

[5] Compromise and Settlement ⇐17(2)
89k17(2)

Minority shareholder had the right to share in the benefit of a settlement of a class action arising out of a merger or to pursue its appraisal right; it did not have the right to collect the benefit, secure a floor value for its interest, and then pursue an appraisal remedy as well. 8 Del.C. § 262.

[6] Corporations ⇐584
101k584

Class counsel for minority shareholders were entitled to ten, not 30% of the settlement fund in suit arising out of merger; the attorneys reached a memorandum of understanding within four months, did not take a single deposition, did not file or defend a single pre-trial motion, merely engaged in confirmatory discovery, and followed the settlement by a majority shareholder.

[7] Corporations ⇐214
101k214

[7] Corporations ⇐320(12)
101k320(12)

The principal factors for determining attorney fee awards in shareholder suits are (1) the time and effort expended by counsel; (2) the difficulty and complexity of the litigation; (3) the standing and

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EXHIBIT "A"

ability of counsel; (4) the contingent or fixed nature of the fees; (5) the stage at which the litigation ended; (6) the ability of the plaintiff to receive credit for the benefit conferred or only a portion thereof and; (7) the size of the benefit.

*1203 Joseph A. Rosenthal and Norman M. Monhait, of Rosenthal, Monhait Gross & Goddess, P.A., Wilmington, Delaware; of Counsel: Robert I. Harwood, of Wechsler Harwood Halebian & Feffer LLP, New York, New York; Stuart H. Savett, of Savett Frutkin Podell & Ryan, P.C., New York, New York, and Rachell Roffe Sirota, of Sirota & Sirota LLP, New York, New York, Attorneys for Plaintiffs.

*1204 Thomas J. Allingham II, Richard L. Easton, Matthew M. Greenberg, and Kevin M. Maloy, of Skadden, Arps, Slate, Meagher & Flom, Wilmington, Delaware, Attorneys for Defendants.

Michael Hanrahan and Paul A. Fioravanti, of Prickett, Jones, & Elliott, Wilmington, Delaware, Attorneys for Objector Mentor Partners.

OPINION

CHANDLER, Chancellor.

The parties to this shareholders class action seek approval of a proposed settlement under Chancery Court Rule 23(e). Filed on behalf of the public shareholders of The Coleman Company, Inc. ("Coleman" or the "Company"), the action asserts claims arising from events following the Sunbeam Corporation's agreement to acquire the public shareholders' 19% interest in Coleman. The settlement contemplates that this action will be certified under Court of Chancery Rules 23(a) and 23(b)(1) and (2), with no right to opt out for objecting class members. Because plaintiffs primarily seek injunctive relief as to which all members of the class are similarly situated or, in the alternative, money damages as to which all members of the class would again be identically situated, use of the (b)(2) class mechanism is appropriate. [FN1]

FN1. *Nottingham Partners v. Da* Del.Supr., 564 A.2d 1089, 1098- 1100 (19[illegible] *Raskin v. Birmingham Steel Cor*, Del.Ch., C.A. No. 11365, 1990 WL 193326, Allen, C. (Dec. 4, 1990) ; *Joseph v. Shell Oil* (Del.Ch., C.A. No. 7450, Hartnett, V.C. (Feb. 8, 1985).

On the afternoon before the settlement hearing, Mentor Partners ("Mentor"), holder of 8% of Coleman's outstanding publicly held shares, objected to the proposed settlement. Although Mentor seems to object to certain aspects of the merger transaction itself, which was never a subject of litigation, its primary disquiet concerns the alleged paucity of the settlement consideration, the scope of released claims and parties, and the allegedly excessive fee award requested by class counsel.

It is now incumbent upon this Court to protect the interests of absent class members who will be barred from future litigation of claims asserted against certain named and unnamed defendants released in the settlement. This responsibility requires the Court to exercise judgment with respect to the strengths and weaknesses of the claims asserted by the plaintiffs and the benefits conferred by the settlement. In so doing, the Court must determine whether the proposed settlement is fair, adequate and reasonable. [FN2]

FN2. *Rome v. Arche.* Del.Supr., 197 A.2d 49, 53-54 (1964); *Polk v. Good,* Del.Supr., 507 A.2d 531, 536 (1986).

I. FACTUAL BACKGROUND

Because this is the first substantive motion filed with the Court in this matter, it will be helpful to set forth a brief factual history of the transactions and events giving rise to this short-lived litigation.

A. *Sunbeam's Two-Step Acquisition of Coleman*

On February 27, 1998, Sunbeam entered into separate merger agreements with two distinct groups of Coleman shareholders--MacAndrews & Forbes, Inc. ("M & F"), holder of approximately 81% of Coleman's outstanding equity (the "M & F Merger"), and a disaggregated group of Coleman's public shareholders, owner of the rump 19% (the "Public Merger").

Under the Public Merger, M & F, as an 81% shareholder, and Coleman's M & F designated board of directors, agreed to merge the public shareholders' 19% interest in the Company with a Sunbeam subsidiary. According to the M & F Merger, the remaining 81% of Coleman's

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outstanding equity held by M & F was also merged with a Sunbeam subsidiary. At the close of both transactions, Coleman would bec ***120** a wholly-owned subsidiary of Sunbeam.

The day the merger agreements were entered into, essentially identical merger consideration flowed to M & F and the public shareholders, though M & F had a larger cash component. [FN3] These transactions, however, are not the subject of this litigation. Rather, events occurring shortly after the parties entered into the merger agreements gave rise to the public shareholders' alleged injuries.

> FN3. In the Public Merger, shareholders will exchange each of their Coleman shares for $6.44 in cash and 0.5677 Sunbeam shares. In the M & F Merger, M & F exchanged each of its Coleman shares for approximately $15 in cash and debt assumption plus 0.32 Sunbeam shares. Using Sunbeam's market price on February 27, the value of the two transactions was within pennies.

B. *Subsequent Events*

On March 30, 1998, the M & F Merger was consummated and the Coleman board comprised of M & F designees resigned. Sunbeam, as the new controlling shareholder, appointed a new five-person board of directors for Coleman (the "March 30 Coleman Board"). [FN4] Before executing the M & F Merger, however, the M & F affiliate, as then-owner of 81% of the Company's outstanding shares, executed a written consent approving the Public Merger.

> FN4. The March 30 Coleman Board was comprised of Albert J. Dunlap (Sunbeam and Coleman director), Charles M. Elson (Sunbeam and Coleman director), Peter A. Langerman (Sunbeam and Coleman director), David C. Fannin (Sunbeam officer and Coleman director) and Russell A. Kersh (Sunbeam officer and Coleman director).

A few days after the M & F Merger was consummated and the M & F affiliate approved the Public Merger, Sunbeam issued a press release announcing that its first quarter sales would be 5% lower than the previous year's first quarter and that due to lower sales and significant one-time charges, a loss was expected for the quarter. By the end of the month, shareholders and plaintiffs lawyers smelled accounting fraud and disclosure problems and filed the first of several lawsuits alleging violations of federal securities laws in the United States District Court for the Southern District of Florida (the "Florida Litigation"). [FN5]

> FN5. *See In re Sunbeam Securities Litigatio* 89 F.Supp.2d 1326 (S.D.Fla.1999).

Over the course of the next month and a half, as a result of the allegations of financial impropriety, the price of Sunbeam's stock declined precipitously. When the dust settled, Sunbeam's share price had declined approximately 50% from its March 4, 1998 high of $53. Thus, in a very short period, the merger consideration flowing to Coleman's public shareholders had decreased from approximately $30 per share to $21 per share. Sunbeam's share price continued to slide and by September 17, 1999, two weeks before the settlement hearing, the public shareholders' merger consideration had declined to approximately $10 per share. [FN6]

> FN6. M & F's merger consideration has also drastically declined, though less than the public's as a result of M & F's larger cash component.

On June 6, 1998, Albert J. Dunlap and several directors and officers aligned with him were removed from Sunbeam's board and management team. By June 15, M & F personnel filled the management vacuum left in Dunlap's wake, taking two Sunbeam board positions and assuming the day-to-day control of Sunbeam's affairs.

Shortly after M & F took control of the beleaguered Sunbeam, Sunbeam's board formed a special committee of directors, independent of both Sunbeam and M & F, to negotiate and settle M & F's claims arising out of the M & F Merger. On August 12, 1998, M & F and Sunbeam executed a settlement agreement.

C. *Coleman Public Shareholders Litigation*

Beginning June 25, 1998, five class action lawsuits were filed in this Court ***1206** connection with the Public Merger. In the consolidated suit, the shareholder plaintiffs named Coleman, Sunbeam and, individually, the five members of the March 30 Coleman Board as defendants. Plaintiffs did not name M & F or members of Coleman's M & F designated board in their consolidated complaint.

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The class action complaint alleged that by refusing to terminate or renegotiate the Public Merger, Sunbeam and the March 30 Coleman Board breached fiduciary duties owed to Coleman's public shareholders. More particularly, plaintiffs argued that because members of the March 30 Coleman Board were designees and indeed insiders of Sunbeam, conflicts of interest caused them to place Sunbeam's interests ahead of the Coleman shareholders, to whom they owed fiduciary duties.

Plaintiffs also argued that as majority shareholder of Coleman, Sunbeam owed the minority fiduciary duties. By cramming down a transaction on them for what was manifestly unfair and inadequate consideration, plaintiffs argued, Sunbeam breached such duties. In light of Sunbeam's control position, plaintiffs believed that the Public Merger transaction should have been scrutinized under the entire fairness standard, a standard which, they argued, defendants surely could not have met.

II. ANALYSIS

[1] When reviewing proposed settlements, this Court considers six factors particularly helpful: (1) probable validity of the claims, (2) apparent difficulties in enforcing the claims through the courts, (3) the collectibility of any judgment recovered, (4) the delay, expense and trouble of litigation, (5) the amount of the compromise as compared with the amount and collectibility of a judgment, and (6) the views of the parties involved, pro and con. [FN7] In this instance, the third and fifth factors concerning the practical benefits of any relief (legal or equitable) granted are instructive. First, however, I turn to the validity of plaintiffs' claims.

FN7. *Polk v. Good,* 507 A.2d at 536.

A. *Validity of Claims*

[2] When litigants move to settle a case in which neither party has filed a dispositive motion, the plaintiff is charged with the awkward task of rebutting its own claims. The Court, of course, finds itself in the even more awkward position of having to evaluate plaintiff's rebuttal of its own claims.

In this instance, according to plaintiffs' settlement brief, defendants would have argued that neither Sunbeam nor the March 30 Coleman Board carried the burden of establishing entire fairness because (1) the unaffiliated directors of Coleman approved the transaction before Sunbeam became the majority owner of Coleman; (2) in approving the transaction, the unaffiliated directors of Coleman were advised by sophisticated independent financial and legal advisors; and (3) the transaction was negotiated before the defendants became directors of Coleman. [FN8] Defendants would have further argued that since the Public Merger agreement did not have a "fiduciary out" termination clause, the March 30 Coleman Board did not have the legal option to terminate it. [FN9]

FN8. Plaintiffs cite *Kahn v. Tremont* Del.Supr., 694 A.2d 422, 429 (1997) at *Citron v. E.I. Du Pont de Nemours & Co.* Del.Ch., 584 A.2d 490 (1990) for the proposition that Sunbeam and the March 30 Coleman Board did not bear the burden of establishing entire fairness because the Public Merger was negotiated by an entity unaffiliated with and independent of Sunbeam and the March 30 Coleman Board.

FN9. Whether or not the March 30 Coleman Board had the legal option to terminate the Public Merger is largely beside the point as, at a minimum, they had the practical option of effectuating an efficient breach of the Public Merger Agreement. Moreover, it is doubtful that Sunbeam would have much cause to cry foul and claim breach of a contract it likely first breached itself.

*1207 Plaintiffs' settlement brief indicates that defendants would characterize the Public Merger as a *fait accompli* that was negotiated and executed by a board of directors and approved by an 81% shareholder who were unaffiliated with Sunbeam and the March 30 Coleman Board. In light of these facts, the final leg of the argument goes, the Public Merger agreement was no longer executory and could not be terminated or amended according to its terms. Plaintiffs state that defendants' prospective arguments would have constituted formidable defenses to their claims against Sunbeam and the March 30 Coleman Board.

Plaintiffs afford more weight to these defenses than seems appropriate. It is far from clear that because M & F and Coleman's M & F designated board purportedly executed the Public Merger that a court would relieve Sunbeam and the March 30 Coleman Board from exercising a fiduciary's judgment as to

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whether to consummate the Public Merger and under what terms. In my view, plaintiffs raised several colorable claims that might well have survived a motion to dismiss, if not beyond.

B. *Collectibility of Potential Judgment*

Certain unfortunate circumstances, however, vitiate the strength of plaintiffs' potential recovery as a practical matter. In light of Sunbeam's precarious financial condition, even the objector acknowledges that a suit for money damages, whether predicated on fraud, breach of contract or breach of fiduciary duty grounds, might not yield happy results for the public shareholders. Even if plaintiffs prevailed and obtained a judgment, they would face the likely eventuality of appearing in a long queue of unsecured creditors confronting the prospect of a court awarded judgment worth even fewer pennies on the dollar than the proposed settlement consideration. [FN10] The still pending Florida litigation and lingering doubt over the applicability of director and officer insurance, indeed, worsens this bleak scenario.

FN10. No doubt the slim prospects for recovery is the reason class counsel reported at the settlement hearing that several significant shareholders had expressed approval of the this settlement as "the best they could hope for."

Likewise, injunctive relief is unappealing because terminating the Public Merger would have bestowed upon plaintiffs the dubious distinction of being a 20% minority in a Sunbeam controlled subsidiary, subject to the whims of Sunbeam and its creditors. Facing such a prospect, a board of directors might well have decided that the Coleman public shareholders were better off with the more liquid Sunbeam stock than with the Coleman stub.

C. *Fairness Analysis*

The key referent plaintiffs employed to assess the fairness and value of their settlement was the settlement terms negotiated by M & F with respect to claims arising out of the M & F Merger. [FN11] Settlement negotiations between M & F and Sunbeam commenced shortly after plaintiffs filed suit. The Sunbeam board appointed four outside directors, none of whom had any affiliation with M & F, to an independent special committee, assisted by its own outside counsel and financial advisors.

FN11. Presumably, M & F asserted contract-based claims arising out of the M & F Merger Agreement in its settlement negotiation.

Complicating the M & F--Sunbeam settlement discussions was the fact that executive personnel affiliated with M & F had been managing Sunbeam for approximately two weeks before settlement discussions commenced. Sunbeam appeared quite eager to maintain their presence and insisted that M & F continue to provide management assistance and other support. Plaintiffs assert that this situation gave M & F significant leverage in its settlement negotiations.

In exchange for a general release of all claims against Sunbeam and continue *1208 management assistance, Sunbeam issued to M & F five-year warrants to purchase 23 million additional shares of Sunbeam common stock at an exercise price of $7.00 per share, with anti-dilution protection ("the M & F Warrants"). [FN12]

FN12. The M & F Warrants are not registered under the Securities Act of 1933 and are not freely tradeable.

The parties' proposed settlement grants plaintiffs warrants to purchase 4.98 million Sunbeam shares with the same exercise price, expiration date, and anti- dilution protection as the M & F Warrants. Unlike the M & F Warrants, the public shareholders' warrants will enjoy some degree of immediate liquidity as they are exempt from registration under the Securities Act of 1933. Using the Black-Scholes option-pricing model, [FN13] plaintiffs' expert values the warrants at $2.475 each, for an aggregate value of $12,324,592. The objector does not challenge this valuation.

FN13. The Black-Scholes option-pricing model is a standard model used by analysts for pricing options. Fisher Black and Myron Scholes, the developers of the model, won Nobel Prizes in economics following development of the model. The existence of variables (the risk free rate, volatility of the underlying stock, expiration date of the option, etc.) may cause the model to have less reliability, however, in certain circumstances. Still, Black-Scholes is the leading option pricing model, and I accept it for purposes of assessing the benefit achieved in the settlement

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of this class litigation. In other circumstances, I have been reluctant to accord too much weight to a Black-Scholes calculation when determining the significance of the benefit in a class action settlement, as its use in that setting may be for the purpose of influencing the magnitude of fees awarded to class counsel *See Rovner v. Health-Chem Corp.*, Del.Ch., C.A. No. 15007, Chandler, C., 1998 WL 227908 *5 (April 27, 1998). As the Black-Scholes model was being employed in *Rovner* to justify a higher fee award, I thought then (and do today) that the Court should approach its conclusions in that context, somewhat skeptically or conservatively. I take no position today (as I need not), however, on the model's reliability or legal significance in other corporate law contexts. *Compare Lewis v. Vogelstein* Del.Ch., 699 A.2d 327 (1997) (questioning whether omission of Black-Scholes calculation from proxy statement was material) *with In re 3COM Corp. Shareholders Litigation,* Del.Ch., C.A. No. 16721, Steele, V.C., 1999 WL 1009210 (Oct. 25, 1999), mem. op. at 16 (concluding there was no substantial likelihood that a reasonable person would consider Black-Scholes option pricing information important in deciding how to vote on proposed amendment to a company's director stock option plan).

Plaintiffs argue that the Court should now approve the settlement because they achieved the same terms as M & F, essentially pointing to the terms of the M & F settlement as indicia of fairness and reasonableness. Plaintiffs also purport to have accomplished the same deal despite enjoying less bargaining power insofar as they could not leverage the provision of key management personnel in order to obtain more favorable settlement terms.

Although the dollar amount of plaintiffs' loss is significantly higher than $12.3 million, I believe the settlement consideration nevertheless confers a real benefit upon plaintiffs. Thus, even though plaintiffs raise colorable claims, the delay, expense, and trouble of litigation coupled with serious collectibility problems seem to justify the proposed settlement agreement.

III. MENTOR'S OBJECTIONS

A. *Objections to Merger*

Mentor's first objection does not address the settlement, but, rather, the underlying transaction giving rise to the settlement. Mentor argues that by negotiating a larger stock component in the Public Merger than in the M & F Merger, M & F and Coleman's M & F designated board injured the public shareholders.

On February 27, 1998, the date the parties entered into the merger agreements, nearly identical consideration flowed to the public shareholders and M & F. In fact, in the days immediately after the companies announced the transactions, Sunbeam stock traded higher. Thus, for a time, albeit brief, it appeared that the pu *1208 shareholders' merger consideration was superior to M & F's.

Not even the objector seriously argues that M & F had any reason to know of Sunbeam's imminent financial reporting debacle. Had it known, M & F surely would not have done the deal or, at a minimum, would have included price collar provisions in its merger agreement to protect it from extraordinary declines in Sunbeam's stock price. Alternatively, M & F simply would not have accepted Sunbeam stock as consideration. [FN14] Although unfortunate in hindsight, the fact that the Public Merger had a larger stock component and the exchange ratio lacked price collars is of no legal moment.

FN14. For an interesting case study of the Sunbeam saga as it bears on contemporary corporate governance issues. *see* Jennifer G. Hill, *Deconstructing Sunbeam--Contemporary Issues in Corporate Governance,* 67 U. Cin. L.Rev. 1099 (1999).

B. *The Settlement Consideration is Inadequate*

Contrary to plaintiffs' contentions, Mentor believes that the proposed settlement compares quite poorly with the M & F settlement. Mentor first argues that M & F received twice as much settlement consideration *i.e.,* twice as many warrants per Sunbeam share) than the public. Though technically accurate, this characterization is subject to criticism.

Under the M & F settlement, M & F received warrants to purchase 23 million Sunbeam shares. In the M & F Merger agreement, M & F received 14 million Sunbeam shares. This yields a ratio of 1.6 warrants for each Sunbeam share received in the merger.

In contrast, the public shareholders are to receive 4.98 million Sunbeam warrants for each of the 6.68 million Sunbeam shares contemplated in the Public

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Merger agreement. This yields a warrant to share ratio of 0.75. Thus, Mentor argues that under the proposed settlement, the public shareholders are to receive less than half of what M & F received in its settlement, *i.e.*, 1.6 warrants per share for M & F versus 0.75 warrants per share for public shareholders.

Plaintiffs call this sophistry. The proper basis for comparing M & F's and the public's settlement consideration, argue plaintiffs, is to examine the number of warrants the public is to receive, 4.98 million, with the number received by M & F pursuant to its settlement, 23 million. This comparison yields a ratio of 0.2165. This ratio is commensurate to the public shareholders' and M & F's respective pre-merger stakes in Coleman of approximately 9.54 million and 44.1 million shares respectively, also yielding a ratio of 0.2165.

In my view, plaintiffs' characterization offers the more legitimate basis for comparison because as indicated above, the larger Sunbeam equity component could have *ex ante*, cut in the public's favor. Consequently, M & F's and the public's pre-merger holdings are a more appropriate basis for comparing their respective settlement consideration.

Mentor's second argument criticizing the purported parity of the two sets of warrants rings truer. Mentor accurately observes that the M & F Warrants enjoy a five-year term commencing August 1998 and expiring August 2003. While the public's warrants carry the same expiration date, they have yet to be issued. Thus, the public's warrants will only carry a three-to-four-year duration. Although this diminished duration has a material impact on the warrants' value, it is at least partially offset by the fact that the public's warrants will be exempt from registration and thus to some extent liquid.

Finally, I note that while accepting the proposition that the M & F Settlement provides a basis for assessing the fairness and reasonableness of the public shareholders' settlement, by no means must the two settlements be identical. While similar, the two settlements are nevertheless the work of separate negotiations constrained ***1210** by different facts and unique negotiating leverage. Thus, Mentor's complaint that M & F "got more" does not strike me as a legally cognizable claim.

C. *Inadequate Notice of Settlement*

[3] The settling parties sent notice of the September 29, 1999 settlement hearing to Coleman's public shareholders on August 25, 1999. While Rules 23(e) and 23.1 do not specifically address notice requirements with respect to settlement hearings, it is the Court of Chancery's general practice that settling parties provide notice to class members between 30 and 45 days prior to the settlement hearing. [FN15] In light of the parties' August 25 mailing, I see no grounds for Mentor's objection to notice.

FN15. DONALD J. WOLFE, JR. & MICHAEL A. PITTENGER, CORPORATE AND COMMERCIAL PRACTICE IN THE DELAWARE COURT OF CHANCERY , § 9-4(e) at 658 (1998).

Moreover, I find no grounds for Mentor's objection to the contents of the notice. The Supreme Court has held that notice is sufficient if it provides a fair description and advises class members of their substantial interests involved. [FN16] The settling parties' August 25 notice certainly achieves this limited objective.

FN16. *Polk v. Good*, 507 A.2d at 538.

D. *Scope of Released Claims and Parties*

Mentor next objects to the breadth of plaintiffs' universal release of all claims relating to the transaction and later events. Admittedly, some potential claims that might have been brought are absent from plaintiffs' complaint. Specifically, the plaintiffs did not bring a derivative claim against Sunbeam for breach of contract with respect to certain representation and warranty provisions in the merger agreement that Sunbeam likely violated (such as the accuracy of public filings, compliance with SEC regulations).

Plaintiffs' most likely remedy for breach of contract would have been money damages. As noted before, however, a judgment for damages against a company in serious financial distress often proves an illusory remedy. And if the Court were to grant rescission or injunctive relief terminating the merger, plaintiffs' would find themselves holding a 20% minority stake of a Sunbeam

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subsidiary whose market price would undoubtedly suffer from Sunbeam's control. Consequently, whether plaintiffs obtain relief directly as a class on breach of fiduciary duty grounds or derivatively pursuant to a breach of contract claim is largely immaterial as both results are problematic on a practical level.

In addition to certain claims never brought in this Court, the proposed settlement releases all federal causes of action plaintiffs might hold as a result of the Public Merger. Though the United States Supreme Court has made clear that a state court has the power to approve certain settlements releasing claims as to which federal courts have exclusive jurisdiction, [FN17] it is nevertheless vital for this Court to examine the release of federal claims with particular skepticism. Here, my general apprehension about releasing federal claims is assuaged by the fact that there is no pending federal litigation involving Coleman or any Coleman directors.

FN17. *Matsushita Electric Indus. Co. Ltd. v. Epstein,* 516 U.S. 367, 116 S.Ct. 873, 134 L.Ed.2d 6 (1996).

The proposed settlement also releases claims that could be asserted by class members in the Florida Litigation, but *only* to the extent that such claims arose from a class member's interest in Sunbeam common stock acquired in the Public Merger. This aspect of the release resulted from defendants' concern that a class member who purchased Coleman share *after* the announcement of the Public Merger and *before* the drop in Sunbeam's stock price might contend that he or she has standing in the federal action as a "de facto purchaser" of Sunbeam stock. Although ***1211** this aspect of the settlement troubled the Court at first, on further reflection it is not problematic. It is far from clear that plaintiffs here would be able to succeed on this "de facto purchaser" theory, but if they could, the benefit defendants seek through this settlement would be largely for naught. To avoid this risk, the release confirms that the Coleman stockholders will not be given a second opportunity to assert their claims by contending that the conversion of their Coleman stock into Sunbeam stock confers standing upon them to join the federal action. I see nothing unfair about this provision, and Mentor offers no authority or argument to the contrary.

[4] Mentor also objects that Coleman shareholders who demand appraisal will still have their non-appraisal claims against defendants released. It complains that the settlement coerces the public shareholders into foregoing their appraisal rights by providing that exercise of those rights will result in the release of their fiduciary duty claims for no consideration. Again, Mentor cites no authority or specific grounds for its objection.

[5] This objection also misses the mark. *Selfe v. Joseph,* [FN18] the Supreme Court rejected the same argument by a dissenting stockholder who objected to the settlement because dissenting stockholders who did not waive their appraisal right and instead accepted the settlement, "receive[d] 'no benefit' from the settlement." [FN19] Here, Mentor (like Mr. Self *Selfe v. Jos*)h misunderstands the benefit offered to the public shareholder. Under this settlement, the public shareholders are given the opportunity to waive all claims and appraisal rights in order to receive warrants valued at approximately $2.50 each. This is clearly a benefit resulting from the settlement. As the *Selfe* Court recognized, the election of an alternative remedy under the appraisal statute [FN20] does not negate the fact that the class of shareholders who have accepted the merger consideration have received a benefit. Mentor has the right to share in the benefit, or to pursue its appraisal right. It does not have the right to collect the benefit, secure a floor value for its interest, and then pursue an appraisal remedy as well.

FN18. Del.Supr., 501 A.2d 409, 410-411 (1985).

FN19. *Id.* at 411.

FN20. 8 *Del. C.* § 262.

Similarly, Mentor's coercion argument fails because all Coleman public shareholders are similarly situated--they may seek appraisal if they dissented from the merger or they may accept the settlement's benefit. If dissenters participate in the settlement consideration and also pursue their appraisal claim, the value of the settlement is significantly diminished from defendants' perspective. The outcome urged by Mentor would cut against the policy of this State favoring the reasonable and fair settlement of claims.

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Mentor's chief objection to the release's scope, however, concerns a certain party to the transaction that went unnamed as a defendant. Mentor argues that claims should have been brought against the one solvent party involved in this "disaster": M & F. Plaintiffs counter that while suing Ron Perelman, chairman and CEO of M & F, is never far from their minds, this time it just was not feasible. Although I am less troubled than the objector that M & F was never named as a defendant, I am a bit puzzled by the fact that all potential claims against it, and all its affiliates and advisors, are nevertheless to be released under the proposed settlement.

Despite Mentor's palpable ire over M & F's release, it does not offer the Court a single theory under which M & F might be held liable to the public shareholders. And even if it had, it is far from clear that plaintiffs did not hold out the possibility of suing M & F in the course of settlement negotiations. Here, the objector would *1212 have the Court reject a settlement that offers something of real value to class members on the strength of what?--a highly speculative, potential claim against M & F that would be litigated for years. This is surely not the outcome the shareholder class (including Mentor) seeks.

IV. ATTORNEYS' FEES

[6] Class counsel seek 30% of the $12,324,592 settlement fund or $3,697,378. Class counsel will receive the same warrants as the settling shareholders.

[7] Fee awards are subject to the same rigorous scrutiny applied to the class action settlement itself. The principal factors the Court considers for purposes of determining fee awards in shareholder suits are (1) the time and effort expended by counsel; (2) the difficulty and complexity of the litigation; (3) the standing and ability of counsel; (4) whether the fees are contingent; (5) the stage at which the litigation ended; (6) whether plaintiff can rightly receive all the credit for the benefit conferred or only a portion thereof and; (7) the size of the benefit conferred. [FN21]

FN21. *Sugarland Indus. Inc. v. Thomas*, Del.Supr., 420 A.2d 142 (198(*see also Del. Law. R. Prof. Conduct* 1.5(a).

Plaintiffs contend that the seventh factor, size of the benefit conferred, should drive the fee award decision. [FN22] This was indeed the Court's holding in *In re Metro Mobile* a case upon which plaintiffs' heavily rely. It is worth noting, however, that the *Metro Mobile* Court found a fee award of 16.67% to be "generous but not unreasonable." [FN23] Then-Vice Chancellor Berger's characterization of a 16.67% award as generous surely calls into question the reasonableness of today's 30% request.

FN22. *In re Metro Mobile CTS, Inc. Shareholders Litig.*, Del.Ch., C.A. No. 12300, Berger, V.C. (Aug. 18, 1993).

FN23. *Id.* at 7.

Furthermore, the other six factors of the fee award analysis also figure importantly in protecting the interests of a class when such interests are no longer aligned with class counsel. In this instance, I will elaborate on the first factor, time and effort expended by counsel, and the fifth factor, the stage at which the litigation ended.

Plaintiffs filed suit June 25, 1998. By October 21, 1998, less than four months after filing, class counsel and defendants entered into a Memorandum of Understanding ("MOU") providing for settlement of the public shareholders' claims. During those intervening months, plaintiffs' counsel reviewed documents and "conducted investigations and evaluations of the facts and law relating to matters set forth in [their complaint]." [FN24] Plaintiffs' counsel did not take a single deposition; nor did they file or defend a single pre-trial motion. Although class counsel performed confirmatory discovery after the MOU was entered into, which included three depositions, confirmatory discovery in settlement situations is hardly the equivalent of adversarial pre- trial discovery.

FN24. Plaintiffs' Brief in Support of Settlement at 9. Although not a relevant factor unde *Sugarland Industries, Inc.* class counsel notes that they logged 760 hours in achieving the settlement, for an hourly rate of $4865.

While the thought of frivolous discovery and motion practice intended solely to build up a paper trail of filings and logged hours is unappetizing to this Court, I am also reluctant to carve out 30% of a settlement fund for lawyers who appear to have

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expended a less than heroic measure of time and effort pursuing plaintiffs' claims. What is more, it appears that class counsel largely piggy-backed M & F's negotiation and settlement, essentially mimicking the bargaining position of the settling party that preceded them.

In these circumstances, it is within the Court of Chancery's discretion to reduce class counsel's fee award. [FN25] Accordingly, *1213 award class counsel 10% of the settlement fund.

FN25. *See, e.g., Field v. S & C Electric Co.*, Del. Ch., C.A. No. 11175, Berger, V.C., 1990 WL 60644 (May 1, 1990); *In re North Am. Philips Stockholders Litigation*, Del.Ch., C.A. No. 9178, Jacobs, V.C., 198 WL 28434 (Dec. 16, 1987); *In re MAXXAM Group, Inc. Stockholders Litigation*, Del.Ch., C.A. No. 8636, Allen, C., 1987 WL 10016 (April 16, 1987).

V. CONCLUSION

Based on all of the foregoing reasons, I find the proposed settlement of this class action to be fair, reasonable and in the best interests of the class. I also award class counsel fees in the amount of 10% of the settlement fund.

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END OF DOCUMENT

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SETTLEMENT AGREEMENT

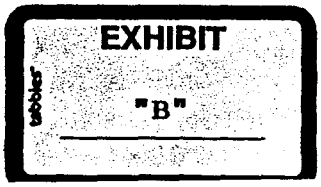
SETTLEMENT AGREEMENT, dated as of August 12, 1998, by and between Sunbeam Corporation, a Delaware corporation ("Sunbeam" or the "Company"), and Coleman (Parent) Holdings Inc., a Delaware corporation ("Coleman Parent").

For the purposes of this Agreement, Sunbeam, together with each direct or indirect parent, subsidiary, division, or affiliated corporation or entity, and each employee, agent, attorney, representative, administrator, executor, receiver, officer, director, or stockholder of any such corporation or entity, and any other person, firm, corporation or entity now or hereafter affiliated in any manner with any of them or claiming through or in the right of any of them and all of their respective predecessors, successors, assigns, heirs, executors and administrators (but excluding for all purposes under this Agreement, Mr. Albert J. Dunlap, former Chief Executive Officer of Sunbeam, Mr. Russell A. Kersh, former Executive Vice President of Sunbeam, Arthur Andersen LLP, Sunbeam's independent auditors, PriceWaterhouseCoopers, consultants to Sunbeam, and any financial advisor to Sunbeam, and each employee, agent, attorney, representative, administrator, executor, receiver, officer, director, or stockholder of any such corporation or entity, and any other person, firm, corporation or entity now or hereafter affiliated in any manner with any of them or claiming through or in the right of any of them and all of their respective predecessors, successors, assigns, heirs, executors and administrators), are collectively hereinafter referred to as the "Sunbeam Group"; and Coleman Parent, together with each direct or indirect parent, subsidiary, division, or affiliated corporation or entity, and each employee, agent, attorney, representative, administrator, executor, receiver, officer, director, or stockholder of any such corporation or entity, and any other person, firm, corporation or entity now or hereafter affiliated in any manner with any of them or claiming through or in the right of any of them and all of their respective predecessors, successors, assigns, heirs, executors and administrators, are collectively hereinafter referred to as the "Coleman Group".

WITNESSETH

WHEREAS, CLN Holdings Inc., a Delaware corporation ("CLN Holdings"), was the indirect beneficial owner of approximately 82% of the outstanding common stock, par value $.01 per share (the "Coleman Common Stock"), of The Coleman Company, Inc., a Delaware corporation ("Coleman"); and

WHEREAS, pursuant to an Agreement and Plan of Merger, dated as of February 27, 1998 (the "Holdings Merger Agreement"), by and among Sunbeam, Laser Acquisition Corp., a Delaware corporation and, as of such date, a wholly owned subsidiary of Sunbeam ("Laser Acquisition"), CLN Holdings, as of such date, a wholly owned subsidiary of Coleman Parent, and Coleman Parent, CLN Holdings was merged with and into Laser Acquisition (the "Holdings Merger"), with the surviving corporation becoming an indirect wholly owned subsidiary of Sunbeam, and pursuant to which Coleman Parent received certain shares of common stock, par value $.01 per share, of Sunbeam ("Sunbeam Common Stock"); and



WHEREAS, pursuant to an Agreement and Plan of Merger, dated as of February 27, 1998 (the "Coleman Merger Agreement"), by and among Sunbeam, Camper Acquisition Corp., a Delaware corporation anda wholly owned subsidiary of Sunbeam ("Camper Acquisition"), and Coleman, Camper Acquisition is to be merged with and into Coleman (the "Coleman Merger"), with the surviving corporation becoming an indirect wholly owned subsidiary of Sunbeam; and

WHEREAS, as a result of the Holdings Merger, Sunbeam acquired an indirect approximately 82% interest in Coleman (the "Coleman Acquisition"); and

WHEREAS, Sunbeam and Coleman Parent are parties to a Registration Rights Agreement, dated as of March 29, 1998 (the "Registration Rights Agreement"), pursuant to which Sunbeam agreed to provide certain registration rights to Coleman Parent; and

WHEREAS, following the dismissal by Sunbeam of certain of its executive officers in mid-June 1998, Coleman Parent has made available to Sunbeam certain senior officers employed by members of the Coleman Group to serve as senior executive officers of Sunbeam (the "Senior Executives") and has provided certain other management support to Sunbeam, and Sunbeam desires to continue the service of the Senior Executives and such management support; and

WHEREAS, Coleman Parent and Sunbeam believe it is desirable that Sunbeam put in place as promptly as possible a permanent management team to prevent jeopardizing the ongoing operations and financial viability of Sunbeam; and

WHEREAS, Coleman Parent believes that it possesses legal and equitable claims against Sunbeam arising out of the Coleman Acquisition and out of what it contends were certain breaches of contract and fraudulent and negligent or other misrepresentations and omissions made to Coleman Parent and its representatives in connection therewith (the "Claims"), and Sunbeam disputes such Claims; and

WHEREAS, there are also now pending or may be filed putative class actions in which Sunbeam is named as a defendant and in which Coleman Parent is a class member (the "Class Actions"), and Sunbeam denies liability with respect to and intends to contest the claims that have been asserted in the Class Actions; and

WHEREAS, the accountants who audited Sunbeam's 1997 financial statements, assisted by another firm of accountants, are in the process of reviewing those financial statements, and believe, as has been publicly announced, that it will be necessary to restate those financial statements by reflecting a variety of adjustments the magnitude of which has not yet been determined; and

WHEREAS, Sunbeam and Coleman Parent desire to terminate the disputes between them, and desire to assure one another that Coleman Parent will not prosecute the Claims or any related or potential claims arising out of or relating to the Coleman Acquisition, directly or indirectly in any capacity, against the Sunbeam Group, so as to avoid the substantial burdens and expense of litigation and the interference with the business and operations of Sunbeam and with the work of its management and employees and to obtain the continued services of certain executives

and employees of the Coleman Group, and in accordance with the terms and provisions hereof, that Coleman Parent and Sunbeam each forever release, waive and discharge any and all manner of actions, causes of action, proceedings, suits, claims, demands, liens, debts, accounts, obligations, rights, costs, contracts, agreements, promises, controversies, judgments, expenses, demands, damages and liabilities, of any nature whatsoever, in law or in equity, whether or not now foreseen, known, suspected, matured, accrued or claimed, and whether or not asserted in litigation, including court costs and attorneys' fees (each an "Action and Liability" and collectively, "Actions and Liabilities"), which any member of the Coleman Group controlling, controlled by or under common control with Coleman Parent (such persons, together with Coleman Parent, the "Coleman Controlled Group") may have against any member of the Sunbeam Group and which any member of the Sunbeam Group controlled by Sunbeam (such persons, together with Sunbeam, the "Sunbeam Controlled Group") may have against any member of the Coleman Group as of the effective date hereof or prior thereto in any manner arising out of or relating to the Coleman Acquisition, irrespective of any present lack of knowledge on the part of either of them of any such possible Action and Liability, but excluding any claim for breach of this Agreement or the agreements and documents entered into or delivered pursuant hereto;

NOW, THEREFORE, in consideration of the respective covenants, agreements and conditions hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be bound hereby, the parties hereto agree as follows:

1. Issuance of Warrants; Closing.

(a) On the basis of the representations, warranties, covenants and agreements and subject to the satisfaction or waiver (to the extent permitted) of the applicable conditions expressly set forth herein, at the closing of the transactions contemplated by this Section 1 (the "Closing"):

(i) Sunbeam shall issue to Coleman Parent certain warrants to purchase shares of Sunbeam Common Stock (the "Warrants") by duly executing and delivering to Coleman Parent a Warrant Agreement in the form attached as Exhibit A hereto (the "Warrant Agreement");

(ii) Sunbeam and Coleman Parent shall enter into an amendment to the Registration Rights Agreement, in the form attached as Exhibit B hereto (as so amended, the "Amended Registration Rights Agreement");

(iii) Sunbeam and Coleman Parent agree to be bound by the releases and covenants set forth in Section 2 of this Agreement;

(iv) Coleman Parent agrees to supply management services of the Senior Executives, and to the covenants and provisions of Section 3 of this Agreement; and

(v) Sunbeam and Coleman Parent agree to be bound by the provisions regarding the restrictions on transfer on the shares of Sunbeam Common Stock received by Coleman Parent in the Holdings Merger and the Warrants set forth in Section 4 of this Agreement.

(b) The Closing shall take place on the first day when all conditions thereto set forth herein shall be satisfied or waived or such other date as Sunbeam and Coleman Parent may agree in writing (the "Closing Date"), but in no event sooner than the tenth day following the mailing of the letter to Sunbeam shareholders contemplated by Section 7. The Closing shall take place on the Closing Date at 10:00 a.m., New York City time, at the offices of Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York and shall be deemed effective as of the opening of business on the Closing Date.

(c) At the Closing, Sunbeam shall deliver or cause to be delivered to Coleman Parent, in addition to the Warrant Agreement, such other instruments or documents as Coleman Parent may reasonably request.

2. Granting of Releases and Indemnification.

(a) At the Closing, simultaneously with receipt by Coleman Parent of the Warrants, and without any further action by any of the parties hereto, each of the following shall be fully and legally effective:

(i) Coleman Parent shall, on behalf of itself and on behalf of each other member of the Coleman Controlled Group, remise, release and forever discharge the Sunbeam Group of and from all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, and any and all claims, demands and liabilities whatsoever of every name and nature, both in law and in equity, against any of the Sunbeam Group or any of their predecessors, successors or assigns, which Coleman Parent or any other member of the Coleman Controlled Group has or ever had from the beginning of the world to the Closing with respect to or arising out of the Coleman Acquisition or any alleged misrepresentations and omissions and/or breach of contract by any member of the Sunbeam Group and parties acting on behalf of any member of the Sunbeam Group in connection with the Coleman Acquisition, including with respect to the Actions and Liabilities; provided that neither the foregoing release nor the dismissals or withdrawals described in this Section 2(a) shall apply to the rights of Coleman Parent and any other member of the Coleman Controlled Group under Article IX of the Holdings Merger Agreement, any breach or failure to comply with this Agreement, the Warrant, the Amended Registration Rights Agreement or the transactions contemplated hereby or thereby, the transactions contemplated by the Coleman Merger Agreement (including the Coleman Merger), which shall not be terminated or amended in any respect hereby, or shall otherwise affect Coleman Parent's right to enforce this Agreement, the Warrant or the Amended Registration Rights Agreement in accordance with its or their terms.

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(ii) In the event any member of the Coleman Controlled Group pursues a claim against any person(s) not released hereby involving the matters that are the subject of the release set forth in Section 2(a)(i) and it is finally judicially determined that such person(s) are entitled directly or indirectly to indemnification or contribution from any member of the Sunbeam Controlled Group for any amounts they are required to pay to any member of the Coleman Controlled Group in connection with such claims, or to reimbursement of litigation expenses solely attributable to such claims of any member of the Coleman Controlled Group (each a "Sunbeam Group Indemnification Obligation"), Coleman Parent will indemnify and hold harmless each member of the Sunbeam Controlled Group against such Sunbeam Group Indemnification Obligation. No member of the Sunbeam Controlled Group will enter into any settlement of a Sunbeam Group Indemnification Obligation without the prior written consent of Coleman Parent, which shall not be unreasonably withheld. Any amounts so paid by a member of the Sunbeam Controlled Group in a settlement so consented to by Coleman Parent shall be treated for purposes hereof as a Sunbeam Group Indemnification Obligation.

(iii) Sunbeam, on behalf of itself and on behalf of each other member of the Sunbeam Controlled Group, shall remise, release and forever discharge the Coleman Group of and from all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, and any and all claims, demands and liabilities whatsoever of every name and nature, both in law and in equity, against any of the Coleman Group or any of their predecessors, successors or assigns, which Sunbeam or any member of the Sunbeam Controlled Group has or ever had from the beginning of the world to the Closing with respect to or arising out of the Coleman Acquisition or any alleged misrepresentations and omissions and/or breach of contract by any member of the Coleman Group and parties acting on behalf of any member of the Coleman Group in connection with the Coleman Acquisition, including with respect to the Actions and Liabilities; provided that neither the foregoing release nor the dismissals or withdrawals described in this Section 2(a) shall apply to the rights of Sunbeam and any other member of the Sunbeam Controlled Group under Article IX of the Holdings Merger Agreement, any breach or failure to comply with this Agreement, the Warrant, the Amended Registration Rights Agreement or the transactions contemplated hereby or thereby, the transactions contemplated by the Coleman Merger Agreement (including the Coleman Merger), which shall not be terminated or amended in any respect hereby, or shall otherwise affect Sunbeam's right to enforce this Agreement, the Warrant or the Amended Registration Rights Agreement in accordance with its or their terms.

(iv) In the event any member of the Sunbeam Controlled Group pursues a claim against any person(s) not released hereby involving the matters that are the subject of the release set forth in Section 2(a)(iii) and it is finally judicially determined that such person(s) are entitled directly or indirectly to indemnifica-

tion or contribution from any member of the Coleman Controlled Group for any amounts they are required to pay to any member of the Sunbeam Controlled Group in connection with such claims, or to reimbursement of litigation expenses solely attributable to such claims of any member of the Sunbeam Controlled Group, (each, a "Coleman Group Indemnification Obligation"), Sunbeam will indemnify and hold harmless each member of the Coleman Controlled Group against such Coleman Group Indemnification Obligation. No member of the Coleman Controlled Group will enter into any settlement of a Coleman Group Indemnification Obligation without the prior written consent of Sunbeam, which shall not be unreasonably withheld. Any amounts so paid by a member of the Coleman Controlled Group in a settlement so consented to by Sunbeam shall be treated for purposes hereof as a Coleman Group Indemnification Obligation.

(v) Sunbeam, on behalf of itself, and on behalf of each other member of the Sunbeam Controlled Group, and Coleman Parent, on behalf of itself and on behalf of each other member of the Coleman Controlled Group, agree to indemnify and hold harmless one another from and against any and all Actions and Liabilities arising from, or in connection with, any action or proceeding, brought by, or prosecuted by, or on the initiative of, either of them, or by any of their predecessors, successors or assigns, contrary to the provisions of this Agreement. It is further agreed that this agreement of indemnity shall be deemed breached and a cause of action shall be deemed to have accrued thereon immediately upon the commencement of any action contrary to this Agreement, and that in any such action this Agreement may be pleaded by either of them as a defense, or either of them may assert this Agreement by way of counterclaim or cross-claim in any such action.

(vi) This Agreement shall inure to the benefit of and shall be binding upon Sunbeam and Coleman Parent, and to the benefit of and shall be binding upon each person or entity in the Sunbeam Group and the Coleman Group.

(b) Coleman Parent agrees that it shall opt out, as to and only as to any claims against any member of the Sunbeam Group, of any class that may be certified in any of the Class Actions or in any other action that may be certified as a class action with respect to or arising out of any other matter released hereby.

3. Provision of Management Services.

(a) The parties hereto acknowledge that Coleman Parent has caused other members of the Coleman Group to make available to Sunbeam the services of certain employees and Senior Executives and has encouraged such persons to continue to provide services to Sunbeam as employees of Sunbeam.

(b) Coleman Parent agrees that it shall, and it shall use its reasonable efforts to cause the other members of the Coleman Group to, continue to, for a minimum period of 36 months from the date hereof, make available to Sunbeam the services of Coleman

Group's employees who are Senior Executives, or who become Senior Executives, for so long as they remain employees of a member of the Coleman Group and otherwise to continue to provide advice and assistance to Sunbeam in connection with the business and operations of Sunbeam consistent with that provided to date; provided, however, that, other than pursuant to the employment arrangements currently in place between such employees and members of the Coleman Group, no member of the Coleman Group shall be required bear any incremental expense with respect to any Senior Executive in order to comply with the foregoing.

(c) Sunbeam agrees to pay the compensation of any such persons who become employees of Sunbeam in accordance with the terms of the employment arrangements entered into by Sunbeam with such persons. This Agreement shall not prevent any of the Senior Executives from continuing to perform services for members of the Coleman Group to the extent that the provision of such services does not materially interfere with the performance of services by the Senior Executive for Sunbeam under his employment arrangements with Sunbeam.

(d) Coleman Parent agrees to use its reasonable efforts to cause the other members of the Coleman Group to continue, for a period of 36 months from the date hereof, to provide assistance and support to Sunbeam on a basis consistent with the manner in which such assistance and support are generally provided to other companies in which members of the Coleman Group have a substantial interest (and without the payment of additional consideration by Sunbeam to Coleman Parent, other than with respect to the reimbursement of out-of-pocket expenses paid to third parties) and of a similar nature to those which have been so provided to Sunbeam from time to time from mid-June 1998 through the date hereof, including as to the following matters:

(i) financings, and dealings with financing sources and the capital markets;

(ii) investor and public relations;

(iii) acquisitions, divestitures and other extraordinary transactions;

(iv) executive benefits and compensation and other personnel matters; and

(v) compliance, litigation, insurance, regulatory and other legal matters.

4. Restrictions on Transfer of Securities. Coleman Parent hereby agrees not to, directly or indirectly, for a period of three (3) years from the date hereof, Transfer (as such term is defined in Section 7.1 of the Holdings Merger Agreement) (A) any shares of Sunbeam Common Stock received pursuant to the terms of the Holdings Merger Agreement or (B) any of the Warrants or the Warrant Shares (as defined in the Warrant Agreement), in either case in whole or in part, other than to one of its Affiliates (as such term is de-

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fined in the Holdings Merger Agreement) who agrees in writing to be bound by the terms of this Section 4, except that (A) the holder or holders of such shares of Sunbeam Common Stock may at any time or from time to time Transfer so many of such shares of Sunbeam Common Stock as represent in the aggregate seventy-five percent (75%) of such shares of Sunbeam Common Stock, and (B) the holder or holders of the Warrants or the Warrant Shares may at any time or from time to time Transfer so many of the Warrants or the Warrant Shares as represent in the aggregate fifty (50%) of the Warrant Shares Amount (as defined in the Warrant Agreement). The provisions of this Section 4 shall not be applicable, and Coleman Parent shall be free to Transfer any and all shares of Sunbeam Common Stock, Warrants and Warrant Shares, (i) following any change of control of Sunbeam or (ii) in connection with any transaction in which the holders of all of the outstanding shares of Sunbeam Common Stock have the opportunity to Transfer at least 50% of their shares of Sunbeam Common Stock on the same terms. The provisions of this Section 4 shall supersede any and all other restrictions on Transfer that Coleman Parent or any of its Affiliates may have agreed to with Sunbeam or any of its Affiliates.

5. Representations and Warranties of Sunbeam. Sunbeam hereby represents and warrants to Coleman Parent as follows:

(a) Due Authorization. This Agreement has been duly authorized by all necessary corporate action on the part of Sunbeam, and no other corporate actions or proceedings on the part of Sunbeam (including any action on the part of its stockholders) are necessary to authorize this Agreement or the transactions contemplated hereby. This Agreement has been duly executed by a duly authorized officer of Sunbeam and constitutes a valid and binding agreement of Sunbeam enforceable against it in accordance with its terms. The Audit Committee of the Board of Directors of Sunbeam (the "Audit Committee") has expressly approved the transactions contemplated hereby as contemplated by Paragraph 312 ("Paragraph 312") of the New York Stock Exchange ("NYSE") Listed Company Manual and has determined that delay in securing shareholder approval of the transactions contemplated hereby would seriously jeopardize the financial viability of the Company. Upon application duly made by Sunbeam, the NYSE has advised that it has accepted Sunbeam's reliance on the exception to the shareholder approval policy of Paragraph 312 as contained therein in connection with the transactions contemplated hereby (the "Exception").

(b) Due Organization. Sunbeam is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has the requisite corporate power to enter into and perform this Agreement and to carry on its business as it is now being conducted.

(c) No Conflicts. No filing with, and no permit, authorization, consent or approval of, any governmental or regulatory authority is necessary for the consummation by Sunbeam of the transactions contemplated hereby, other than as may be required under the Hart-Scott-Rodino Antitrust Improvements Act with respect to the exercise of the Warrants. Neither the execution and delivery of this Agreement by Sunbeam nor the

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consummation by Sunbeam of the transactions contemplated hereby, nor compliance by Sunbeam with any of the provisions hereof, will (i) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of Sunbeam; (ii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any material contract or of any material license, franchise, permit, concession, certificate of authority, order, approval, application or registration of, from or with any governmental authority to which Sunbeam is a party or by which it or any of its properties or assets may be bound; or (iii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Sunbeam or any of its properties or assets.

(d) Validity of Warrants and Underlying Shares. At the Closing, the issuance of the Warrants will have been duly authorized and, upon their issuance pursuant to the terms of this Agreement, the Warrants will be validly issued and will not be subject to any preemptive or similar right other than the rights and obligations under the Warrant Agreement. All shares of Sunbeam Common Stock to be issued upon the exercise of the Warrants, when issued, will be duly authorized and validly issued, fully paid and nonassessable and will not be subject to any preemptive or similar right.

(e) Capitalization. The authorized capital stock of Sunbeam consists of 500,000,000 shares of Sunbeam Common Stock, and 2,000,000 shares of preferred stock, par value $.01 per share, of Sunbeam. As of the date hereof, (i) 100,860,129 shares of Sunbeam Common Stock were issued and outstanding (excluding any shares of Sunbeam Common Stock issued upon the exercise of Sunbeam Stock Options (as defined below) since August 6, 1998); (ii) 7,199,452 shares of Sunbeam Common Stock were issuable upon the consummation of the Coleman Merger Agreement; (iii) 13,242,050 shares of Sunbeam Common Stock were issuable in accordance with the terms of the Zero Coupon Convertible Senior Subordinated Debentures due 2018 of the Company; and (iv) no shares of Sunbeam preferred stock were issued and outstanding. As of the date hereof, not more than 9,000,000 shares of Sunbeam Common Stock were issuable upon exercise of vested and unvested employee and non-employee stock options (the "Sunbeam Stock Options") outstanding under all stock option plans of Sunbeam or granted pursuant to employment agreements (although Sunbeam is contesting the validity of certain of such Sunbeam Stock Options). As of the date hereof, no shares of Sunbeam Common Stock were held as treasury shares. All of the issued and outstanding shares of Sunbeam Common Stock are validly issued, fully paid and nonassessable and free of preemptive rights. As of the date hereof, except as set forth above, there are no shares of capital stock of Sunbeam issued or outstanding or, except as set forth above, any options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating Sunbeam to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities, or the capital stock or securities of Sunbeam. There are no notes, bonds, debentures or other indebtedness of Sunbeam having the right to vote (or convertible into or exchangeable for securities having the right to vote) on any matters upon which stockholders of Sunbeam may vote.

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(f) Brokers. Other than Blackstone Financial Group, which has acted as financial advisor to the Special Committee of the Sunbeam Board, no broker, investment banker or other person is entitled to any broker's, finder's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Sunbeam or any member of the Sunbeam Group.

6. Representations and Warranties of Coleman Parent. Coleman Parent hereby represents and warrants to Sunbeam as follows:

(a) Due Authorization. This Agreement has been duly authorized by all necessary corporate action on the part of Coleman Parent, and no other corporate actions or proceedings on the part of the Coleman Parent (including any action on the part of its stockholders) are necessary to authorize this Agreement or the transactions contemplated hereby. This Agreement has been duly executed by a duly authorized officer of Coleman Parent and constitutes a valid and binding agreement of Coleman Parent enforceable against it in accordance with its terms.

(b) Due Organization. Coleman Parent is a corporation duly organized, validly existing and in good standing under the laws of State of Delaware and has the requisite corporate power to enter into and perform this Agreement.

(c) No Conflicts. No filing with, and no permit, authorization, consent or approval of, any governmental or regulatory authority is necessary for the consummation by Coleman Parent of the transactions contemplated hereby, other than as may be required under the Hart-Scott-Rodino Antitrust Improvements Act with respect to the exercise of the Warrants. Neither the execution and delivery of this Agreement by Coleman Parent nor the consummation by Coleman Parent of the transactions contemplated hereby, nor compliance by Coleman Parent with any of the provisions hereof, will (i) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of Coleman Parent; (ii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any material contract or of any material license, franchise, permit, concession, certificate of authority, order, approval, application or registration of, from or with any governmental authority to which Coleman Parent is a party or by which it or any of its properties or assets may be bound; or (iii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Coleman Parent or any of its properties or assets.

(d) Acquisition of Warrants for Investment. Coleman Parent is acquiring the Warrants (and will acquire any Warrant Shares upon exercise of the Warrants) for its own account for investment purposes only and not with a view toward or for a sale in connection with, any distribution thereof, or with any present intention of distributing or selling any of such in violation of federal or state securities laws.

(e) Brokers. No broker, investment banker or other person is entitled to any broker's, finder's or other similar fee or commission in connection with the transactions

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contemplated by this Agreement based upon arrangements made by or on behalf of Coleman Parent or any member of the Coleman Group.

7. Covenants.

(a) Within one day following the date hereof, Sunbeam shall cause to be mailed to all shareholders of Sunbeam a letter informing them of the transactions contemplated hereby as contemplated and required by Paragraph 312 of the NYSE Listed Company Manual and indicating that the Audit Committee has expressly approved the Exception in light of the Audit Committee's determination that delay in securing shareholder approval of the transactions contemplated hereby would seriously jeopardize the financial viability of the Company and that the NYSE has accepted the Company's reliance on the Exception .

(b) The anti-dilution provisions of the Warrant shall be given retroactive effect to the date hereof.

8. Specific Performance. The parties acknowledge that money damages are an inadequate remedy for breach of this Agreement. Therefore, the parties agree that each of them has the right, in addition to (and not in lieu of) any other right they may have under this Agreement or otherwise, to specific performance of this Agreement in the event of any breach hereof by any other party.

9. Conditions to the Obligations of both Parties. The obligations of each of Sunbeam and Coleman Parent to effect the transactions contemplated hereby shall be conditioned on the non-existence of any order, decree or injunction of a court of competent jurisdiction which restrains the consummation of the transactions contemplated by this Agreement.

10. Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by mutual agreement of the Boards of Directors of Coleman Parent and Sunbeam; or

(b) by Coleman Parent if the Warrants to be issued to Coleman Parent pursuant hereto have not been issued or will not be issued at the Closing or if there has been a material violation or breach by Sunbeam of any agreement, representation or warranty contained in this Agreement which has rendered the satisfaction of any condition to the obligations of Coleman Parent impossible and such violation or breach has not been waived by Coleman Parent; or

(c) by Sunbeam if there has been a material violation or breach by Coleman Parent of any agreement, representation or warranty contained in this Agreement which has rendered the satisfaction of any condition to the obligations of Sunbeam impossible and such violation or breach has not been waived by Sunbeam.

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In the event of termination and abandonment of this Agreement by Coleman Parent or Sunbeam or both of them pursuant to the terms of this Section 10, written notice thereof shall forthwith be given to the other party and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned, without further action by any of the parties hereto.

11. Expenses. All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby will be paid by the party incurring such costs and expenses.

12. Tax Matters. Coleman Parent shall in good faith provide to Sunbeam information concerning the tax treatment under the Internal Revenue Code of 1986, as amended (the "Code"), of the transactions contemplated hereby. Sunbeam shall report such transactions for all tax purposes consistent with such information and take no position with any taxing authority inconsistent therewith. Coleman Parent and Sunbeam shall report the Holdings Merger as a reorganization within the meaning of Code Section 368(a) for all tax purposes.

13. Best Efforts. Each of the parties hereto agrees to use its best efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement. In case at any time after the Closing any further action is necessary or desirable to carry out the purposes of this Agreement, the proper officers and directors of each corporation which is a party to this Agreement shall take all such necessary action.

14. Parties in Interest; Assignments. This Agreement is binding upon and is solely for the benefit of the parties hereto, the Sunbeam Group and the Coleman Group and their respective successors and legal representatives.

15. Entire Agreement. This Agreement and the agreements to be entered into and delivered pursuant hereto constitutes the entire agreement between Sunbeam and Coleman Parent with respect to the subject matter hereof, and it is expressly understood and agreed that this Agreement may not be altered, amended, modified, or otherwise changed in any respect or particular whatsoever, except by a writing duly executed by authorized representatives of both Sunbeam and Coleman Parent. No party to this Agreement has relied upon any representation or warranty, written or oral, except as expressly included herein.

16. Amendments. This Agreement may not be modified, amended, altered or supplemented except upon the execution and delivery of a written agreement executed by the parties hereto.

17. Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in person, by telecopy or other standard form of telecommunication, or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Coleman Parent:

Coleman (Parent) Holdings Inc.
c/o MacAndrews & Forbes Holdings Inc.
35 East 62nd Street
New York, New York 10021
Attention: Barry F. Schwartz, Esq.
Facsimile: (212) 572-5056

with a copy to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Attention: Adam O. Emmerich, Esq.
Facsimile: (212) 403-2000

If to Sunbeam:

Sunbeam Corporation
1615 South Congress Avenue, Suite 200
Delray Beach, Florida 33445
Attention: Corporate Secretary
Facsimile: (561) 243-2191

with copies to:

Skadden, Arps, Slate, Meagher & Flom LLP
919 Third Avenue
New York, New York 10022
Attention: Blaine V. Fogg, Esq.
Facsimile: (212) 735-3597

and

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10152
Attention: Stephen E. Jacobs, Esq.
Facsimile: (212) 310-8007

or to such other address as any party may have furnished to the other parties in writing in accordance herewith.

18. Governing Law; Forum.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to its conflict of law rules.

(b) The parties hereto irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the courts of the State of Delaware and/or of the United States of America located in the State of Delaware for any actions, suits or proceedings out of or relating to this Agreement and the transactions contemplated hereby.

19. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute but one agreement.

20. Effect of Headings. The descriptive headings contained herein are for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

21. Interpretation. When a reference is made in this Agreement to an Article or Section, such reference shall be to an Article or Section of this Agreement unless otherwise indicated. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. References to a person are also to its permitted successors and assigns and, in the case of an individual, to his heirs and estate, as applicable.

16div-007051

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the day and year first above written.

COLEMAN (PARENT) HOLDINGS INC.

By: Barry F. Schwartz

Name: Barry F. Schwartz
Title: Executive Vice President and General Counsel

SUNBEAM CORPORATION

By: _____

Name: Howard Kristol
Title: Chairman of the Special Committee

16div-007052

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the day and year first above written.

COLEMAN (PARENT) HOLDINGS INC.

By: _____
Name: Barry F. Schwartz
Title: Executive Vice President and General Counsel

SUNBEAM CORPORATION

By: _____
Name: Howard Kristol
Title: Chairman of the Special Committee

EXHIBIT A

SUNBEAM CORPORATION

WARRANT FOR THE PURCHASE OF SHARES OF
COMMON STOCK OF SUNBEAM CORPORATION

ISSUE DATE: August__, 1998

Warrant No. W-1

23,000,000 Warrant Shares

THIS WARRANT AND THE SHARES OF COMMON STOCK PURCHASEABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION AND MAY NOT BE SOLD OR OTHERWISE TRANSFERRED OR DISPOSED OF UNLESS REGISTERED OR QUALIFIED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAWS OR UNLESS SUCH REGISTRATION, QUALIFICATION OR OTHER SUCH ACTIONS ARE NOT REQUIRED UNDER ANY SUCH LAWS.

FOR VALUE RECEIVED, SUNBEAM CORPORATION, a Delaware corporation (the "Company"), hereby certifies that Coleman (Parent) Holdings Inc., its successor or permitted assigns (the "Holder"), is entitled, subject to the provisions of this Warrant, to purchase from the Company, at the times specified herein, a number of the fully paid and non-assessable shares of Common Stock of the Company, par value $.01 per share (the "Common Stock"), equal to the Warrant Share Amount (as hereinafter defined) at a purchase price per share equal to the Exercise Price (as hereinafter defined).

SECTION 1. DEFINITIONS. (a) The following terms, as used herein, have the following meanings:

"Affiliate" shall have the meaning given to such term in Rule 12b-2 promulgated under the Securities and Exchange Act of 1934, as amended.

"Business Day" means any day except a Saturday, Sunday or other day on which commercial banks in The City of New York are authorized by law to close.

"Certificate of Incorporation" means the Restated Certificate of Incorporation of the Company.

"Closing Price" on any day means (1) if the shares of Common Stock then are listed and traded on the New York Stock Exchange, Inc. ("NYSE"), the Closing Price on such day as reported on the NYSE Composite Transactions Tape; (2) if shares of Common Stock then are not listed and traded on the NYSE, the Closing Price on such day as reported by the principal national securities exchange on which the shares of Common Stock are listed and traded; (3) if the shares of Common Stock then are not listed and traded on any such securities exchange, the last reported sale price on such day on the National Market of The National Association of Securities Dealers, Inc. Automated Quotation System ("NASDAQ"); or (4) if the shares of Common Stock then are not traded on the NASDAQ National Market, the average of the highest reported bid and the lowest reported asked price on such day as reported by NASDAQ.

"Common Share Equivalent" means, with respect to any security of the Company and as of a given date, a number which is, (i) in the case of a share of Common Stock, one, (ii) in the case of all or a portion of any right, warrant or other security which may be exercised for a share or shares of Common Stock, the number of shares of Common Stock receivable upon exercise of such security (or such portion of such security), and (iii) in the case of any security convertible or exchangeable into a share or shares of Common Stock, the number of shares of Common Stock that would be received if such security were converted or exchanged on such date.

"Common Stock" shall have the meaning set forth in the first paragraph hereof.

"Company" shall have the meaning set forth in the first paragraph hereof.

"Convertible Securities" shall have the meaning set forth in Section 7(d).

"Determination Date" shall have the meaning set forth in Section 7(f).

"Exercise Price" means a price per Warrant Share equal to $7.00.

"Expiration Date" means 5:00 p.m. New York City time on August __, 2003 [the fifth anniversary of the date of this Warrant].

"Fair Market Value" as at any date of determination means, as to shares of the Common Stock, if the Common Stock is publicly traded at such time, the average of the daily Closing Prices of a share of Common Stock for the ten (10) consecutive trading days ending on the most recent trading day prior to the date of determination. If the shares of Common Stock are not publicly traded at such time, and as to all things other than the Common Stock, Fair Market Value shall be determined in good faith by an independent nationally recognized investment banking firm selected by the Company and acceptable to a majority of the Holders and which shall have no other substantial relationship with the Company.

"Holder" shall have the meaning set forth in the first paragraph hereof.

"Options" shall have the meaning set forth in Section 7(d).

"Person" means an individual, partnership, corporation, limited liability company, trust, joint stock company, association, joint venture, or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Securities Act" means the Securities Act of 1933, as amended.

"Subsidiary" means, with respect to any Person, any corporation or other entity of which a majority of the capital stock or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person.

"Warrant Share Amount" means 23,000,000 (Twenty Three Million) shares of Common Stock as such number may be adjusted pursuant to Sections 7 and 8.

"Warrant Shares" means the shares of Common Stock deliverable upon exercise of this Warrant, as adjusted from time to time.

SECTION 2. EXERCISE OF WARRANT. (a) The Holder is entitled to exercise this Warrant in whole or in part at any time, or from time to time, until the Expiration Date or, if such day is not a Business Day, then on the next succeeding day that shall be a Business Day. To exercise this Warrant, the Holder shall deliver to the Company this Warrant, including the Warrant Exercise Subscription Form forming a part hereof duly executed by the Holder, together with payment of the applicable Exercise Price. Upon such delivery and payment, the Holder shall be deemed to be the holder of record of the number of Warrant Shares equal to the Warrant Share Amount (or, in the case of a partial exercise of this Warrant, a ratable number of such shares), notwithstanding that the stock transfer books of the Company shall then be closed or that certificates representing such shares shall not then be actually delivered to the Holder.

(b) At the option of the Holder, the Exercise Price may be paid in cash (including by wire transfer of immediately available funds) or by certified or official bank check or bank cashier's check payable to the order of the Company or by any combination of such cash or check. At the option of the Holder, the Exercise Price may in the alternative be paid in whole or in part by reducing the number of shares of Common Stock issuable to the Holder by a number of shares of Common Stock that have a Fair Market Value equal to the Exercise Price which otherwise would have been paid (so that the net number of shares of Common Stock issued in respect of such exercise shall equal the number of shares of Common Stock that would have been issuable had the Exercise Price been paid entirely in cash, less a number of shares of Common Stock with a Fair Market Value equal to the portion of the Exercise Price paid in kind); provided that this option shall be available only with respect to the exercise of this Warrant with respect to not more than one-half of the total number of Warrant Shares. The Company shall pay any and all documentary, or similar issue or transfer taxes payable in respect of the issue or delivery of the Warrant Shares. The Company shall not, however, be required to pay any transfer tax which may be payable in respect of any transfer involved in the issue or delivery of Warrants or Warrant Shares (or other securities or assets) in a name other than that in which the Warrants so exercised were registered, and no such issue or delivery shall be made unless and until the person requesting such

issue has paid to the Company the amount of such transfer tax or has established, to the satisfaction of the Company, that such transfer tax has been paid.

(c) If the Holder exercises this Warrant in part, this Warrant shall be surrendered by the Holder to the Company and a new Warrant of the same tenor and for the unexercised number of Warrant Shares shall be executed by the Company. The Company shall register the new Warrant in the name of the Holder or in such name or names of its transferee pursuant to Section 6 as may be directed in writing by the Holder and deliver the new Warrant to the Person or Persons entitled to receive the same.

(d) Upon surrender of this Warrant in conformity with the foregoing provisions, the Company shall, subject to the expiration of any applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act, transfer to the Holder of this Warrant appropriate evidence of ownership of the shares of Common Stock or other securities or property (including any money) to which the Holder is entitled, registered or otherwise placed in, or payable to the order of, the name or names of the Holder or such transferee as may be directed in writing by the Holder, and shall deliver such evidence of ownership and any other securities or property (including any money) to the Person or Persons entitled to receive the same, together with an amount in cash in lieu of any fraction of a share as provided in Section 5, subject to any required withholding.

SECTION 3. RESTRICTIVE LEGEND. Each certificate representing shares of Common Stock issued pursuant to this Warrant, unless at the time of exercise such shares are registered under the Securities Act, shall bear a legend substantially in the form of the legend set forth on the first page of this Warrant.

SECTION 4. RESERVATION OF SHARES. The Company hereby agrees that at all times there shall be reserved for issuance and delivery upon exercise of this Warrant such number of its authorized but unissued shares of Common Stock or other securities of the Company from time to time issuable upon exercise of this Warrant as will be sufficient to permit the exercise in full of this Warrant. The Company hereby represents and agrees that all such shares shall be duly authorized and, when issued upon such exercise, shall be validly issued, fully paid and non-assessable, free and clear of all liens, security interests, charges and other encumbrances or restrictions on sale and free and clear of all preemptive or similar rights, except to the extent imposed by or as a result of the status, act or omission of, the Holder.

SECTION 5. FRACTIONAL SHARES. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant and in lieu of delivery of any such fractional share upon any exercise hereof, the Company shall pay to the Holder an amount in cash equal to such fraction multiplied by the Fair Market Value thereof; provided, however, that, in the event that the Company combines or reclassifies the outstanding shares of its Common Stock into a smaller number of shares, it shall be required to issue fractional shares to the Holder if the Holder exercises all or any part of its Warrants, unless the Holder has consented in writing to such reduction and provided the Company with a written waiver of its right to receive fractional shares in accordance with this Section 5.

SECTION 6. TRANSFER, EXCHANGE OR ASSIGNMENT OF WARRANT. (a) Each taker and holder of this Warrant by taking or holding the same, consents and agrees that the registered holder hereof may be treated by the Company and all other persons dealing with this Warrant as the absolute owner hereof for any purpose and as the person entitled to exercise the rights represented hereby.

(b) Subject to the requirements of state and federal securities laws, the Holder of this Warrant shall be entitled, without obtaining the consent of the Company to assign and transfer this Warrant, at any time in whole or from time to time in part, to any Person or Persons. Subject to the preceding sentence, upon surrender of this Warrant to the Company, together with the attached Warrant Assignment Form duly executed, the Company shall, without charge, execute and deliver a new Warrant in the name of the assignee or assignees named in such instrument of assignment and, if the Holder's entire interest is not being assigned, in the name of the Holder and this Warrant shall promptly be canceled.

(c) Upon receipt by the Company of evidence satisfactory to it (in the exercise of its reasonable discretion) of the loss, theft, destruction or mutilation of this Warrant, and (in the case of loss, theft or destruction) of indemnification or security reasonably required by the Company, and upon surrender and cancellation of this Warrant, if mutilated, the Company shall execute and deliver a new Warrant of like tenor and date.

(d) The Company shall pay all expenses, taxes (other than transfer taxes) and other charges payable in connection with the preparation, issuance and delivery of Warrants hereunder.

SECTION 7. ANTI-DILUTION PROVISIONS. So long as any Warrants are outstanding, the Warrant Share Amount shall be subject to change or adjustment as follows:

(a) *Common Stock Dividends, Subdivisions, Combinations.* In case the Company shall (i) pay or make a dividend or other distribution to all holders of its Common Stock in shares of Common Stock, (ii) subdivide or split the outstanding shares of its Common Stock into a larger number of shares, or (iii) combine the outstanding shares of its Common Stock into a smaller number of shares (which shall not in any event be done without the express written approval of Holders of a majority of the outstanding Warrants), then in each such case the Warrant Share Amount shall be adjusted to equal the number of such shares to which the holder of this Warrant would have been entitled upon the occurrence of such event had this Warrant been exercised immediately prior to the happening of such event or, in the case of a stock dividend or other distribution, prior to the record date for determination of shareholders entitled thereto. An adjustment made pursuant to this Section 7(a) shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event.

(b) *Reorganization or Reclassification.* In case of any capital reorganization or any reclassification of the capital stock of the Company (whether pursuant to a merger or consolidation or otherwise), or in the event of any similar transaction, this Warrant shall thereafter be exercisable for the number of shares of stock or other securities or property receivable upon such capital reorganization or reclassification of capital stock or other transaction, as the case may be, by a holder of the number of shares of Common Stock into which this Warrant was exercisable im-

mediately prior to such capital reorganization or reclassification of capital stock; and, in any case, appropriate adjustment (as determined in good faith by the Board of Directors of the Company) shall be made for the application of the provisions herein set forth with respect to the rights and interests thereafter of the Holder of this Warrant to the end that the provisions set forth herein shall thereafter be applicable, as nearly as reasonably practicable, in relation to any shares of stock or other securities or property thereafter deliverable upon the exercise of this Warrant. An adjustment made pursuant to this Section 7(b) shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event.

(c) *Distributions of Assets or Securities Other than Common Stock.* In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock shares of any class of its capital stock (other than Common Stock), or other debt or equity securities or evidences of indebtedness of the Company, or options, rights or warrants to purchase any of such securities, cash or other assets, then in each such case the Warrant Share Amount shall be adjusted by multiplying the Warrant Share Amount immediately prior to the date of such dividend or distribution by a fraction, of which the numerator shall be the Fair Market Value per share of Common Stock at the record date for determining shareholders entitled to such dividend or distribution, and of which the denominator shall be such Fair Market Value per share less the Fair Market Value of the portion of the securities, cash, other assets or evidences of indebtedness so distributed applicable to one share of Common Stock. An adjustment made pursuant to this Section 7(c) shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event.

(d) *Below Market Issuances of Common Stock and Convertible Securities.* In case the Company shall issue Common Stock (or options, rights or warrants to purchase shares of Common Stock (collectively, "Options") or other securities convertible into or exchangeable or exercisable for shares of Common Stock (such other securities, collectively, "Convertible Securities")) at a price per share (or having an effective exercise, exchange or conversion price per share together with the purchase price thereof) less than the Fair Market Value per share of Common Stock on the date such Common Stock (or Options or Convertible Securities), is sold or issued (provided that no sale of securities pursuant to an underwritten public offering shall be deemed to be for less than Fair Market Value), then in each such case the Warrant Share Amount shall thereafter be adjusted by multiplying the Warrant Share Amount immediately prior to the date of issuance of such Common Stock (or Options or Convertible Securities) by a fraction, the numerator of which shall be (x) the sum of (i) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such issuance and (ii) the number of additional Common Share Equivalents represented by all securities so issued multiplied by (y) the Fair Market Value of a share of Common Stock immediately prior to the date of such issuance, and the denominator of which shall be (x) the product of (A) the Fair Market Value of a share of Common Stock immediately prior to the date of such issuance and (B) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such issuance plus (y) the aggregate consideration received by the Company for the total number of securities so issued plus, (z) in the case of Options or Convertible Securities, the additional consideration required to be received by the Company upon the exercise, exchange or conversion of such securities; provided that no adjustment shall be required in respect of issuances of Common Stock (or

options to purchase Common Stock) pursuant to stock option or other employee benefit plans in effect on the date hereof, or approved by the Board of Directors of the Company after the date hereof. Notwithstanding anything herein to the contrary, (1) no further adjustment to the Warrant Share Amount shall be made upon the issuance or sale of Common Stock pursuant to (x) the exercise of any Options or (y) the conversion or exchange of any Convertible Securities, if in each case the adjustment in the Warrant Share Amount was made as required hereby upon the issuance or sale of such Options or Convertible Securities or no adjustment was required hereby at the time such Option or Convertible Security was issued, and (2) no adjustment to the Warrant Share Amount shall be made upon the issuance or sale of Common Stock upon the exercise of any Options existing on the original issue date hereof, without regard to the exercise price thereof. Notwithstanding the foregoing, no adjustment to the Warrant Share Amount shall be made pursuant to this paragraph upon the issuance or sale of Common Stock, Options, or Convertible Securities in a *bona fide* arm's-length transaction to any Person or group that, at the time of such issuance or sale, is not an Affiliate of the Company (including any possible issuance of Common Stock, Options, or Convertible Securities to the public stockholders of The Coleman Company, Inc. ("Coleman") in connection with the acquisition of their shares of Coleman common stock pursuant to the Agreement and Plan of Merger, dated as of February 27, 1998 (the "Coleman Merger Agreement"), by and among Sunbeam, Camper Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Sunbeam, and Coleman, or otherwise). An adjustment made pursuant to this Section 7(d) shall become effective immediately after such Common Stock, Options or Convertible Securities are sold.

(e) *Below Market Distributions or Issuances of Preferred Stock or Other Securities.* In case the Company shall issue non-convertible and non-exchangeable preferred stock (or other debt or equity securities or evidences of indebtedness of the Company (other than Common Stock or Options or Convertible Securities) or options, rights or warrants to purchase any of such securities) at a price per share (or other similar unit) less than the Fair Market Value per share (or other similar unit) of such preferred stock (or other security) on the date such preferred stock (or other security) is sold (provided that no sale of preferred stock or other security pursuant to an underwritten public offering shall be deemed to be for less than its fair market value), then in each such case the Warrant Share Amount shall thereafter be adjusted by multiplying the Warrant Share Amount immediately prior to the date of issuance of such preferred stock (or other security) by a fraction, the numerator of which shall be the product of (i) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such issuance and (ii) the Fair Market Value of a share of Common Stock immediately prior to the date of such issuance, and the denominator of which shall be (x) the product of (A) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such issuance and (B) the Fair Market Value of a share of the Common Stock immediately prior to the date of such issuance minus (y) the difference between (1) the aggregate Fair Market Value of such preferred stock (or other security) and (2) the aggregate consideration received by the Company for such preferred stock (or other security). Notwithstanding the foregoing, no adjustment to the Warrant Share Amount shall be made pursuant to this paragraph upon the issuance or sale of preferred stock (or other securities of the Company other than common Stock or Options or Convertible Securities) in a *bona fide* arm's-length transaction to any Person or group that, at the time of such issuance or sale, is not an Affiliate of the Company (including any possible issuance

of preferred stock (or other securities of the Company other than common Stock or Options or Convertible Securities) to the public stockholders of Coleman in connection with the acquisition of their shares of Coleman common stock pursuant to the Coleman Merger Agreement, or otherwise). An adjustment made pursuant to this Section 7(e) shall become effective immediately after such preferred stock (or other security) is sold.

(f) *Above Market Repurchases of Common Stock.* If at any time or from time to time the Company or any Subsidiary thereof shall repurchase, by self-tender offer or otherwise, any shares of Common Stock of the Company (or any Options or Convertible Securities) at a purchase price in excess of the Fair Market Value thereof, on the Business Day immediately prior to the earliest of (i) the date of such repurchase, (ii) the commencement of an offer to repurchase, or (iii) the public announcement of either (such date being referred to as the "Determination Date"), the Warrant Share Amount shall be determined by multiplying the Warrant Share Amount immediately prior to such Determination Date by a fraction, the numerator of which shall be the product of (1) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such Determination Date minus the number of Common Share Equivalents represented by the securities repurchased or to be purchased by the Company or any Subsidiary thereof in such repurchase and (2) the Fair Market Value of a share of Common Stock immediately prior to such Determination Date, and the denominator of which shall be (x) the product of (A) the number of Common Share Equivalents represented by all securities outstanding immediately prior to the Determination Date and (B) the Fair Market Value of a share of Common Stock immediately prior to such Determination Date minus (y) the sum of (1) the aggregate consideration paid by the Company in connection with such repurchase and (2) in the case of Options or Convertible Securities, the additional consideration required to be received by the Company upon the exercise, exchange or conversion of such securities. Notwithstanding the foregoing, no adjustment to the Warrant Share Amount shall be made pursuant to this paragraph upon the repurchase, by self-tender offer or otherwise, of Common Stock (or any Options or Convertible Security) in a *bona fide* arm's-length transaction from any Person or group that, at the time of such repurchase, is not an Affiliate of the Company.

(g) *Above Market Repurchases of Preferred Stock or Other Securities.* If at any time or from time to time the Company or any Subsidiary thereof shall repurchase, by self-tender offer or otherwise, any shares of non-convertible and non-exchangeable preferred stock (or other debt or equity securities or evidences of indebtedness of the Company (other than Common Stock or Options or Convertible Securities) or options, rights or warrants to purchase any of such securities), at a purchase price in excess of the Fair Market Value thereof, on the Business Day immediately prior to the Determination Date, the Warrant Share Amount shall be determined by multiplying the Warrant Share Amount immediately prior to the Determination Date by a fraction, the numerator of which shall be the product of (i) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such Determination Date and (ii) the Fair Market Value of a share of Common Stock immediately prior to such Determination Date, and the denominator of which shall be (x) the product of (A) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such Determination Date and (B) the Fair Market Value of a share of Common Stock immediately prior to such Determination Date minus (y) the difference between (1) the aggregate consideration paid by the

Company in connection with such repurchase and (2) the aggregate Fair Market Value of such preferred stock (or other security). Notwithstanding the foregoing, no adjustment to the Warrant Share Amount shall be made pursuant to this paragraph upon the repurchase, by self-tender offer or otherwise, of non-convertible and non-exchangeable preferred stock (or other securities of the Company other than Common Stock or Options or Convertible Securities) in a *bona fide* arm's-length transaction from any Person or group that, at the time of such repurchase, is not an Affiliate of the Company.

(h) *Readjustment of Warrant Share Amount.* If (i) the purchase price provided for in any Option or the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities or the rate at which any Convertible Securities, in each case as referred to in paragraphs (b) and (f) above, are convertible into or exchangeable for Common Stock shall change at any time (other than under or by reason of provisions designed to protect against dilution upon an event which results in a related adjustment pursuant to this Section 7), or (ii) any of such Options or Convertible Securities shall have irrevocably terminated, lapsed or expired, the Warrant Share Amount then in effect shall forthwith be readjusted (effective only with respect to any exercise of this Warrant after such readjustment) to the Warrant Share Amount which would then be in effect had the adjustment made upon the issuance, sale, distribution or grant of such Options or Convertible Securities been made based upon such changed purchase price, additional consideration or conversion rate, as the case may be (in the case of any event referred to in clause (i) of this paragraph (h)) or had such adjustment not been made (in the case of any event referred to in clause (ii) of this paragraph (h)).

(i) *Exercise Price Adjustment.* Upon each adjustment of the Warrant Share Amount pursuant to this Section 7, the Exercise Price of each Warrant outstanding immediately prior to such adjustment shall thereafter be equal to an adjusted Exercise Price per Share determined (to the nearest cent) by multiplying the Exercise Price for the Warrant immediately prior to such adjustment by a fraction, the numerator of which shall be the Warrant Share Amount in effect immediately prior to such adjustment and the denominator of which shall be the Warrant Share Amount in effect immediately after such adjustment.

(j) *Consideration.* If any shares of Common Stock, Options or Convertible Securities shall be issued, sold or distributed for cash, the consideration received in respect thereof shall be deemed to be the amount received by the Company therefor, before deduction therefrom of any reasonable, customary and adequately documented expenses incurred in connection therewith. If any shares of Common Stock, Options or Convertible Securities shall be issued, sold or distributed for a consideration other than cash, the amount of the consideration other than cash received by the Company shall be deemed to be the Fair Market Value of such consideration, before deduction of any reasonable, customary and adequately documented expenses incurred in connection therewith. If any shares of Common Stock, Options or Convertible Securities shall be issued in connection with any merger in which the Company is the surviving corporation, the amount of consideration therefor shall be deemed to be the Fair Market Value of such portion of the assets and business of the non-surviving corporation as shall be attributable to such Common Stock, Options or Convertible Securities, as the case may be. If any Options shall be issued in connection with the issuance and sale of other securities of the Company, together comprising one inte-

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gral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued without consideration.

(k) *No Impairment.* The Company will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Section 7 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the Holder against impairment. Without limiting the generality of the foregoing, the Company will not increase the par value of any shares of Common Stock receivable on the exercise of the Warrants above the amount payable therefor on such exercise.

(l) *Certificate as to Adjustments.* Upon the occurrence of each adjustment or readjustment of the Warrant Share Amount pursuant to this Section 7, the Company at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to the Holder a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Company shall, upon the written request at any time of the Holder, furnish or cause to be furnished to Holder a like certificate setting forth (1) such adjustments and readjustments and (2) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the exercise of this Warrant.

(m) *Proceedings Prior to Any Action Requiring Adjustment.* As a condition precedent to the taking of any action which would require an adjustment pursuant to this Section 7, the Company shall take any action which may be necessary, including obtaining regulatory approvals or exemptions, in order that the Company may thereafter validly and legally issue as fully paid and nonassessable all shares of Common Stock which the Holders are entitled to receive upon exercise thereof.

(n) *Notice of Adjustment.* Upon the record date or effective date, as the case may be, of any action which requires or might require an adjustment or readjustment pursuant to this Section 7, the Company shall forthwith file in the custody of its Secretary or an Assistant Secretary at its principal executive office and with its stock transfer agent or its warrant agent, if any, an officers' certificate showing the adjusted number of Warrant Shares determined as herein provided, setting forth in reasonable detail the facts requiring such adjustment and the manner of computing such adjustment. Each such officers' certificate shall be signed by the chairman, president or chief financial officer of the Company and by the secretary or any assistant secretary of the Company. Each such officers' certificate shall be made available at all reasonable times for inspection by the Holder or any Holder of a Warrant executed and delivered pursuant to Section 6(b) and the Company shall, forthwith after each such adjustment, mail a copy, by first-class mail, of such certificate to the Holder or any such holder.

(o) *Payments in Lieu of Adjustment.* The Holder shall, at its option, be entitled to receive, in lieu of the adjustment pursuant to Section 7(c) otherwise required thereof, on (but not

prior to) the date of exercise of the Warrants, the evidences of indebtedness, other securities, cash, property or other assets which such Holder would have been entitled to receive if it had exercised its Warrants for shares of Common Stock immediately prior to the record date with respect to such distribution. The Holder may exercise its option under this Section 7(o) by delivering to the Company a written notice of such exercise simultaneously with its notice of exercise of this Warrant.

SECTION 8. CONSOLIDATION, MERGER OR SALE OF ASSETS. In case of any consolidation of the Company with, or merger of the Company into, any other Person, any merger of another Person into the Company (other than a merger which does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock) or any sale or transfer of all or substantially all of the assets of the Company to the Person formed by such consolidation or resulting from such merger or which acquires such assets, as the case may be, the Holder shall have the right thereafter to exercise this Warrant for the kind and amount of securities, cash and other property receivable upon such consolidation, merger, sale or transfer by a holder of the number of shares of Common Stock for which this Warrant may have been exercised immediately prior to such consolidation, merger, sale or transfer. Adjustments for events subsequent to the effective date of such a consolidation, merger, sale or transfer of assets shall be as nearly equivalent as may be practicable to the adjustments provided for in this Warrant. In any such event, effective provisions shall be made in the certificate or articles of incorporation of the resulting or surviving corporation, in any contract of sale, merger, conveyance, lease, transfer or otherwise so that the provisions set forth herein for the protection of the rights of the Holder shall thereafter continue to be applicable; and any such resulting or surviving corporation shall expressly assume the obligation to deliver, upon exercise, such shares of stock, other securities, cash and property. The provisions of this Section 8 shall similarly apply to successive consolidations, mergers, sales, leases or transfers.

SECTION 9. WARRANT AGENT. At the written request of the Holders of a majority of the outstanding Warrants, the Company shall as soon as is reasonably practicable:

(i) appoint a warrant agent to act as agent for the Company in connection with the issuance, transfer and exchange of the Warrants and shall enter into an agreement with such warrant agent reflecting the terms and conditions of such appointment, which terms and conditions shall be customary for such appointments, and such other matters as are customarily included in such agreements so as to facilitate the transfer and registration of the Warrants; and

(ii) use its reasonable best efforts to cause the Warrants to be eligible to be publicly traded, including, without limitation, amending this Warrant to provide terms and conditions necessary and appropriate for the Warrants to be publicly traded.

SECTION 10. NOTICES. Any notice, demand or delivery authorized by this Warrant shall be in writing and shall be given to the Holder or to the Company, as the case may be, at its address (or facsimile number) set forth below, or such other address (or facsimile number) as shall have been furnished to the party giving or making such notice, demand or delivery:

If to the Company:	Sunbeam Corporation 1615 South Congress Avenue, Suite 200 Delray Beach, Florida 33445 Attention: Corporate Secretary Facsimile: (561) 243-2191
with copies to:	Skadden, Arps, Slate, Meagher & Flom LLP 919 Third Avenue New York, New York 10022 Attention: Blaine V. Fogg, Esq. Facsimile: (212) 735-3597
and to:	Weil, Gotshal & Manges LLP 767 Fifth Avenue New York, New York 10153 Attention: Stephen E. Jacobs, Esq. Facsimile: (212) 310-8007
If to the Holder:	Coleman (Parent) Holdings Inc. c/o MacAndrews & Forbes Holdings Inc. 35 East 62nd Street New York, New York 10021 Attention: Barry F. Schwartz, Esq. Facsimile: (212) 572-5056
with copies to:	Wachtell, Lipton, Rosen & Katz 51 West 52nd Street New York, New York 10019 Attention: Adam O. Emmerich, Esq. Facsimile: (212) 403-2000

Each such notice, demand or delivery shall be effective (i) if given by telecopy, when such telecopy is transmitted to the telecopy number specified herein and the intended recipient confirms the receipt of such telecopy, or (ii) if given by any other means, when received at the address specified herein.

SECTION 11. RIGHTS OF THE HOLDER. Prior to the exercise of any Warrant, the Holder shall not, by virtue hereof, be entitled to any rights of a shareholder of the Company, including, without limitation, the right to vote, to receive dividends or other distributions, to exercise any preemptive right or to receive any notice of meetings of shareholders or any notice of any proceedings of the Company except as may be specifically provided for herein.

SECTION 12. GOVERNING LAW. THIS WARRANT AND ALL RIGHTS ARISING HEREUNDER SHALL BE CONSTRUED AND DETERMINED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF DELAWARE,

AND THE PERFORMANCE THEREOF SHALL BE GOVERNED AND ENFORCED IN ACCORDANCE WITH SUCH LAWS.

SECTION 13. AMENDMENTS; WAIVERS. Any provision of this Warrant may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by the Holder and the Company, or in the case of a waiver, by the party against whom the waiver is to be effective. No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

SECTION 14. Interpretation. When a reference is made in this Warrant to a Section such reference shall be to a Section of this Warrant unless otherwise indicated. Whenever the words "include", "includes" or "including" are used in this Warrant, they shall be deemed to be followed by the words "without limitation". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Warrant shall refer to this Warrant as a whole and not to any particular provision of this Warrant. The definitions contained in this Warrant are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. References to a person are also to its permitted successors and assigns and, in the case of an individual, to his heirs and estate, as applicable.

IN WITNESS WHEREOF, the Company has duly caused this Warrant to be signed by its duly authorized officer and to be dated as of the date first above written.

SUNBEAM CORPORATION

By: _____
Name:
Title:

Attest:

By: _____
Name:
Title:

ACKNOWLEDGED AND AGREED:

COLEMAN (PARENT) HOLDINGS INC.

By: _____
Name:
Title:

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WARRANT EXERCISE SUBSCRIPTION FORM

(To be executed only upon exercise of the Warrant after delivery of the Warrant Exercise Notice)

To: Sunbeam Corporation

The undersigned irrevocably exercises the Warrant for the purchase of _____ shares (the "Shares") of Common Stock, par value $.01 per share, of Sunbeam Corporation (the "Company") ("Common Stock") at an exercise price of $_____ per Share and herewith makes payment of $_____ (such payment being made in cash or by certified or official bank or bank cashier's check payable to the order of the Company or by any permitted combination of such cash or check or by the reduction of the number of shares of Common Stock that otherwise would be issued upon this exercise by the number of shares of Common Stock that have a value equal to such exercise price), all on the terms and conditions specified in this Warrant, surrenders this Warrant and all right, title and interest therein to the Company and directs that the Shares deliverable upon the exercise of this Warrant be registered or placed in the name and at the address specified below and delivered thereto.

Date: _____ __, ____.

_____
(Name - Please Print)

_____
(Signature of Owner)

_____
(Street Address)

_____
(City) (State) (Zip Code)

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Securities and/or check to be issued to:

Please insert social security or identifying number:

Name:

Street Address:

City, State and Zip Code:

Any unexercised portion of the Warrant evidenced by the within Warrant to be issued to:

Please insert social security or identifying number:

Name:

Street Address:

City, State and Zip Code:

WARRANT ASSIGNMENT FORM

Dated _____ __, ____

FOR VALUE RECEIVED, _____ hereby sells, assigns and transfers unto _____ (the "Assignee"),
(please type or print in block letters)

_____
(insert address)

its right to purchase up to _____ shares of Common Stock represented by this Warrant and does hereby irrevocably constitute and appoint _____ Attorney, to transfer the same on the books of the Company, with full power of substitution in the premises.

Signature: _____

EXHIBIT B

AMENDMENT TO REGISTRATION RIGHTS AGREEMENT

AMENDMENT, dated as of August ___, 1998 (this "Amendment"), to the REGISTRATION RIGHTS AGREEMENT, dated as of March 29, 1998 (the "Registration Rights Agreement"), by and among SUNBEAM CORPORATION, a Delaware corporation ("Laser" or "Sunbeam"), and COLEMAN (PARENT) HOLDINGS INC., a Delaware corporation ("Parent Holdings"). Capitalized terms used in this Amendment have the meanings ascribed to them in the Registration Rights Agreement unless otherwise defined herein. References to Articles and Sections shall, unless otherwise stated, be to the Articles and Sections of the Registration Rights Agreement. In all respects not inconsistent with the terms and provisions of this Amendment, the Registration Rights Agreement shall continue to be in full force and effect in accordance with the terms and conditions thereof, and is hereby ratified, adopted, approved and confirmed. From and after the date hereof, each reference to the Registration Rights Agreement therein or in any other instrument or document shall be deemed a reference to the Registration Rights Agreement as amended hereby, unless the context otherwise requires, and this Amendment and the Registration Rights Agreement shall for all purposes and matters be considered as one agreement, including that all of the ministerial and miscellaneous provisions of the Registration Rights Agreement shall apply equally thereto as so amended and to this Amendment.

WHEREAS, pursuant to the Holdings Merger Agreement, by and among Sunbeam, a subsidiary of Sunbeam, CLN HOLDINGS INC., a Delaware corporation and wholly owned subsidiary of Parent Holdings ("Holdings"), and Parent Holdings, the Holdings Merger was consummated on March 30, 1998 and Holdings became an indirect wholly owned subsidiary of Sunbeam; and

WHEREAS, following consummation of the Holdings Merger, the shares of Holdings Common Stock issued and outstanding immediately prior to the effective time of the Holdings Merger were converted into an aggregate of (A) 14,099,749 fully paid and nonassessable shares of common stock, par value $.01 per share, of Sunbeam ("Laser Common Stock") and (B) $159,956,756 in cash, without interest thereon; and

WHEREAS, following the dismissal by Sunbeam of certain of its executive officers in mid-June 1998, Sunbeam retained certain senior officers employed by Affiliates of Parent Holdings as executive officers of Sunbeam; and

WHEREAS, Sunbeam and Parent Holdings have entered into a Settlement Agreement (the "Settlement Agreement") pursuant to which Sunbeam will issue to Parent Holdings certain warrants to purchase shares of Laser Common Stock (the "Warrants") and has agreed to enter into this Agreement; and

WHEREAS, in order to induce Parent Holdings to enter into the Settlement Agreement, Sunbeam has agreed to amend the Registration Rights Agreement and modify the registration rights with respect to the shares of Laser Common Stock issued to Parent Hold-

ings in the Holdings Merger and to provide for registration rights with respect to the Warrants and Laser Common Stock issuable upon exercise of the Warrants.

"NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 is amended with respect to certain of the definitions therein as follows:

The definition of the term "Agreement" is amended and restated in its entirety to mean the Registration Rights Agreement as amended by this Amendment.

The definition of the term "Registrable Securities" is amended and restated in its entirety to mean (i) the Holdings Merger Stock, (ii) the Warrants, and (iii) any shares of Laser Common Stock issued pursuant to the Warrants, and, in each case, any other securities issued or issuable upon or in respect of such securities by way of conversion, exchange, dividend, split or combination, recapitalization, merger, consolidation, other reorganization or otherwise. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when such securities have been sold or otherwise transferred by Parent Holdings pursuant to the Shelf Registration Statement or pursuant to Rule 144 under the Securities Act.

The following defined term shall be added to the list of definitions in their respective alphabetically ordered positions:

The term "Holdings Merger Stock" shall mean the shares of Laser Common Stock issued to Parent Holdings in the Holdings Merger.

The term "Warrants" shall mean the warrants to purchase 23,000,000 (Twenty-Three Million) shares of Laser Common Stock issued to Parent Holdings pursuant to Warrant No. W-1 dated August ___, 1998.

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ARTICLE II

REQUIRED REGISTRATION

Sections 2.1, 2.2 and 2.3 of Article II are amended and restated to read in their entirety as follows:

Section 2.1 *Required Registration.*

(a) *Form S-3.* Promptly following a demand to such effect from any holder of Registrable Securities, Laser shall prepare and file with the SEC a registration statement (the "Shelf Registration Statement") on an appropriate form permitting registration of the Registrable Securities so as to permit the resale of the Registrable Securities pursuant to an offering on a delayed or continuous basis under the Securities Act and shall use reasonable best efforts to (i) cause the Shelf Registration Statement to be declared effective by the SEC as promptly as practicable thereafter and (ii) permit the Shelf Registration Statement to be used by Affiliates of Camper for resales of shares of Laser Common Stock held by such Affiliates ; provided, however, that any such Affiliate using the Shelf Registration Statement shall agree in writing to be bound by all of the restrictions, limitations and obligations of Parent Holdings contained in this Agreement.

(b) *Effectiveness.* Laser shall use reasonable best efforts to keep the Shelf Registration Statement continuously effective under the Securities Act until the date that is the earliest to occur of (i) the date by which all Registrable Securities have been sold and (ii) the date by which all Registrable Securities are eligible for immediate sale to the public without registration under Rule 144 under the Securities Act, with such sale not being limited by the volume restrictions thereunder or otherwise.

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

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

Section 2.2 *Holdback Agreement.*

From and after the Effective Date, upon the request of Laser, Parent Holdings shall not effect any public sale or distribution (including sales pursuant to Rule 144) of Registrable Securities that are equity securities of Laser, or any securities convertible into or ex-

changeable or exercisable for such securities, including the Warrants, (other than any such sale or distribution of such securities pursuant to registration of such securities on Form S-8 or any successor form) during the period commencing on the date on which Laser commences a Laser Offering through the sixty (60)-day period immediately following the closing date of such Laser Offering; provided, however, that Parent Holdings shall not be obligated to comply with this Section 2.2 on more than two (2) occasions in any twelve (12)-month period; and provided, further, that notwithstanding anything to the contrary in this Section 2.2 or Section 2.3, in no event shall Parent Holdings be disabled from effecting offers or sales of Registrable Securities for more than one-hundred-and-twenty (120) days during any twelve (12)-month period.

Section 2.3 *Blackout Provisions.*

In the event that, at any time while the Shelf Registration Statement remains effective, Laser determines in its reasonable judgment and in good faith that the sale of Registrable Securities would require disclosure of material information which Laser has a bona fide business purpose for preserving as confidential, Parent Holdings shall, upon receiving written notice from Laser of such good faith determination, suspend sales of the Registrable Securities for a period beginning on the date of receipt of such notice and expiring on the earlier of (i) the date upon which such material information is disclosed to the public or ceases to be material or (ii) forty-five (45) days after the receipt of such notice from Laser; provided, however, that Parent Holdings shall not be obligated to comply with this Section 2.3 on more than two (2) occasions in any twelve (12) month period; and provided, further, that notwithstanding anything to the contrary in this Section 2.3 or Section 2.2, in no event shall Parent Holdings be disabled from effecting offers or sales of Registrable Securities for more than one-hundred-and-twenty (120) days during any twelve (12)-month period.

* * *

Section 2.4(a) of Article II is hereby amended by deleting the word "and" from the end of paragraph (12) thereof, replacing the period at the end of paragraph (13) thereof with "; and" and adding the following additional paragraph:

(14) will enter into customary agreements (including an underwriting agreement in customary form) and take such actions as are reasonably required in order to expedite or facilitate the sale of such Registrable Securities, including, without limitation, cooperation, and causing its officers, employees and advisors to cooperate, with the sellers of such Registrable Securities and the underwriter(s), if any, including participation in meetings and road shows held in connection with such sale.

ARTICLE III

TRANSFERS OF REGISTRABLE SECURITIES

Sections 3.1 and 3.2 of Article III are amended and restated to read in their entirety as follows:

Section 3.1 *Transferability of Registrable Securities.*

(a) Parent Holdings may not Transfer the Registrable Securities, other than

(1) pursuant to Rule 144;

(2) pursuant to the Shelf Registration Statement; or

(3) in any other Transfer exempt from registration under the Securities Act, and as to which Laser has received an opinion of counsel, reasonably satisfactory to Laser, that such Transfer is so exempt;

and shall in no event Transfer any Registrable Securities in violation of the Settlement Agreement.

Section 3.2 *Restrictive Legends.*

Parent Holdings hereby acknowledges and agrees that, during the term of this Agreement, all of the Registrable Securities shall include the legend set forth in Section 7.2 of the Holdings Merger Agreement, the legend set forth on the Warrants or as provided in the Warrants or as may otherwise be reasonably appropriate to reflect the fact that such Registrable Securities have not been issued in transactions registered under the Securities Act, unless at the time such Registrable Securities have been registered under the Securities Act.

ARTICLE IV

MISCELLANEOUS

Sections 4.5 and 4.11 of Article IV are amended and restated in their entirety to read as follows:

Section 4.5 *Binding Effect; Assignment.*

This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, successors and permitted assigns, but, except as expressly contemplated herein, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, directly or indirectly, by Laser or Parent Holdings without the prior written consent of the other (except in the case of

any assignment in whole or in part by Parent Holdings to any Affiliate, as to which no such consent shall be required); provided, that in connection with a bona fide pledge of any Registrable Securities to secure indebtedness or other obligations, Parent Holdings may assign its rights, interests and obligations hereunder to the beneficiary of such pledge in whole or in part. Upon any permitted assignment (other than in connection with any such bona fide pledge), this Agreement shall be amended to substitute or add the assignee as a party hereto in a writing reasonably acceptable to the other party.

Section 4.11 *Termination; Restrictive Legend.*

This Agreement shall terminate only following such time as Sunbeam shall have no further obligation under Section 2.1(b) to use its reasonable best efforts to keep the Shelf Registration Statement effective; provided, however, that the provisions of Section 2.6 hereof shall survive termination of this Agreement. It is understood and agreed that any restrictive legends set forth on any Registrable Securities shall be removed by delivery of substitute certificates without such legends and such Registrable Securities shall no longer be subject to the terms of this Agreement or upon the resale of such Registrable Securities in accordance with the terms of this Agreement.

ARTICLE V

OTHER

The following provisions shall also apply to this Amendment:

Section 5.1 Effectiveness of this Amendment. The provisions of this Amendment shall be effective as of the date hereof.

Section 5.2 Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 5.3 Governing Law. This Amendment shall be governed by the laws of the State of New York, without regard to the principles of conflicts of law thereof.

Section 5.4 No Waiver. The execution, delivery and performance of this Amendment shall not operate as a waiver of any condition, power, remedy or right exercisable in accordance with the Registration Rights Agreement, and shall not constitute a waiver of any provision of the Registration Rights Agreement, except as expressly provided herein.

Section 5.5 Descriptive Headings. The article and section headings contained in this Amendment are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Amendment.

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IN WITNESS WHEREOF, the undersigned hereby agree to be bound by the terms and provisions of this Amendment as of the date first above written.

SUNBEAM CORPORATION

By:_____
Name:
Title:

COLEMAN (PARENT) HOLDINGS INC.

By:_____
Name:
Title:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FILED
MAY 19 1999
CLERK U.S. DIST. CT.

JAMAL SHALLAL and LILLIAN SHALLAL derivatively on behalf of SUNBEAM CORPORATION,

Plaintiffs,

v.

CHARLES M. ELSON, HOWARD G. KRISTOL, PETER A. LANGERMAN, FAITH WHITTLESEYJERRY W. LEVIN, HOWARD GITTIS and MACANDREWS & FORBES HOLDINGS, INC.

Defendants,

and

SUNBEAM CORPORATION,

Nominal Defendant.

Civil Action No. 98-8739
Civ-MIDDLEBROOKS

DEFENDANTS' JOINT REPLY MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTIONS TO DISMISS OR, IN THE ALTERNATIVE, TO STAY PROCEEDINGS

EXHIBIT "C"

33 WC

United States District Court
Case No. 98-8739
CIV-MIDDLEBROOKS

PRELIMINARY STATEMENT

In their opening memoranda, defendants demonstrated that considerations of "wise judicial administration" as set forth by the Supreme Court in Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 187 (1976) warrant the dismissal or stay of this action – purportedly brought derivatively on behalf of Sunbeam to challenge the decision of a special committee of Sunbeam's Board of Directors in August, 1998 to enter into an agreement with MacAndrews & Forbes Holdings, Inc. ("MacAndrews") – because this action is identical to five previously filed stockholder derivative actions currently pending in the Court of Chancery of the State of Delaware. Defendants demonstrated that each of the factors to be considered under Colorado River weigh in favor of a dismissal or stay in the circumstances of this case. (Sunbeam Corporation's Memorandum Of Law In Support Of Its Motion To Dismiss Or, In The Alternative, To Stay Proceedings ("Sunbeam Mem.") at 9-13; Memorandum Of Law In Support Of The Special Committee Defendants' Motion To Dismiss, Or In The Alternative, To Stay Proceedings ("Sp. Comm. Mem.") at 5).

United States District Court
Case No. 98-8739
CIV-MIDDLEBROOKS

Plaintiffs offer two arguments in response: First, plaintiffs argue that the fact that their challenge to Sunbeam's agreement with MacAndrews is governed exclusively by Delaware law is not a ground for abstention under Colorado River; and second, plaintiffs argue that the Court's jurisdiction over the pending consolidated federal securities fraud class action In re Sunbeam Securities Litigation, Case No. 98-8258-CIV-Middlebrooks, supports an exercise of jurisdiction here because that action allegedly arises from "the same events and occurrences that Plaintiffs challenge here." (Plaintiffs' Response at 4) Neither argument rebuts defendants' showing that Colorado River abstention is appropriate here, because neither argument is correct. In any event, abstention is justified under Colorado River solely on the basis of other important factors not disputed by plaintiffs.

ARGUMENT

Plaintiffs do not deny (i) that their derivative claims are identical to the derivative claims asserted by other purported Sunbeam stockholders in the now-consolidated earlier-filed actions in the Delaware Court of Chancery; (ii) that duplication of judicial effort and the potential for inconsistent results would necessarily result if this action were allowed to proceed simultaneously with the

pending derivative actions in Delaware; (iii) that the Court of Chancery acquired jurisdiction over this controversy first; or (iv) that the Court of Chancery can adequately protect the parties' interests. These admissions alone are sufficient to warrant abstention under Colorado River. See Allied Machinery Service, Inc. v. Caterpillar Inc., 841 F. Supp. 406, 408-410 (S.D. Fla. 1993). Unable to dispute the existence of these important factors weighing heavily in favor of abstention, plaintiffs instead limit their efforts to attempting to rebut two other factors identified by defendants as weighing in favor of abstention. As explained below, neither argument is correct.

First, contrary to plaintiffs' assertion that the applicability of Delaware law to their claims is irrelevant, this Court has held that "whether state or federal law will be applied" is indeed one of the factors to be considered in a Colorado River analysis. Allied Machinery Service, Inc. v. Caterpillar Inc., 841 F. Supp. 406, 408 (S.D. Fla. 1993); see also Sabato v. Florida Dep't of Ins., 768 F. Supp. 1562, 1567 (S.D. Fla. 1991) (dismissing federal action in favor of state action where wholly state law claims were raised). As explained in defendants' opening memoranda, the undisputed expertise of the Delaware

courts in resolving questions of Delaware corporate law is a factor strongly favoring abstention in this case. (Sunbeam Mem. at 10-12).

In particular, abstention is appropriate because a well-developed body of substantive Delaware law will determine whether the plaintiffs here -- and the plaintiffs in the identical Delaware actions -- have the right to pursue litigation on behalf of Sunbeam. There is no reason for this Court to duplicate the effort of the Delaware Court of Chancery in resolving the identical threshold question of whether any of the Sunbeam stockholders challenging the MacAndrews Warrant has standing to pursue such a claim on behalf of the company. See 7C Charles A. Wright, et al., Federal Practice and Procedure § 1838, at 171 (2d ed. 1986); 19 Am. Jur. 2d Corporations § 2458 (1986).

Second, plaintiffs argue that "[d]iscovery, prosecution and management" of the plaintiffs' derivative case will be "inherently intertwined" with the litigation of the consolidated federal securities action now before this Court. Not so. The consolidated federal securities action involves a different time period, a different set of transactions, a different set of defendants and a different set of legal issues than those presented by the plaintiffs' derivative complaint.

The claims asserted here and in the identical earlier-filed Delaware actions arise exclusively under Delaware law. They challenge as a breach of fiduciary duty the decision by a special committee of Sunbeam's Board of Directors in August, 1998 to enter into an agreement with MacAndrews whereby MacAndrews would (i) release certain claims it may have had in connection with Sunbeam's acquisition of an 82% stake in Coleman Co. from MacAndrews prior to the announcement of Sunbeam's financial difficulties, and (ii) agree to permit various high-level MacAndrews executives to continue to provide management services to Sunbeam, in exchange for five-year warrants allowing MacAndrews to buy 23 million Sunbeam shares at $7 per share (the "MacAndrews Warrant"). (See Sunbeam Mem. at 3-4)

By contrast, the claims asserted in the recently filed consolidated amended class action complaint in In re Sunbeam Securities Litigation (the "Amended 10b-5 Complaint") arise exclusively under the federal securities laws. They involve questions of whether Sunbeam and certain of its former officers and directors committed securities fraud prior to June 30, 1998. The Amended 10b-5 Complaint contains (i) no claim of breach of fiduciary duty; (ii) no claim arising under Delaware law; and (iii) no reference to Sunbeam's

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agreement with MacAndrews or the MacAndrews Warrant. Indeed, this action and In re Sunbeam have only one individual defendant in common, and the class period alleged in the Amended 10b-5 Complaint in In re Sunbeam ends on June 30, 1998 -- weeks before the events challenged in this action.

As a result, litigation of the federal securities claims against Sunbeam alleging fraud prior to June 30, 1998 and the Delaware law derivative claims on behalf of Sunbeam challenging the issuance of the MacAndrews Warrant in August, 1998 will be entirely distinct: threshold motions testing the sufficiency of the derivative complaint in this case and the Amended 10b-5 Complaint in In re Sunbeam would raise entirely different issues of law, discovery and trial would focus on unrelated conduct in different time periods with little, if any, overlap of witnesses. Accordingly, the pendency of In re Sunbeam provides no basis for the Court to exercise jurisdiction over this action.

Neither of the cases cited by plaintiffs, Meredith v. City of Winter Haven, 320 U.S. 227 (1943) and American Mfrs. Ins. Co. v. Edward D. Stone, Jr. & Assoc., 743 F.2d 1519 (11th Cir. 1984), supports their contentions. The Supreme Court's opinion in Meredith merely stands for the unobjectionable

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proposition that a federal court is not incapable of resolving questions of state law. Moreover, the Supreme Court in Meredith expressly recognized (even 33 years before Colorado River) that non-exercise of diversity jurisdiction was appropriate in certain circumstances. Meredith, 320 U.S. at 234-35.

In American Mfrs., the Court held that a stay under Colorado River was inappropriate where "the parallel state action will not decide the issues presented in the federal case" because the plaintiff had raised cross-claims in its federal action that had not been asserted in the state court action. 743 F.2d at 1525. No such circumstances are present here: as demonstrated in defendants' opening briefs, in the instant case, "the Delaware Actions and this one present identical issues of Delaware law." (Sunbeam Mem. at 9; see also Sp. Comm. Mem. at 2-3)

Thus, because any decision of the Delaware Court of Chancery will be res judicata in a federal (or other) action, this Court could not consider plaintiffs' claims if they chose to re-assert them -- or indeed, if they still were being litigated -- in this forum. See Nathan v. Rowan, 651 F.2d 1223, 1226 (6th Cir. 1981) (barring shareholder's claims as res judicata because "in shareholder derivative actions arising under Fed. R. Civ. P. 23.1, parties and their privies

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include the corporation and all non-party shareholders"); accord Stella v. Kaiser, 218 F.2d 64, 65-66 (2d Cir. 1954); see also 19 Am. Jur. 2d, Corporations § 2471 ("a valid final judgment rendered on the merits in a shareholder's derivative action is res judicata, binding on all shareholders including those not made parties to the action, as well as the corporation and its officers") (citing cases); In re Home, 44 B.R. 796, 797 (S.D. Fla. 1984) (collaterally estopping debtor from relitigating issues which had been pursued by his corporation against defendant in a prior adversary proceeding).

In sum, because simultaneous litigation of this action and the identical Delaware actions would only be duplicative and wasteful of judicial resources -- and of the resources of Sunbeam, on whose behalf this action is purportedly brought -- abstention under Colorado River is appropriate.[1]

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[1]As explained in Sunbeam's Opening Memorandum, Sunbeam has adopted an efficient and sensible bifurcated approach to its litigation problems: claims based on the federal securities laws and related claims should be tried in this Court, and claims (like this case) that primarily present issues of Delaware corporate law should be resolved in the Delaware Court of Chancery. (See Op. Mem. at 3)

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United States District Court
Case No. 98-8739
CIV-MIDDLEBROOKS

CONCLUSION

For the reasons stated above, the Court should dismiss or stay all proceedings on Plaintiff's claims pending resolution of the earlier-filed Delaware actions.

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16div-007087

United States District Court
Case No. 98-8739
CIV-MIDDLEBROOKS

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. mail, first class postage prepaid on this 19 day of January, 1999 upon: Tod Aronovitz, Esquire, Aronovitz & Associates, P.A., Musuem Tower, Suite 2700, 150 W. Flagler Street, Miami, FL 33130.

By: _____
RICHARD E. BERMAN, ESQUIRE

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16div-007088

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

PRESCOTT GROUP SMALL CAP, L.P.; PHIL & JANA FROHLICH; PHIL D. FROHLICH, IRA; LEROY WARREN BREWER; and CEDE & CO.,	)	
Petitioners,	)	
v.	)	C. A. No. 1789-NC
THE COLEMAN COMPANY, INC.,	)	
Respondent.	)	

PETITION FOR APPRAISAL OF STOCK

Petitioners, by their undersigned attorneys, state as follows:

1. Respondent, The Coleman Company, Inc. ("Coleman"), is a Delaware corporation, and is the surviving corporation of a merger ("Merger") between it and a subsidiary of Sunbeam Corporation ("Sunbeam"), effective on January 6, 2000.

2. Upon the merger becoming effective, each share of Coleman common stock was converted into a right to receive $6.44 in cash and $0.5677 of a share of Sunbeam common stock, or, in lieu thereof, the right to elect appraisal pursuant to 8 Del. C. § 262.

EXHIBIT

3. Immediately prior to the Merger, petitioner Prescott Group Small Cap, L.P. was the beneficial owner of 380,400 shares of Coleman common stock; petitioners Phil & Jana Frohlich were the beneficial owners of 17,000 shares of Coleman common stock; petitioner Phil D. Frohlich, IRA was the beneficial owner of 10,000 shares of Coleman common stock and petitioner Leroy Warren Brewer was the beneficial owner of 10,000 shares of Coleman common stock (collectively, "Petitioners' Shares").

4. Petitioner Cede & Co. ("Cede") is a New York partnership which acts as nominee for the Depository Trust Company ("DTC"), a securities depository. At all times relevant hereto, Cede has been the holder of record of Petitioners' Shares. While Cede appears as a petitioner in this action as a holder of record of Petitioners' Shares, it does so only at the request of the beneficial owners, the true parties-in-interest set forth above. Cede has no interest in this matter other than to take those steps which are necessary to ensure that the beneficial owners are not denied their rights as beneficial owners of Petitioners' Shares, and Cede assumes no further responsibility in this matter.

5. Within the time prescribed by 8 Del. C. § 262, petitioners caused to be delivered to Coleman written demands

for appraisal of Petitioners' Shares, in accordance with 8 Del. C. § 262.

6. Petitioners did not vote Petitioners' Shares in favor of the Merger and have not withdrawn their demands for appraisal.

7. Petitioners, therefore, have complied with the provisions of 8 Del. C. § 262 and are entitled to a determination of the value of and payment for Petitioners' Shares.

WHEREFORE, petitioners demand, pursuant to 8 Del. C. § 262 that:

1. The Court determine and direct that respondent pay to petitioners, and all other Coleman stockholders entitled to appraisal, the fair value of their shares of Coleman common stock, together with interest from the date of the Merger;

2. The Court tax all costs of the proceedings upon respondent; and

3. The Court grant such other and further relief as it may deem just, proper and equitable.

MORRIS, NICHOLS, ARSHT & TUNNELL

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Attorneys for Petitioners

February 22, 2000

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THE COURT: I think we're going to give them an opportunity to talk about that some more.

For argument sake, assume what they say is true, that there were these people, the Blackstone report was prepared by Weil Gotshal and Blackstone for Sunbeam's litigation committee because people were complaining about this sale and shareholders were saying, we got ripped off, we didn't get anything of value, bla, bla, bla. So, what are we going to do about this? So, they come up with this report, which obviously discusses things that you all would be interested in.

Why wouldn't that be work product?

The question is, if -- it's not privileged if they were loosey-goosey with it and gave it to Coleman and they are not identified together as defendants, you're right about that, I think.

What do you think about what they said, that they were threatened or sued as joint defendants?

MR. HILL: I agree that the, to the best of my knowledge, Coleman Parent and Sunbeam were joint defendants.

Here's what happened, Coleman threatened suit, or rescission, as Mr. Neumeier says, suit or

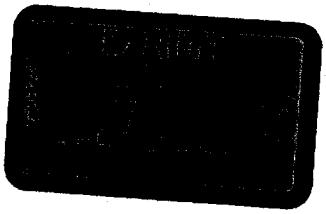
IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC., Plaintiff, v. ARTHUR ANDERSEN LLP and PHILLIP E. HARLOW, Defendants.	Case No.: CA 01-06062AN Judge Stephen Rapp

ANDERSEN'S MOTION TO COMPEL THE PRODUCTION OF A NON-PRIVILEGED COLEMAN PARENT DOCUMENT

Pursuant to Florida Rule of Civil Procedure 1.380(a)(1), defendant Arthur Andersen LLP ("Andersen") respectfully moves this Court for an order compelling plaintiff Coleman (Parent) Holdings, Inc. ("Coleman Parent") to produce all copies of a document originally from Ernst and Young, numbered CP 41767-41775 (the "E&Y Memo"). Coleman Parent produced the document to Andersen in December, 2001 and labeled it as "Confidential." When Andersen requested in late May, 2002 that Coleman Parent allow Andersen to show the document to a third party despite the "Confidential" label, Coleman Parent refused, asserted a claim of privilege over the document, and demanded the return of all copies. Because Coleman Parent's belated assertion of privilege is groundless, Andersen respectfully requests the Court to require Coleman Parent to return the document to Andersen. In addition, Andersen asks that the Court remove the "Confidential" label, so that Andersen can show the document to third parties, and, if need be, other courts.[1]

[1] Andersen also asks Coleman Parent to bring a copy of the document to the hearing so that Judge Rapp can see the document.



BACKGROUND

This lawsuit arose out of Sunbeam's financial collapse following its acquisition of The Coleman Company and two other companies at the end of March, 1998. Plaintiff Coleman Parent controlled 81% of The Coleman Company prior to selling that Company to Sunbeam. Coleman Parent received shares of Sunbeam stock in the transaction, in addition to cash and debt reduction.

After the transaction the Sunbeam stock price collapsed. Coleman Parent threatened to sue Sunbeam. Sunbeam's Board of Directors formed a Special Committee to formulate options for settling Coleman Parent's potential claims. One such option was that Sunbeam would offer Coleman Parent warrants in exchange for a promise not to sue. The Special Committee of the Sunbeam board hired legal advisors, Weil Gotshal & Manges ("Weil Gotshal"), and financial advisors, The Blackstone Group. Working in concert, Weil Gotshal and The Blackstone Group performed a valuation analysis of the warrants. The warrant valuation analysis is described in a written report, the "Blackstone Report." Sunbeam offered, and Coleman Parent accepted, the warrants as the settlement consideration.

The Blackstone Report is critical evidence concerning Coleman Parent's allegation that it was damaged in the Sunbeam transaction. Furthermore, counsel for Coleman Parent has admitted to the Court that Andersen is entitled to a "setoff" equal to the compensation Coleman Parent has already received from Sunbeam.[2] The Blackstone report specifically addressed the value of the warrants Sunbeam gave Coleman, and is vital for determining what the value was. Despite the obvious importance of the Blackstone Report, Andersen has still not been provided a

[2] See the January 3, 2002 Hearing Transcript, p. 23-24, attached as Ex. A. Mr. Scarola stated that Coleman Parent and Sunbeam "negotiated a settlement," and that "(c)learly (the settlement) would be" a setoff for Andersen. "Whatever has been received already in compensation for losses sustained in this transaction would be a setoff against any claim against Andersen."

copy. Andersen has subpoenaed Weil Gotshal, but Weil Gotshal refuses to produce the Blackstone Report. Weil Gotshal contends the Report is protected attorney work product.

Andersen needs the "E&Y Memo" at issue here to demonstrate to Weil Gotshal that any privilege concerning the Blackstone Report has long been waived. The document Andersen seeks from Coleman Parent (CP 41767-41775) is an Ernst & Young memo addressed to the file. It reveals that Ernst & Young – a third party who was *Coleman's* auditor, not Sunbeam's -- had full access to The Blackstone Report. In short, the document establishes conclusively that the Blackstone Report was shared with representatives of Sunbeam's adversary, and cannot be protected work product. Andersen must show the E&Y Memo to Weil Gotshal, and if necessary to the New York Courts, in order to establish that the Blackstone Report is not privileged and must be produced. Coleman Parent originally produced the E&Y Memo to Andersen, and labeled it "Confidential." When Andersen requested permission to show the E&Y Memo to Weil Gotshal, however, Coleman refused, and belatedly claimed that the E&Y Memo was itself privileged.

ARGUMENT

There is no basis for Coleman Parent's contention that the E&Y Memo is privileged. There is no suggestion that it was prepared by a lawyer or with the assistance of a lawyer, or that it was prepared by anyone other than an auditor or tax professional who worked for Ernst & Young. Nor is there any evidence of a privileged communication with a lawyer's client – it was addressed to "The Files."

Coleman Parent attempts to argue that the document is privileged because it references and includes portions of The Blackstone Report, which Coleman Parent contends is the protected attorney work-product of Weil Gotshal.

The sole claim of alleged privilege on which Coleman Parent relies – that pertaining to the Blackstone Report – is one that Coleman Parent has no standing to assert. Courts routinely have held that only the attorney who created the work product or the client on whose behalf the work product was created have standing to assert the privilege. *See In Re Grand Jury Proceedings*, 604 F.2d 798, 801(3d Cir. 1979)(noting that the lawyer who created the work product as well as the client who paid for it may assert the privilege); *State of Florida v. Rabin*, 495 So. 2d 257, 262 n.8 (Fla. 3rd D.C.A. 1986)(stating that the work product privilege "may be asserted by either the client or the attorney."). The Blackstone Report was created by Weil Gotshal, whose client was Sunbeam's Special Committee, not Coleman Parent. Coleman Parent cannot assert any privilege over the Blackstone Report, much less rely on such an alleged privilege as a basis for withholding a *different* document.

Furthermore, if the Court determines that Coleman Parent has no standing to assert Weil Gotshal's privilege, the Court need not rule on whether or not the Blackstone Report itself contains privileged information. Andersen would simply show the E & Y document to Weil Gotshal in order to demonstrate to them that any work-product privilege that attached to the Blackstone Report has been waived. Any further dispute regarding the Report could then be settled by Andersen and Weil Gotshal, rather than by Coleman Parent.

Even if Coleman Parent had standing to assert the work product protection over the Blackstone Report, however, that protection cannot extend to the E & Y Memo which Andersen now seeks. When a privileged document is shown to a third party and quoted in the third party's document, the privilege is *waived*, not somehow extended to also cover the third party's document as Coleman Parent argues.[3] It is also clear from the case law and the purposes behind

[3] Without the presence of Weil Gotshal, it is difficult to know the exact facts and circumstances which led to the creation of the Report, and therefore it is hard to analyze whether any work product privilege ever attached to the

the work product protection that if the work product document is disclosed to a party in an adversarial relationship with the disclosing party, the work product privilege is waived. Florida, New York, and federal case law all make this clear. *See Visual Scene Inc. v. Pilkington Bros.*, 508 So. 2d 437, 442 (Fla. 3rd D.C.A. 1987)("a disclosure . . . does not waive the work product privilege unless it is 'inconsistent with the maintenance of secrecy from the disclosing party's adversary . . . [that is, that it] substantially increases the possibility of an opposing party obtaining the information.'")(internal citations omitted); *Charter One Bank, F.S.B. v. Midtown Rochester, L.L.C.*, 738 N.Y.S.2d 179, 186 (N.Y. Sup. Ct. 2002)("When a party voluntarily gives to its adversary documents that share the thought processes of counsel, the work-product privilege disappears."); *Salomon Bros. Treasury Litig. v. Steinhardt Partners, L.P.*, 9 F.3d 230, 235 (2d Cir. 1993)("The waiver doctrine provides that voluntary disclosure of work product to an adversary waives the privilege as to other parties."). To the extent that the E&Y Memo discusses and quotes the Blackstone Report, it simply reveals that the Report was provided to representatives of Sunbeam's adversary, and lost any privilege it might have had.[4]

Finally, Andersen also asks that the Court remove the "Confidentiality" label from CP41767-775. According to the Stipulated Confidentiality Order in effect for this case, documents may be marked confidential if they "constitute, contain, reveal or reflect proprietary or confidential trade secrets or technical, business, financial or personnel information of a current nature." (Stipulated Confidentiality Order, ¶ 4)(Ex. B). A routine valuation analysis done in 1999 cannot be said to fall under this category. The Confidentiality label should be removed so

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Report. Therefore, without waiving its argument that the Report was not even work product privileged in the first place, Andersen will simply assume in this motion that the Report at one time did contain work product privileged information.

[4] The accountant-client privilege also does not provide an exception to the waiver rule here. Ernst & Young was not Sunbeam's auditor, so communication between Sunbeam and Ernst & Young were not between an accountant and its client.

that Andersen can freely show the document to Weil Gotshal and persuade them to turn over the Blackstone Report. If the Court does not choose to remove the Confidentiality label, Andersen asks that the Court at least order Coleman Parent to give Andersen permission to show the document to Weil Gotshal, and if need be the New York Courts. As Coleman Parent's stated basis for withholding the E&Y Memo is to protect Weil Gotshal's work product, it can have no basis for refusing to allow Weil Gotshal to see the document.

CONCLUSION

For the foregoing reasons, Andersen asks the Court to declare that CP 41767-775 is not privileged, nor does it contain confidential information. Copies of the document should be returned to Andersen, and the Confidentiality label should be removed from the document.

Dated: June 27, 2002

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT
ARTHUR ANDERSEN LLP

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Arthur Andersen LLP's Motion to Compel The Production of a Non-Privileged Coleman Parent Document* was served on the following counsel via facsimile and U.S. Mail on this 27th day of June, 2002.

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Counsel for Defendants Arthur Andersen LLP (an Ontario limited liability partnership), Arthur Andersen & Co. (a Hong Kong partnership); Ruiz, Urquiza Y Cia. S.C. (a Mexican partnership), Porta, Cachafeiro, Laria & Asociados (a Venezuelan partnership) and Arthur Andersen (a United Kingdom partnership).

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16div-007100

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Hank Jackson

WPB1 #311250 v1

IN THE FIFTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO.: CA 01-06062 AN

ORIGINAL

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

ARTHUR ANDERSEN, LLP and
PHILLIP E. HARLOW,

Defendants.
----------/

COURT REPORTER'S TRANSCRIPT
OF THE PROCEEDINGS BEFORE THE COURT

PRESIDING: HONORABLE STEPHEN RAPP
West Palm Beach, Florida
Thursday, January 3rd, 2002
1:34 p.m. - 2:57 p.m.

EXHIBIT
A

a hundred and ten million dollars. Arthur Andersen has settled that claim. Our claim was not part of that action. We have a separate claim, and the position that we are in is that we brought claims against Sunbeam in 1998. Those claims against Sunbeam were settled. In connection with that settlement, very interestingly and significantly, Sunbeam, in connection with that litigation, Sunbeam never raised any issue with regard to the value of what it received in this transaction. Not only did it not raise any issue with regard to the value of what it received, it expressly waived any possible claim with respect to the value of what it received in connection with its settlement.

So, while Sunbeam has expressed its complete satisfaction with the transaction in which it engaged, Arthur Andersen seeks to raise the issue that Sunbeam was cheated.

THE COURT: Let me ask you this: Coleman had previously sued Sunbeam?

MR. SCAROLA: Coleman has previously sued and settled its claim, Coleman Parent Holding.

MR. LEVINE: That's not correct.

MR. SCAROLA: They negotiated a settlement. It never resulted in a lawsuit.

THE COURT: Is that a setoff for Andersen?

MR. SCAROLA: Clearly it would be. Whatever has been received already in compensation for losses sustained in this transaction would be a setoff against any claim against Andersen.

So, what we have, stripped to its bare essentials, is this argument in connection with the discovery that is currently pending before the Court. Andersen is in a position where Andersen has got to admit that he cheated Coleman Parent in the Sunbeam deal because it has already publicly admitted that it certified false financial statements, materially false financial statements that could not and should not be relied upon. Andersen cheated Coleman Parent in the Sunbeam deal, but Coleman Parent, Andersen says, should not be fully compensated for its loss because maybe, sheer speculation, maybe The Coleman Company stock that Sunbeam got was worth less than Sunbeam -- excuse me -- worth less than Andersen told Sunbeam that it was worth because Andersen is the one that helped to conduct the due diligence. Not only did it help to conduct the due diligence, but in the financial statements that follow this transaction, Arthur Andersen said that this was a two billion dollar deal. They represented that what Sunbeam got was --

MR. LEVINE: Your Honor, I'm going to object.

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

COLEMAN (PARENT) HOLDINGS, INC., Plaintiff, v. ARTHUR ANDERSEN LLP and PHILLIP E. HARLOW, Defendants.	Case No.: CA 01-06062AN Judge Stephen A. Rapp JURY TRIAL DEMANDED

STIPULATED CONFIDENTIALITY ORDER

The parties hereto hereby stipulate and agree to the following Confidentiality Order:

1. Scope of Order. This Order shall apply to all non-public and Confidential (as hereinafter defined) materials produced in this litigation and all testimony given in any deposition by any party to the litigation or by any person or entity that is not a party hereto (a "non-party"), to all non-public and Confidential information disclosed by any party hereto during the course of the captioned litigation and to all non-public information disclosed to any party hereto by any non-party in response to the service of a subpoena or notice of deposition on a non-party in connection with the captioned litigation ("Litigation Materials").

2. This Order shall not apply to any document, testimony or other information that (a) is already in a receiving party's possession at the time it is produced, (b) becomes generally available to the public other than as a result of disclosure in violation of this Order or in breach of any other legal obligation, or (c) becomes available to a party other than through voluntary or required production from a person or party who obtained the document, testimony or other information without any confidentiality restriction.

EXHIBIT B

3. Litigation Materials and the information derived therefrom shall be used solely for the purpose of preparing for and conducting this litigation or any other litigation arising therefrom, and shall not be disclosed or used for any other purpose.

4. Any party or non-party may designate as "Confidential" any Litigation Materials or portions thereof which the party or non-party believes, in good faith, constitute, contain, reveal or reflect proprietary or confidential trade secrets or technical, business, financial or personnel information of a current nature. If a party or non-party produces Litigation Materials that have been produced in another litigation or to any government entity and such Litigation Materials have been designated confidential or were accompanied by a request that confidential treatment be accorded them, such Litigation Materials shall be deemed to have been designated "Confidential" for purposes of this Stipulation and Order.

5. Any documents or other tangible Litigation Materials may be designated as "Confidential" by marking every such page "Confidential" or by informing the other party in writing that such material is Confidential. Such markings will be made in a manner which does not obliterate or obscure the content of the document or other tangible Litigation Material. If Litigation Material is inspected at the choice of location of the party or non-party producing or disclosing Litigation Materials (a "producing party"), all such Litigation Material shall be presumed at such inspection to have been designated as Confidential by the producing party until such time as the producing party provides copies to the party that requested the Litigation Material. Production of Confidential Material for inspection and copying shall not constitute a waiver of confidentiality.

6. Depositions or other testimony may be designated "Confidential" by any one of the following means:

(a) stating orally on the record, with reasonable precision as to the affected testimony, on the day the testimony is given that this information is "Confidential"; or

(b) sending written notice designating, by page and line, the portions of the transcript of the deposition or other testimony to be treated as "Confidential" within 10 days after receipt of the transcripts.

7. The entire transcript of any deposition shall be treated as Confidential Material until thirty days after the conclusion of the deposition. Each page of deposition transcript designated as Confidential Material shall be stamped, as set forth in paragraph 5 above, by the court reporter or counsel.

8. In the event it becomes necessary at a deposition or hearing to show any Confidential Material to a witness, any testimony related to the Confidential Material shall be deemed to be Confidential Material, and the pages and lines of the transcript that set forth such testimony shall be stamped as set forth in paragraph 5 of this Stipulation.

9. Litigation Materials designated "Confidential" and any copies thereof, and the information contained therein, shall not be given, shown, made available or communicated in any way to anyone except:

(a) The Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida (the "Court") (including Clerks and other Court personnel). Litigation Materials designated "Confidential" and any copies thereof, and the information contained therein, that are filed with the Court or any pleadings, motions or other papers filed with the Court, shall be filed under seal in a separate sealed envelope conspicuously marked "Filed Under Seal – Subject to Confidentiality Order," or with such other markings as required by Court rules, and shall be kept under seal until further order of the

Court. Where possible, only those portions of filings with the Court that disclose matters designated "Confidential" shall be filed under seal;

(b) counsel to the parties, including co-counsel of record for the parties actually assisting in the prosecution or defense of this litigation, and the legal associates and clerical or other support staff who are employed by such counsel or attorneys and are working under the express direction of such counsel or attorneys;

(c) parties and current officers and employees of parties to the extent reasonably deemed necessary by counsel disclosing such information for the purpose of assisting in the prosecution or defense of this litigation;

(d) outside photocopying, graphic production services, litigation support services, or investigators employed by the parties or their counsel to assist in this litigation and computer personnel performing duties in relation to a computerized litigation system;

(e) any person who is a witness or deponent, and his or her counsel, during the course of a deposition of testimony in this litigation;

(f) any person who is a potential fact witness in the litigation, provided, however, that a person identified solely in this subparagraph shall not be permitted to retain copies of such Litigation Material;

(g) court reporters, stenographers, or videographers who record deposition or other testimony in the litigation;

(h) experts or consultants retained in connection with the litigation;

(i) any person who is indicated on the face of a document to have been an author, addressee or copy recipient thereof, provided, however, that a person identified

solely in this subparagraph shall not be permitted to retain copies of such Litigation Material; and

(j) any other person, upon written consent from the party or person who designated such Litigation Materials "Confidential."

10. Before any person included in paragraph 9(f) or (h) is given access to Litigation Materials designated "Confidential," and before any person included in subparagraph 9(e) is permitted to retain any copy of Litigation Materials designated Confidential, such person shall be provided with a copy of this Order and shall acknowledge in a written statement, in the form provided as Exhibit A hereto, that he or she read the Order and agrees to be bound by the terms thereof. Such executed forms shall be retained in the files of counsel for the party who gave access to Litigation Materials to the person who was provided such access. Such executed forms shall not be subject to disclosure under the Florida Rules of Civil Procedure unless a showing of good cause is made and the Court so orders.

11. The inadvertent production of privileged or arguably privileged materials shall not be determined to be either: (a) a general waiver of the attorney-client privilege, the work product doctrine or any other privilege; or (b) a specific waiver of any such privilege with respect to documents being produced or the testimony given. Notice of any claim of privilege as to any document claimed to have been produced inadvertently shall be given within a reasonable period of time after discovery of the inadvertent production, and, on request by the producing party, all inadvertently produced materials as to which a claim of privilege is properly asserted and any copies thereof shall be returned promptly.

12. Nothing in this Order shall prevent any producing party from disclosing or using its own "Confidential" Litigation Materials as it deems appropriate, and any such

disclosure shall not be deemed a waiver of any party's right or obligations under this Order with respect to any other information. If a party or non-party that designates information "Confidential" discloses or uses such "Confidential" Litigation Materials in a manner inconsistent with the claim that such information is confidential, any party may move the Court for an order removing such "Confidential" designation pursuant to paragraph 15 herein. Nothing in this Stipulation and Order shall impose any restrictions on the use or disclosure by any party of documents, materials, testimony or other information produced as Litigation Material obtained by such party independently of discovery in this litigation.

13. The parties do not waive any right to object to any discovery request, or to the admission of evidence on any ground, or seek any further protective order, or to seek relief from the Court from any provision of this Order by application on notice on any grounds.

14. If any party objects to the designation of any Litigation Materials as "Confidential," the party shall first state the objection by letter to the party that made such designations. The parties agree to confer in good faith by telephone or in person to attempt to resolve any dispute respecting the terms or operation of this Order. If the parties are unable to resolve such dispute within 5 days of such conference, any party may then move the Court to do so. Until the Court rules on such dispute, the Litigation Materials in question shall continue to be treated as "Confidential," as designated.

15. Upon motion, the Court may order the removal of the "Confidential" designation from any information so designated. In connection with any motion concerning the propriety of a "Confidential" designation, the party making the designation shall bear the burden of proof.

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16. Within 60 days of the conclusion of this litigation as to all parties, all Litigation Materials designated "Confidential" and all copies or notes thereof shall be returned to counsel for the producing party who initially produced the Litigation Materials, or destroyed, except that counsel may retain their work product and copies of court filings, transcripts, and exhibits, provided said retained documents will continue to be treated as provided in this Order, as modified by rulings of the Court. If a party chooses to destroy documents after the litigation has concluded, that party shall certify such destruction in writing to the producing party upon written request for such certification by the producing party.

17. The failure of any party to challenge the designation by another production party of Litigation Material as "Confidential" during the discovery period shall not be a waiver of that party's right to object to the designation of such material at trial.

18. This Stipulation applies to all non-parties that are served with subpoenas in connection with this litigation or who otherwise produce documents or are noticed for deposition in connection with this litigation, and all such non-parties are entitled to the protection afforded hereby upon signing a copy of this agreement and agreeing to be bound by its terms.

19. Any party may move to modify the provisions of this Order at any time or the parties may agree by written stipulation, subject to further order of the Court, to modify the provisions of the Order. Should any non-party seek access to the Confidential Material, by request, subpoena or otherwise, the party or recipient of the Confidential Material from whom such access is sought, as applicable, shall promptly notify the producing party who produced such Confidential Materials of such requested access and shall not provide such materials unless required by law or with the consent of the producing party.

20. This Order shall not apply to any Litigation Materials offered or otherwise used by any party at trial or at any hearing held in open court. Prior to the use of any Litigation Materials that have been designated Confidential at trial or any hearing to be held in open court, counsel who desires to so offer or use such Confidential Material shall take reasonable steps to afford opposing counsel and counsel for the producing party who produced such Confidential Material a reasonable opportunity to object to the disclosure in open court of such Confidential Material, and nothing herein shall be construed a wavier of such right to object.

21. Written notice provided pursuant to this Order shall be made to counsel of record by facsimile.

22. The provisions of this Order shall survive the final termination of the case for any retained Confidential Litigation Material thereof.

ARTHUR ANDERSEN LLP and PHILLIP E. HARLOW

By _____
Eliot Lauer
Curtis, Mallet-Prevost, Colt & & Mosle LLP
101 Park Avenue
New York, NY 10178

COLEMAN (PARENT) HOLDINGS, INC.

By _____
Jack Scarola
Searcy, Denney, Scarola, Barnhart & Shipley P.A.
2139 Palm Beach Lake Boulevard
West Palm Beach, FL 33409

SO ORDERED;

This _____ day of _____, 2001

_____
CIRCUIT JUDGE

COPIES PROVIDED TO ALL THOSE ON THE ATTACHED COUNSEL LIST

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Exhibit A

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

COLEMAN (PARENT) HOLDINGS, INC., Plaintiff, v. ARTHUR ANDERSEN LLP and PHILLIP E. HARLOW, Defendants.	Case No.: CA 01-06062AN Judge Stephen A. Rapp JURY TRIAL DEMANDED

DECLARATION OF ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I, _____, declare under penalty of perjury that:

1. My address is _____

2. My present employer is _____.

3. My present occupation or job description is _____

_____.

4. I hereby certify and agree that I have read and understand the terms of the Confidentiality Order in the above-captioned actions. I further certify that I will not use "Confidential" information for any purpose other than this litigation among the parties, and will not disclose or cause "Confidential" information to be disclosed to anyone not expressly permitted by the Order to receive "Confidential" information. I agree to be bound by the terms and conditions of the Order.

5. I understand that I am to retain in confidence from all individuals not expressly permitted to receive information designated as "Confidential," whether at home or at

work, all copies of any materials I receive which have been designated as "Confidential," and that I will carefully maintain such materials in a container, drawer, room or other safe place in a manner consistent with the Order. I acknowledge that the return or destruction of "Confidential" material shall not relieve me from any other continuing obligations imposed upon me by the Order.

6. I stipulate to the jurisdiction of this Court.

Date: _____

_____
(Signature)

WHSF: NY 1845667 1

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#210742/mm

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiffs,

vs.

CASE NO: CA 01-06062 AN

ARTHUR ANDERSEN LLP (a United States Partnership); ANDERSEN WORLDWIDE, SOCIÉTÉ COOPÉRATIVE (a Swiss Cooperative); ARTHUR ANDERSEN & CO. (a Canadian company); ARTHUR ANDERSEN & CO. (a Hong Kong Company); RUIZ, URQUIZA Y CIA, S.C. (a Mexican company); PIERNAVIEJA, PORTA, CACHAFEIRO & AVOCADOS (a Venezuela company); ARTHUR ANDERSEN (a United Kingdom company); And PHILLIP E. HARLOW,

Defendants.

PLAINTIFF COLEMAN PARENT'S MEMORANDUM IN OPPOSITION TO DEFENDANT ARTHUR ANDERSEN LLP's MOTION TO COMPEL THE PRODUCTION OF A NON-PRIVILEGED COLEMAN PARENT DOCUMENT

Plaintiff Coleman (Parent) Holdings, Inc. ("Coleman Parent") respectfully submits this response in opposition to the motion to compel of Arthur Andersen LLP ("Andersen").

Background

On May 17, 2002, counsel for Arthur Andersen LLP ("Andersen") requested that Coleman Parent permit Andersen to show a memorandum produced in discovery by Coleman Parent with a "confidential" designation to a third-party, the law firm of Weil Gotshal & Manges, LLP ("Weil Gotshal"). The memorandum was written by the accounting firm of Ernst & Young,

COLEMAN VS. ANDERSEN ET AL
Case No.: CA 01-06062 AN

LLP ("E&Y") for the parent company of Coleman Parent, MacAndrews & Forbes Holding Co., Inc. ("Mafco") and its affiliates. The memorandum memorializes E&Y's internal analysis of the value of certain warrants to purchase shares of Sunbeam Corporation ("Sunbeam") that Sunbeam issued to Coleman Parent in connection with a settlement between Sunbeam and Coleman Parent in August 1998. The E&Y memorandum contains privileged information and was produced inadvertently. Coleman Parent retrieved this inadvertently produced memorandum from Andersen pursuant to Paragraph 11 of the Stipulated Confidentiality Order entered in this case. Andersen now has filed this motion to compel to get the memorandum back and to lift the confidential designation so that Andersen can show it to Weil Gotshal.

Andersen's sole interest in the E&Y memorandum, as Andersen acknowledges (Mot. at 3), is the memorandum's references to a second document, a report authored by The Blackstone Group, LLP. The Blackstone report was prepared at the direction of Weil Gotshal, which was counsel for a Special Committee of Sunbeam's Board of Directors, in connection with the evaluation and resolution of claims asserted by Coleman Parent against Sunbeam in 1998. Shortly after the settlement, Sunbeam, members of Sunbeam's Special Committee, and Mafco were named as co-defendants in multiple lawsuits challenging the settlement. Sunbeam provided the Blackstone report to Mafco during the course of that litigation. The Blackstone report contains information that was pertinent to the claims made in those cases.[1/]

1/ In connection with the consideration of Andersen's request for consent to show the E&Y report to Weil Gotshal, we determined that Mafco possessed a copy of the Blackstone report. Coleman Parent is adding that document to its privilege log.

COLEMAN VS. ANDERSEN ET AL
Case No.: CA 01-05062 AN

Andersen's motion should be rejected, because the E&Y memorandum is privileged, and because Mafco's receipt of the Blackstone report and E&Y's review of that report in preparing its memorandum did not deprive the Blackstone report of its privileged status.

Argument

Florida law governs this discovery dispute. *See Restatement (Second) of Conflict of Laws* § 127 comment a (1971) ("The local law of the forum governs, among other things, . . . discovery . . ."); *see also Merkle v. Robinson*, 737 So. 2d 540, 544 (Fla. 1999) (citations omitted) (the Supreme Court of Florida "has consistently followed the *Restatement* in addressing conflict of law issues"); *Nahar v. Nahar*, 656 So. 2d 225, 229 n.9 (Fla. Dist. Ct. App. 1995) (same). Andersen does not contend that the law of some other jurisdiction applies and, in fact, relies on Florida law for its meritless arguments.[2/]

Florida's statutory accountant-client privilege protects the entire E&Y memorandum. *See* Fla. Stat. Ann. § 90.5055. Section 90.5055 provides that communications between accountant and client that are not intended to be disclosed to third parties are privileged.

2/ Although Andersen does not argue that New York law applies to this discovery dispute, Andersen cites a few inapposite New York cases (Mot. at 5). Even if New York law applied, however, the E&Y document would be privileged because it contains privileged information (from the Blackstone report) that was shared between Sunbeam, Sunbeam's Special Committee, and Mafco as co-defendants with a common litigation interest in a pending lawsuit. *See In re Will of Prezzano*, 567 N.Y.S.2d 1009, 1012 (Surrogate's Ct. N.Y. 1991) (no waiver of work product protection when privileged information is disclosed to another person or entity with a common litigation interest). Moreover, the E&Y memorandum was prepared solely for the use of Mafco and its affiliates, and Andersen has made no showing that either the E&Y memorandum or the Blackstone report ever was disseminated to a third party. "To constitute a waiver [of the privilege] disclosure must be inconsistent with maintaining secrecy as against an adversary and must significantly increase the possibility that the opposing party will obtain the information." *Id.* at 1012. Clearly, no waiver occurred here.

COLEMAN VS. ANDERSEN ET AL
Case No.: CA 01-06062 AN

Moreover, that privilege encompasses confidential information that the client provides to the accountant for the purpose of rendering accounting advice (*id.*):

> (c) A communication between an accountant and the accountant's client is "confidential" if it is not intended to be disclosed to third persons other than:
>
> 1. Those to whom disclosure is in furtherance of the rendition of accounting services to the client.
>
> 2. Those reasonably necessary for the transmission of the communication.
>
> (2) A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, the contents of confidential communications with an accountant when such other person learned of the communications because they were made in the rendition of accounting services to the client. This privilege includes other confidential information obtained by the accountant from the client for the purpose of rendering accounting advice.

Under Section 90.5055, the E&Y memorandum clearly is a privileged communication because it was prepared for Mafco and its affiliates by their accountants at E&Y for the purpose of rendering accounting services. Andersen has made no showing that this document was disseminated to anyone outside E&Y, Mafco, or Mafco's affiliates. Moreover, under Section 90.5055, the Blackstone report retained its confidentiality when E&Y received it because E&Y obtained the report from Mafco (which had obtained the report from Sunbeam when Sunbeam, members of Sunbeam's Special Committee, and Mafco were co-defendants in pending litigation) for the purpose of rendering accounting advice. Thus, Coleman Parent is entitled to prevent the dissemination of the entire E&Y memorandum to third parties such as Andersen.

Conclusion

Arthur Andersen LLP's motion to compel should be denied.

COLEMAN VS. ANDERSEN ET AL
Case No.: CA 01-06062 AN

Dated: July 30, 2002

COLEMAN (PARENT) HOLDINGS, INC.

By: _____
One of Its Attorneys

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COLEMAN VS. ANDERSEN ET AL
Case No.: CA 01-06062 AN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to the attorneys on the attached list on this 30th day of July, 2002.

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Florida Bar No. 181773
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BARNHART & SHIPLEY P.A.
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COLEMAN VS. ANDERSEN ET AL
Case No.: CA 01-06062 AN

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COLEMAN VS. ANDERSEN ET AL
Case No.: CA 01-06062 AN

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

COLEMAN (PARENT) HOLDINGS, INC., Plaintiff, v. ARTHUR ANDERSEN LLP and PHILLIP E. HARLOW, Defendants.	Case No.: CA 01-06062AN Judge Stephen Rapp

ANDERSEN'S REPLY TO COLEMAN PARENT'S MEMORANDUM IN OPPOSITION TO DEFENDANT ARTHUR ANDERSEN LLP'S MOTION TO COMPEL THE PRODUCTION OF A NON-PRIVILEGED COLEMAN PARENT DOCUMENT

Defendant Arthur Andersen LLP respectfully submits this reply to Coleman Parent's Memorandum in Opposition to Defendant Arthur Andersen LLP's Motion to Compel the Production of a Non-Privileged Coleman Parent Document.

ARGUMENT

Andersen Moves the Court to Compel the Production of the Blackstone Report by Coleman Parent

Andersen filed its initial motion to compel with the Court and served the motion on the parties and non-parties on June 27, 2002 ("Andersen's Motion to Compel the Production of a Non-Privileged Coleman Parent Document"). Notice of the August 1, 2002 hearing date for the motion was served on the parties on July 8, 2002. Andersen stated in its motion that one of the reasons it needed the Ernst & Young memo ("E&Y Memo") that was the subject of that motion was because the E&Y Memo proves that any privilege that may have attached to the Blackstone Report had been waived. Andersen stated in its motion that the Blackstone Report "is critical

evidence concerning Coleman Parent's allegation that it was damaged in the Sunbeam transaction," and that Andersen sought to show Weil Gotshal the E&Y Memo in order to prove the Blackstone Report was no longer privileged and should be produced. Furthermore, counsel for Andersen explained to counsel for Coleman Parent on numerous occasions that Andersen ultimately sought the Blackstone Report.

Coleman Parent has refused to allow Andersen to show Weil Gotshal the E&Y Memo, and asserted a privilege over the E&Y Memo. Coleman Parent was aware that Andersen would then have to file a motion to compel in front of this Court in order to get access to the E&Y Memo, and that if Andersen was successful it would then have to persuade Weil Gotshal that the Blackstone Report should be produced because any privilege that had previously attached to the document had been waived. In sum, Coleman Parent knew that Andersen ultimately sought the Blackstone Report by at least May 17, 2002. (See Coleman Parent's Memorandum in Opposition at 1).

This entire time Coleman Parent *itself* had the Blackstone Report in its possession. Coleman Parent was aware of this fact by at least May 24, 2002, when Coleman Parent told Andersen that the E&Y Memo was privileged and could not be shown to Weil Gotshal (See Ex. 1) (Coleman Parent admits that "(i)n connection with the consideration of Andersen's request for consent to show the E&Y report to Weil Gotshal, we determined that Mafco possessed a copy of the Blackstone Report." Coleman Parent's Memorandum in Opposition at 2, footnote 1). Despite the knowledge that Andersen sought the Blackstone Report, and despite the knowledge that it possessed the Blackstone Report, Coleman Parent waited until late in the day on Tuesday, July 30, to alert Andersen to the fact that Coleman Parent itself possessed a copy of the Blackstone Report (See Ex. 2) By waiting more than two months to alert Andersen to this fact,

and then informing Andersen less than two days before the hearing. Coleman Parent hoped to avoid the issue at the August 1 hearing. Coleman Parent's attempts to game the system should not be allowed.

As a result of the recent discovery that Coleman Parent possesses the Blackstone Report, Andersen requests its production, along with the E&Y Memo that was the subject of the initial motion. Given that Coleman Parent's initial rationale for the argument that the E&Y Memo was privileged was that it contained portions of the "privileged" Blackstone Report, the parties have already briefed the issue of whether or not the Blackstone Report is privileged. Andersen spent a full page discussing why the Blackstone Report is not privileged in its initial motion (See p. 4-5). Coleman Parent discussed the same issue in its Memorandum in Opposition, which states that "E&Y's review of that report in preparing its memorandum did not deprive the Blackstone Report of its privileged status." (Memorandum in Opposition at 3, issue also discussed at pages 2 and 4).

Any work product privilege that the Blackstone Report may have contained has been waived. As Andersen stated in its initial motion, the law is clear that when a party shows its adversary its own work product, the work product privilege is waived. The purpose behind the work product privilege is to keep the mental impressions of the attorneys secret from their adversaries. As Coleman Parent admits in its Memorandum, Sunbeam provided Mafco (Coleman Parent's parent) with a copy of the Blackstone Report. (Memorandum in Opposition at 2). There could hardly be a clearer example of a waiver of the work product privilege than voluntarily handing an adversary one's work product. Any attempt by Coleman Parent to paint Mafco and Sunbeam as co-defendants with common legal interests relating to the Blackstone Report is simply inaccurate and unsupported by the facts. The Blackstone Report was created by

Sunbeam in response to threatened litigation by Mafco/Coleman Parent. Its entire purpose was to formulate settlement options with Coleman Parent. The Blackstone Report led Sunbeam to provide Mafco/Coleman Parent with warrants to purchase 23 million shares of Sunbeam stock at $7 a share. Ernst & Young, Mafco/Coleman Parent's auditors, put a gross fair value on the warrants of $80 million. Yet Coleman Parent would have the Court believe that Sunbeam and Mafco/Coleman Parent shared common legal interests and that the Blackstone Report was somehow pertinent to defending various claims brought after the Blackstone Report was created.

Furthermore, Coleman Parent has provided no proof of any joint defense agreement between Sunbeam and Mafco, no proof of when such agreement was instituted, and no proof of whether the agreement was in place prior to Sunbeam's decision to share its work product with its adversary. In fact, there has been absolutely no proof whatsoever put forth by Coleman Parent to show that it shared some sort of common legal interest with Sunbeam.

The Florida Accountant-Client Privilege Does Not Govern the E&Y Memo

In its initial motion, Andersen sought the production of the E&Y Memo. Coleman Parent, in its Memorandum of Opposition, has now argued that the E&Y Memo is protected by Florida's accountant-client privilege. Coleman Parent is wrong.

Mafco/Coleman Parent is a corporation with its headquarters in New York. Brian Carolan, who created the E&Y Memo, worked in Ernst & Young's New York office. Ernst & Young and Mr. Carolan were performing a valuation analysis of the warrants for Mafco's tax purposes. There is no reason why Florida law would govern the applicability of any accountant-client privilege. New York would clearly have the most interest in the relationship between a New York company, a New York auditor, and work done in New York City. New York also has no accountant-client privilege. *First Interstate Credit Alliance, Inc. v. Arthur Andersen & Co.*,

541 N.Y.S.2d 433, 434 (N.Y. App. Div. 1st 1988)(This case also noted that Maryland's accountant-client privilege would not apply because the plaintiff was a New York corporation and Andersen had a significant presence there, and therefore New York law (no accountant-client privilege) would apply). The E&Y Memo is not shielded from production by any accountant-client privilege.

CONCLUSION

Andersen believes it is entitled to the Blackstone Report, that the Report is not privileged, and that Coleman Parent should produce the Report. The issues have already been briefed, and both parties were on notice that the privilege status of the Blackstone Report would be at issue at the August 1 hearing. Coleman Parent did not tell Andersen that it had a copy of the Report until late in the day on July 30, at which time Andersen only had one day in which to file a reply and ask the Court to compel the production of the Blackstone Report. Therefore, Coleman Parent is on notice that Andersen seeks to compel the production of the Blackstone Report.

It is also clear that the E&Y Memo should be produced.

For the foregoing reasons, Andersen asks the Court to compel the production of both the E&Y memo and the Blackstone Report.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Arthur Andersen LLP's Motion to Compel The Production of a Non-Privileged Coleman Parent Document* was served on the following counsel on this 31st day of July, 2002.

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WPB1 #312553 v1

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May 24, 2002

VIA FACSIMILE

Hamilton H. Hill, Esq.
BARTLIT BECK HERMAN PALENCHAR & SCOTT
Courthouse Place
54 West Hubbard Street
Chicago, Illinois 60610

Re: Coleman (Parent) Holdings, Inc. v. Arthur Andersen LLP, et al.

Dear Hamilton:

This will respond to your inquiry regarding whether Coleman (Parent) would permit Andersen to provide the confidential Coleman (Parent) document bearing bates numbers CP041767-CP041775 to Weil, Gotshal & Manges. After reviewing the document, we have determined that it is privileged and was inadvertently produced. Pursuant to Paragraph 11 of the Stipulated Confidentiality Order, please promptly return all copies of the document in the possession of you, your co-counsel, your client and/or anyone else who may have received a copy.

Very truly yours,

Elizabeth A. Coleman

cc: Gary L. Cutler
Hank Jackson
Jack Scarola

TOTAL P.02

EXHIBIT

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July 30, 2002

VIA FACSIMILE AND U.S. MAIL

Hamilton R. Hill, Esq.
BARTLIT BECK HERMAN PALENCHAR & SCOTT
Courthouse Place
54 West Hubbard Street
Chicago, Illinois 60610

Re: Coleman (Parent) Holdings Inc. v. Arthur Andersen LLP, et al.

Dear Hamilton:

I enclose a supplement to Coleman (Parent)'s privilege log that adds document numbers 558 and 559. Document number 558 is the Ernst & Young memorandum and attachments that is the subject of Andersen's Motion to Compel a Non-Privileged Coleman Parent Document; document number 559 is the report prepared by The Blackstone Group, LLP in August 1998 for the Special Committee of Sunbeam's Board of Directors.

Very truly yours,

Elizabeth A. Coleman

cc: Gary L. Cutler
Hank Jackson
Jack Scarola

EXHIBIT
Exhibit 2

Coleman (Parent) v. Arthur Andersen, et al.
No. CA-01-080KAN (Hon. Stephen A. Rapp)
Coleman (Parent) Privilege Log

DOCUMENT NUMBER	ATTACHMENT	DATE	AUTHOR	RECIPIENT	PRIVILEGE ASSERTED	DOCUMENT DESCRIPTION
555		03/00/1998	Sarah Shenker, Esq.	Jeanie Zirus, Esq.	Attorney-Client, Work Product	Fax w/attached document.
556	A	03/07/1998	Sarah Shenker, Esq.		Attorney-Client, Work Product	Draft Engagement Letter Blog with S. Shenker's handwritten notes.
557		04/28/1998	Frank Miller, Esq.	Barry Schenck, Esq., James Maher, William Nesbitt, Jason Daly, Esq., Shawn Hills, Esq., Adam Dannenfelt, Esq., Jeff Paul Rose, Esq. [cc], Rebecca Sandberg, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft document.
557	A	04/28/1998	Blackstone Advs		Attorney-Client, Work Product	Excerpt of draft Sarbanes Form S-4.
558		04/29/1998	Shawn M. Carolan	Fax	Attorney-Client, Work Product, Joint Defense, Associated Client	Memorandum to Sarbanes regarding valuation of Sarbanes warrants for internal accounting purposes.
559	A	08/04/1998	Ernst & Young		Accountant-Client	Excerpt of Sarbanes Form S-K with handwritten marginalia.
560	B	04/00/0000	Ernst & Young		Accountant-Client Privilege	Summary of Ernst & Young valuation of Sarbanes Warrants.

Coleman (Parent) v. Arthur Andersen, et al.
No. CA-01-000530 (Hon. Stephen A. Rapp)
Coleman (Parent) Privilege Log

DOCUMENT NUMBER	ATTACHMENT	DATE	AUTHOR	RECIPIENT	PRIVILEGE ASSERTED	DOCUMENT DESCRIPTION
63	C	08/15/2000	The Blackstone Group, LLP		Attorney-Client, Work Product, Joint Defense, Accountant-Client Privilege	Excerpt from Report prepared by Blackstone Group, LLP for counsel to Sunbeam in connection with Anchorage litigation.
64	D	00/00/2000	Ernst & Young		Attorney-Client, Work Product, Joint Defense, Accountant-Client Privilege	Summary of invoices of Sunbeam counsel's performed by Ernst & Young and The Blackstone Group, LLP.
65		08/12/2000	The Blackstone Group, LLP		Attorney-Client, Work Product, Joint Defense	Report prepared by The Blackstone Group, LLP for counsel to Sunbeam in connection with Arthur Andersen litigation.

TOTAL P.04

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

COLEMAN (PARENT) HOLDINGS, INC., Plaintiff, v. ARTHUR ANDERSEN LLP and PHILLIP E. HARLOW, Defendants.	**Case No.: CA 01-06062AN** **Judge Stephen Rapp**

ANDERSEN'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF ITS MOTION TO COMPEL THE PRODUCTION OF THE E&Y MEMO AND THE BLACKSTONE REPORT

Defendant Arthur Andersen LLP ("Andersen") respectfully submits this Supplemental Memorandum in Support of its Motion to Compel the Production of the E&Y Memo and the Blackstone Report.

BACKGROUND

On June 27, 2002, Andersen filed a motion to compel the production of an Ernst & Young document (the "E&Y Memo"). Two days before the hearing on that motion Coleman Parent revealed for the first time that it possessed a copy of the Blackstone Report. Although Andersen had requested the production of the Blackstone Report in September of 2001, Coleman Parent never produced the report, never put the report on its privilege log, and never alerted Andersen to the fact that Coleman Parent had a copy of the report until filing its July 30 brief.

On July 31 Andersen therefore asked the Court to compel the production of not only the E&Y Memo but also the Blackstone Report.[1] Andersen now files this memorandum in response to the arguments raised by Sunbeam and Coleman..

Neither the E&Y Memo nor the Blackstone Report are privileged. "The burden is upon the party asserting a privilege to establish the existence of each element of the privilege in question." Charles W. Ehrhardt, Florida Evidence, § 501.1, at 277 (2001 ed.) Neither Sunbeam nor Coleman Parent has met that burden regarding either the E&Y Memo or the Blackstone Report.

ARGUMENT

THE BLACKSTONE REPORT SHOULD BE PRODUCED

Even if the Blackstone Report at one time contained work product privileged information, the privilege has been waived.

As Andersen has argued before, any work product privilege that might have attached to the Blackstone Report has been waived because Sunbeam shared the Report with its adversary, Coleman Parent. Coleman Parent and Sunbeam have now filed affidavits in an attempt to create support withholding the Blackstone Report. The Court should not rely on those last-minute affidavits until Andersen has had a chance to test them through depositions and further document discovery.

Even if the self-serving affidavits are true, however, Coleman Parent cannot escape the fact that any work-product protection for the Blackstone Report has long been waived as to Andersen. As Sunbeam admits, it *voluntarily* showed Andersen a copy of the Blackstone

[1] Andersen directs the Court to its earlier filings ("Andersen's Motion to Compel the Production of a Non-Privileged Coleman Parent Document" and "Andersen's Reply to Coleman Parent's Memorandum in Opposition to Defendant Arthur Andersen LLP's Motion to Compel the Production of a Non-Privileged Coleman Parent Document") for more of the facts and circumstances that led Andersen to move to compel these two documents.

Report. (Sunbeam Memorandum at 7, 11) There is *no* suggestion that at the time *Andersen* had any common defense relationship with Coleman Parent, or that they had entered into any joint defense relationship with Sunbeam. After voluntarily handing Andersen a copy of the Blackstone Report, Sunbeam and Coleman Parent cannot now assert a work product privilege to prevent Andersen from seeing the same document.[2]

The Blackstone Report was not work product in the first place.

The affidavits filed by Coleman Parent and Sunbeam purport to show, among other things, that the Blackstone Report was the work product of Weil Gotshal & Manges, a law firm which advised the Special Committee of the Sunbeam Board of Directors. None of the affidavits, however, are from anyone with first hand knowledge of the creation of the Blackstone Report. There are no affidavits from Weil Gotshal lawyers who supposedly played such an instrumental role in the creation of the Blackstone Report. Nor have Sunbeam and Coleman Parent provided any statements from members of the Blackstone Group. Their testimony could have shed light on Sunbeam and Coleman Parent's claim that the Blackstone Group prepared the Blackstone Report at the behest of Weil Gotshal. Sunbeam and Coleman Parent have the burden to prove that the Blackstone Report was in fact work product, and they have not met their burden.

Andersen needs a copy of the Blackstone Report, and is unable without undue hardship to obtain the substantial equivalent of the Report by other means.

Finally, even if the Blackstone report were work product, and the work product protection had not been waived, Andersen is still entitled to a copy of the Report. Florida Rule

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[2] Sunbeam and Coleman Parent's argument that the Blackstone Report has been kept confidential is not persuasive. By their own admission, the Report has been shared between Sunbeam and Coleman Parent, and has been shown by Sunbeam to one of its auditors, Andersen, and by Coleman Parent to its auditor, Ernst & Young. Furthermore,

of Civil Procedure 1.280(b)(3) states that work product can be obtained "upon a showing that the party seeking discovery has need of the materials . . . and is unable without undue hardship to obtain the substantial equivalent of the materials by other means." It is clear that Andersen needs a copy of the Blackstone Report, and it is also clear that it would be impossible for Andersen to obtain the information contained in the Blackstone Report by any other means.

The Blackstone Report does not consist of the mental impressions of Sunbeam's lawyers, nor any litigation strategy or legal opinion. Instead, it consists of valuation data, created by investment bankers at Blackstone, not by lawyers. Even if it was work product at all, it was "fact" work product and should be produced. *S. Bell Tel. & Tel. Co., v. Deason*, 632 So. 2d 1377, 1384 (Fla. 1994) (stating that fact work product is subject to discovery by showing need and undue hardship).

The Blackstone Report is crucial to Andersen because it offers a unique contemporaneous perspective and analysis relating to the deal at the center of the current dispute. It is a valuation analysis of the warrants to purchase 23 million Sunbeam shares at $7/share that Sunbeam gave to Coleman Parent in order to settle Coleman Parent's claim against Sunbeam. As Coleman Parent's attorneys have stated in Court, should Coleman Parent secure a judgment against Andersen, Andersen would be entitled to a "set-off" for the value of the warrants Coleman Parent already received from Sunbeam. (1-3-02 Hearing, Ex A) The Blackstone Report puts a value on those warrants, and would provide Andersen with a contemporaneous analysis of the value of the warrants.

Not only does Andersen need the information that is contained in the Blackstone Report, it would be impossible for Andersen to obtain the substantial equivalent of the Report by any

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Sunbeam also showed the Report to another of its auditors, Deloitte & Touche. Deloitte & Touche then created a document which summarized the Report, and produced that Report to the plaintiffs in the *In Re Sunbeam* litigation.

other means. *See S. Bell Tel. & Tel,* 632 So. 2d at 1385 (noting that five internal investigative audits ("analyses of information") must be produced because it would constitute an undue hardship to require the movant to replicate the effort). The Blackstone Group's valuation analysis was the only analysis that was done at the time the warrants were given to Coleman Parent. The Blackstone Group's valuation analysis was also the only analysis that incorporated information from the Sunbeam Board regarding Sunbeam's financial health. The contemporaneous perspective it offers is impossible to duplicate.

Furthermore, there is no other way for Andersen to obtain the information that is contained in the Blackstone Report. As the deposition transcripts that Coleman Parent attached to its Supplemental Memorandum make clear, it will instruct its witnesses not to answer questions regarding the Blackstone Report.[3]

THE E&Y MEMO SHOULD BE PRODUCED

The E&Y Memo is not privileged and therefore must be produced.

The E&Y Memo was created by an auditor at Ernst & Young. It is also a valuation analysis of the warrants to purchase 23 million Sunbeam shares that Coleman Parent received as consideration for settling its threatened suit against Sunbeam. The Memo was prepared on behalf of Coleman Parent (or its parent, Mafco) for tax purposes. There is no suggestion that the E&Y Memo was prepared by an attorney or with the assistance of an attorney, and no evidence that the E&Y Memo contained any privileged communication with a lawyer's client as it was addressed to "The Files."

Coleman Parent's main argument for why the E&Y Memo is privileged is that the Memo is protected by Florida's accountant-client privilege. The sole reason Coleman Parent argues that

[3] Since Sunbeam made the decision to show Andersen a copy of the Report in the past, they cannot now argue that giving a copy of the Report to Andersen would prejudice them or harm them in any way.

Florida law applies is because New York law does not recognize an accountant-client privilege. Applying Florida's accountant-client privilege to the E&Y Memo would be a misapplication of proper choice of law rules. Coleman Parent argues that the issue before the Court is simply a "discovery dispute" and that forum law governs discovery. (Coleman Parent Memo. at 3) Andersen does not dispute that forum law governs certain discovery issues that relate to procedure. The issue before the Court, however, is not merely a procedural discovery issue, but rather a substantive issue regarding whether or not an accountant-client privilege applies to certain documents.

Florida, as Coleman Parent admits, follows the *Restatement* when addressing conflict of law issues. (Coleman Parent Memo. at 3; 8-1-02 Hearing p. 27, Ex B) *See Bishop v. Fla. Specialty Paint Co.*, 389 So. 2d 999, 1001 (Fla. 1980)(adopting the *Restatement's* "most significant relationship" test for conflict of law issues in tort actions); *Merkle v. Robinson,* 737 So. 2d 540, 542 (Fla. 1999)(holding that the "most significant relationship" test should be applied to Florida's statute of limitations). Regarding privileges such as the accountant-client privilege, the *Restatement* states:

> Evidence that is not privileged under the local law of the state which has the most significant relationship with the communication will be admitted, even though it would be privileged under the local law of the forum, unless the admission of such evidence would be contrary to the strong public policy of the forum.

Restatement (Second) of Conflict of Laws § 139(1) (1988 Revisions). The comments to section 139 of the *Restatement* provide further guidance. Comment E states that "(t)he state which has the most significant relationship with a communication will usually be the state where the communication took place, which . . . is the state where an oral interchange between persons occurred, where a written statement was received or where an inspection was made of a person or thing."

There is no doubt that New York has the most significant relationship with the communication between Coleman Parent and its auditor, Ernst & Young, which resulted in the creation of the E&Y Memo. Coleman Parent is based in New York City. Ernst & Young's New York City office performed the tax analysis, and that work was apparently performed in New York City. New York law *does not* recognize any accountant-client privilege. *First Interstate Credit Alliance, Inc. v. Arthur Andersen & Co.*, 541 N.Y.S.2d 433, 434 (N.Y. App. Div. 1st 1989). At the time of the relevant communications between Coleman Parent and Ernst & Young (late 1998-early 1999), Coleman Parent was still more than two years away from filing its lawsuit against Andersen in Florida. There is absolutely no reason to believe that Coleman Parent or Ernst & Young expected their communications in New York would be privileged due to Florida law. The *Restatement* provides more guidance here:

> There can be little reason why the forum should exclude evidence that is not privileged under the local law of the state which has the most significant relationship with the communication, even though this evidence is privileged under the local law of the forum. Admitting such evidence cannot defeat the expectations of the parties since, if they relied on any law at all, they would have relied on the local law of the state of most significant relationship. This state (the state with the most significant relationship) has a substantial interest in determining whether evidence of the communication should be privileged. If this state has not chosen to make certain evidence privileged, its interests obviously will not be infringed if this evidence is admitted by the forum. Admission of this evidence, if relevant, will usually be in the best interests of the forum since such admission will assist the forum in arriving at the true facts and thus in making a correct disposition of the case.

Restatement (Second) of Conflict of Laws § 139 cmt. c (1988 Revisions) .[4]

[4] The *Restatement* also provides an example of applying the law to the facts which fits our situation perfectly, and shows that the E&Y Memo is not privileged by Florida's accountant-client privilege. "In state X (New York), A (Coleman Parent), a business man doing business in X (New York), gives certain information to B (Ernst & Young), an accountant, which is not privileged under X (New York) local law. The information would, however, be privileged under the local law of state Y (Florida), and in the trial of an action brought in Y (Florida), A (Coleman Parent) claims that evidence of his conversation with B (Ernst & Young) should be excluded. The evidence *will be* received." *Restatement (Second) of Conflict of Laws* § 139 cmt. c, illus. 1 (1988 Revisions)(emphasis added).

Given the fact that both parties agree that Florida follows the *Restatement* regarding conflicts of law, and the fact that the *Restatement* would compel the conclusion that Florida's accountant-client privilege would not apply to the E&Y Memo, the Memo is clearly not privileged. Coleman Parent should therefore produce the E&Y Memo.

Coleman Parent's secondary arguments about why the E&Y Memo should not be produced center around the idea that the E&Y Memo contains portions of the Blackstone Report, and since the Blackstone Report is work product, the E&Y Memo should not be produced. As has been shown above, the Blackstone Report does not contain work product information, if it did the privilege was waived, and even if the privilege was not waived, Andersen needs the information and could not obtain the substantial equivalent by other means.[5]

[5] If the Court determines that the E&Y Memo should be produced but that the Blackstone Report is privileged, Andersen asks that the Court view the E&Y Memo in order to be certain that Coleman Parent only redacts the portions of the E&Y Memo that discuss or directly cite the Blackstone Report.

CONCLUSION

For the foregoing reasons, Andersen asks that the Court compel Coleman Parent to produce to Andersen copies of the Blackstone Report and the E&Y Memo. At the very least, the Court should order the production of the E&Y Memo, and defer ruling on the Blackstone report until Coleman Parent's self-serving affidavits are tested in discovery.

Dated: August 14, 2002

Respectfully submitted

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ATTORNEYS FOR DEFENDANT
ARTHUR ANDERSEN LLP

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Arthur Andersen LLP's Motion to Compel The Production of a Non-Privileged Coleman Parent Document* was served via facsimile and U.S. Mail on the following counsel on this 14th day of August, 2002.

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WPB1 #213043 v1

IN THE FIFTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO.: CA 01-06062 AN

ORIGINAL

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

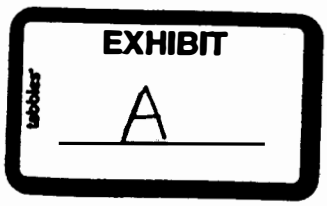
vs.

ARTHUR ANDERSEN, LLP and
PHILLIP E. HARLOW,

Defendants.
----------/

COURT REPORTER'S TRANSCRIPT
OF THE PROCEEDINGS BEFORE THE COURT

PRESIDING: HONORABLE STEPHEN RAPP
West Palm Beach, Florida
Thursday, January 3rd, 2002
1:34 p.m. - 2:57 p.m.



a hundred and ten million dollars. Arthur Andersen has settled that claim. Our claim was not part of that action. We have a separate claim, and the position that we are in is that we brought claims against Sunbeam in 1998. Those claims against Sunbeam were settled. In connection with that settlement, very interestingly and significantly, Sunbeam, in connection with that litigation, Sunbeam never raised any issue with regard to the value of what it received in this transaction. Not only did it not raise any issue with regard to the value of what it received, it expressly waived any possible claim with respect to the value of what it received in connection with its settlement.

So, while Sunbeam has expressed its complete satisfaction with the transaction in which it engaged, Arthur Andersen seeks to raise the issue that Sunbeam was cheated.

THE COURT: Let me ask you this: Coleman had previously sued Sunbeam?

MR. SCAROLA: Coleman has previously sued and settled its claim, Coleman Parent Holding.

MR. LEVINE: That's not correct.

MR. SCAROLA: They negotiated a settlement. It never resulted in a lawsuit.

THE COURT: Is that a setoff for Andersen?

MR. SCAROLA: Clearly it would be. Whatever has been received already in compensation for losses sustained in this transaction would be a setoff against any claim against Andersen.

So, what we have, stripped to its bare essentials, is this argument in connection with the discovery that is currently pending before the Court. Andersen is in a position where Andersen has got to admit that he cheated Coleman Parent in the Sunbeam deal because it has already publicly admitted that it certified false financial statements, materially false financial statements that could not and should not be relied upon. Andersen cheated Coleman Parent in the Sunbeam deal, but Coleman Parent, Andersen says, should not be fully compensated for its loss because maybe, sheer speculation, maybe The Coleman Company stock that Sunbeam got was worth less than Sunbeam -- excuse me -- worth less than Andersen told Sunbeam that it was worth because Andersen is the one that helped to conduct the due diligence. Not only did it help to conduct the due diligence, but in the financial statements that follow this transaction, Arthur Andersen said that this was a two billion dollar deal. They represented that what Sunbeam got was --

MR. LEVINE: Your Honor, I'm going to object.

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiffs,

VS. CASE NO. CA 01-06062 AN

ARTHUR ANDERSEN LLP and PHILLIP E. HARLOW,

Defendants.
_____/

ORIGINAL

BE IT REMEMBERED that the following proceedings were had in the above-styled and numbered cause in the Palm Beach County Courthouse, City of West Palm Beach, in the State of Florida, before the Honorable Steven A. Rapp, Judge of the above-mentioned court, on the 1st day of August, 2002.

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Suite 200
West Palm Beach, Florida 33401
(561) 835-0220

EXHIBIT
tabbies
B

In the motion that was brought, which is again over the Ernst and Young memo, the Andersen memo itself says in its footnote three, page five, says Andersen is assuming, for the purposes of this motion, that that Blackstone report is work product or had a privilege at some point in time. They recognized that this was a work product document.

They brought a motion saying that there has been a disclosure of the work product to an adverse party, Coleman Company, and therefore there has been a waiver of any privilege assertion because these folks were adverse at one point in time.

Now, from the legal argument side of this, there's a couple of things I think that are important, and these are raised in our very short response brief.

First of all, this case is pending in a Florida court. In a Florida court the law of the forum applies to the discovery issues and privilege issues. Florida follows every statement of law for conflicts of law.

That's an issue that's been raised in this court before, early on, over a year ago when the motion to dismiss and the local law, forum governs

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

COLEMAN (PARENT) HOLDINGS, INC., Plaintiff, v. ARTHUR ANDERSEN LLP, et al., Defendants.	Case No.: CA 01-05062AN Judge Stephen A. Rapp

ORDER

THIS CAUSE coming to be considered on ~~Coleman Parent's Memorandum In Opposition~~ Defendant Arthur Andersen LLP's Motion To Compel The Production Of A ~~Certain Privileged~~ Blackstone Memo & Court & Young Memo ~~Coleman Parent Document~~ and the Court having reviewed the file and being fully advised in the premises, it is

ORDERED AND ADJUDGED that:

The matter is denied.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 6 day of August, 2002.

Stephen A. Rapp, Circuit Judge

Copies have been furnished to all counsel on the attached counsel list.

SIGNED AND DATED
SEP 06 2002
Stephen A. Rapp
Circuit Judge

16div-007151

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

v.

Case No.
CA 3-5165 AI

MACANDREWS & FORBES HOLINGS, INC.,

Defendant.

July 28, 2004
12:08 p.m.

Continued Deposition of PAUL E. SHAPIRO, taken by Defendant, pursuant to Agreement, at the offices of Kirkland & Ellis LLP, 153 East 53rd Street, New York, New York, before ANITA SHEMIN, a Shorthand Reporter and Notary Public within and for the State of New York.

suggest that Morgan Stanley had had any paragraphs in any of the accounting matters that caused the restatement?

A Not, not to my recollection.

Q Was there any indication in the management letter that was issued by Arthur Andersen in connection with the restatement that Morgan Stanley knew of the accounting matters that caused the restatement before the restatement was --

A They wouldn't have looked into it, but, no.

Q Let me show you what has been marked as Exhibit 61 and ask you if this is the management letter that you have been describing for us that Arthur Andersen issued following the investigation that you have described in conjunction with Deloitte & Touche, the Audit Committee, and Sunbeam's accounting staff?

A It appears to be.

Q In addition to the --

A Yes, okay.

Q It is okay to proceed?

A Yes.

Q In addition to the audit work that was

done and which we have been -- we have summarized in MS 61, you told us also there was an investigation undertaken by the Board with the assistance of legal counsel and Chicago Partners. Do you recall that testimony?

A Yes.

Q Did this committee of the Board have a name, like the Audit Committee, like special committee to investigate?

A As I said, I should remember this, but I just don't. I don't remember if it was the whole Board, or a committee of the Board or the Audit Committee itself.

Q Did this -- I am going to call it a special committee, so we can separate it from the Audit Committee, if that is proper. Did this special committee issue a report of any kind?

A There was a report prepared. I don't know if it was issued by that committee or accepted by the committee. In other words, I don't know whether the report which was largely compiled and prepared by Skadden and Chicago Partners then became the committee's report or whether they simply accepted the report.

Q Did the report of the special committee, whatever form it eventually took, did it assess blame or assign blame to any one person or persons for the issues that were also the subject of the management letter, which we marked as MS 61?

A I don't recall. What I recall focusing on was, did it pin any blame on anybody that was still with the company. In other words, my focus sitting where I was as an operational person, I had my own views of who was at fault. My concern was is anybody that might have been at fault in any material way gone, or do we have people that we are depending on now still at the company whose activities are revealed by this investigation to be such that we shouldn't continue in employment with the company. So, that was sort of my focus.

Q Did people on the Board receive a written version of whatever Skadden prepared?

A They received a presentation of it. I don't remember whether they kept it or not.

Q When you say a presentation, like that, like a DEC presentation we talked about?

A No. I think they received the report

itself and a verbal presentation by Bob Zimmit at Skadden, along with Chris Malloy, who worked with him. I don't know whether they kept the report because there were all kinds of issues regarding confidentiality and privilege that were going back and forth with the SEC. I don't recall if they were given to them in a room, made a presentation and gave it back to them or kept it.

Q Did the report go to the SEC as far as ongoing proceedings with the SEC?

A We initially resisted giving it to the SEC, and I don't recall if it ultimately went to the SEC or not.

Q Did the report identify any wrongdoing by Morgan Stanley in connection with the matters that were investigated?

A I don't recall.

Q You don't recall one way or the other?

A No, I don't recall one way or the other.

Q Did the report identify any current employees of Sunbeam at the time that the report was prepared were at fault for the matters set forth in the report?

A My recollection is that there was one

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff, Case No. CA 03-5045 AI

vs.
MORGAN STANLEY & CO., INC.,
Defendant,
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff, Case No. CA 03-5165 AI

vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant,
_____/

ORDER ON CPH AND MAFCO'S VERIFIED MOTION TO PERMIT FOREIGN ATTORNEY TO APPEAR (BYMAN, CHORVAT, SWEENEY)

THIS CAUSE having come to be considered upon the Verified Motion of Coleman (Parent) Holdings Inc. and MacAndrews & Forbes Holdings, Inc., and the Court having reviewed the file and being fully advised in the premises, it is hereby,

ORDERED and ADJUDGED: the Motions are granted, and the above listed attorneys admitted to practice in this court.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this 5 day of Oct, 2004.

ELIZABETH T. MAASS
CIRCUIT COURT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,

Defendant(s).

_____/

CASE NO: CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant(s).

_____/

NOTICE OF VIDEOTAPED DEPOSITION

PLEASE TAKE NOTICE that Morgan Stanley & Company Incorporated and Morgan Stanley Senior Funding, Inc. will take the videotaped deposition of Steven R. Isko, pursuant to the Court's August 27, 2004 Order and Notice of Hearing and Florida Rules of Civil Procedure 1.280 and 1.310. The oral examination will take place on October 5, 2004 at 3:00 pm and continue from day to day until completed at the offices of Kirkland & Ellis, LLP, 153 East 53rd Street, New York, New York, 10022. The deposition will be taken before a person authorized to administer oaths and recorded by stenographic and videographic means. The video operator will be Esquire Deposition Services of 216 E. 45th Street in New York, New York.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and federal express on this 4th day of October, 2004.

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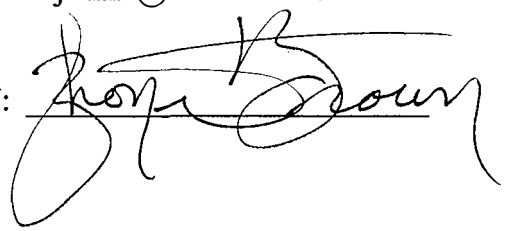
BY: 

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al ,
Defendants.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S AND MACANDREWS & FORBES HOLDINGS INC.'S MEMORANDUM IN OPPOSITION TO THE *PRO HAC VICE* MOTIONS OF THE KELLOGG HUBER ATTORNEYS

Several attorneys from the Washington, D.C. law firm of Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C. ("Kellogg Huber") have moved for leave to appear *pro hac vice* on behalf of Morgan Stanley, but for two reasons, that relief would be inappropriate.

1. **The *Pro Hac Vice* Motion Should Be Denied Because The Kellogg Huber Attorneys Have Not Demonstrated That They Should Be Granted The Privilege of Appearing In That Capacity.**

There are serious questions about whether the Kellogg Huber attorneys have demonstrated that they should be permitted to practice before this Court. Although this Court has eliminated the contempt proceedings because everyone found out long after the alleged violations of the Stipulated Confidentiality Order that the redacted copy of the Andersen settlement agreement had been in the public court file all along, this Court should not overlook the involvement of Kellogg Huber attorneys in the activities that led to the contempt proceedings

in the first place. In connection with the proceedings on CPH's motion for contempt, CPH made a substantial showing that Kellogg Huber used the Andersen settlement agreement — which at the time, everyone, including Kellogg Huber, believed to be confidential pursuant to this Court's Order of December 4, 2003 — outside this litigation for an improper purpose to fashion a new lawsuit against Arthur Andersen and others. Regardless of whether that conduct is sufficient to give rise to a finding of contempt, the involvement of Kellogg Huber attorneys in the conduct that everyone believed at the time could violate the Stipulated Confidentiality Order most certainly should be taken into account in determining whether it is appropriate to extend the Kellogg Huber attorneys the privilege of *pro hac vice* admission.

There are a number of open factual questions that have yet to be resolved. For example, the Court has not ascertained whether the Kellogg Huber attorneys did or did not believe that they were using confidential information, at the time that the information was supplied, for the purpose of preparing a separate lawsuit. That issue is critical because it goes to the heart of the merits of the *pro hac vice* application — did the Kellogg Huber attorneys understand that they were violating, or at the very least skirting the boundaries, of Court Orders issued by the very Court before whom they now seek the privilege of appearing *pro hac vice*?

Similarly, during a key portion of the proceedings before this Court, Kellogg Huber attorneys offered contradictory sworn statements concerning the scope of the representation they purportedly had been retained to provide. Specifically, in a March 17, 2004 declaration submitted in connection with the contempt proceedings filed on March 12, Kellogg Huber attorney Rebecca Beynon averred that Kellogg Huber "was retained in late February 2004 to represent Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc. (collectively, 'Morgan Stanley') in those aspects of the above-captioned case that involve Arthur Andersen and in the prosecution of Morgan Stanley's claims against Arthur Andersen." *See*

Ex. , 3 (emphasis added). Ms. Beynon's affidavit is consistent with Mr. Bemis' repeated asse ti ons to the Court that Kellogg Huber was retained to handle the "Andersen aspects" of the case *See, e.g.*, Ex. C, 4/30/04 Tr. 47:21-48:7, 51:9-51:16, 62:14-64:12, 107:19-109:10. How e' er, at the April 30, 2004 hearing at which the motion for contempt was addressed at leng h. Mark Hansen testified under cross-examination by Mr. Scarola that there were no limi at ons on the scope of Kellogg Huber's retention (*id.* at 115:3-13):

> Q: Mr. Hansen, I'm going to re-direct my inquiry a little bit and ask you, what is it specifically that your law firm was retained on February 23 — First of all, that was the date of the retention, right, the 23rd of February?
>
> A: Yes.
>
> Q: What was it specifically that your law firm was retained to do on February 23rd as it relates to this lawsuit on which we are before Judge Maass today?
>
> A: To serve as co-counsel with Kirkland and Ellis in all respects of the case.

Before extending the privilege of appearing *pro hac vice*, we respectfully submit that it wou d be necessary for this Court to determine the facts concerning Kellogg Huber's invo v ment in the activities that led to the motion for contempt proceedings and concerning the actu l reasons for Kellogg Huber's retention, which admittedly could be a time-consuming proc s . We are willing to undertake that inquiry, but for the reasons previously articulated by the Court, the parties' resources would better be devoted to preparing the case for trial — espe ia lly given that Morgan Stanley already is represented by two large and able law firms, and has e ained yet another Florida counsel, D. Culver Smith III, to prosecute claims against And rs en.

In sum, based on the involvement of the Kellogg Huber attorneys in the troubling activiti s leading to the motion for contempt, and on the inconsistent representations made by Kell g g Huber attorneys in court documents and at hearings, there is good reason at this late date to de y the *pro hac vice* motions of the Kellogg Huber attorneys.

2. Morgan Stanley Does Not Need The Kellogg Huber Attorneys In Order To Take Positions Adverse To Andersen.

The central reason cited on several occasions by Morgan Stanley as to why the Kellogg Huber attorneys need to appear in this case is because Kirkland & Ellis has a conflict precluding it from taking positions adverse to Arthur Andersen. Morgan Stanley has argued that in light of that conflict, if Arthur Andersen witnesses are to be cross-examined at trial, Morgan Stanley needs separate counsel. More recently, Morgan Stanley also has indicated that it needs the Kellogg Huber attorneys so that it can seek leave to file an additional affirmative defense, which will seek to blame Andersen for the Sunbeam fraud. Morgan Stanley's arguments are not only without merit, but pretextual.

First, Morgan Stanley does not need Kellogg Huber attorneys admitted *pro hac vice* to address Andersen-related issues. At the September 15 hearing, Morgan Stanley for the first time asserted that its Carlton Fields attorneys cannot sign pleadings relating to Andersen. *See* Ex. A, 9/15/04 Tr. 13:24-14:13 (Mr. Ianno stating that his firm cannot sign pleadings relating to the new undisclosed affirmative defense). That is an about face. At the July 23 hearing, in arguing that portions of pleadings that referenced the Andersen settlement agreement should be made public, Mr. Ianno stressed that he would make that argument because he does not represent Andersen and therefore has no conflict (Ex. B, 7/23/04 Tr. 19:21-20:7), emphasis added):

> I think that Coleman is selectively using this confidentiality order to protect interests they feel is in their best interest against Morgan Stanley. And I don't represent Arthur Andersen, so I can be here arguing with total bona fides, as Mr. Scarola points out, that none of this should remain confidential, that what Mr. Scarola is doing is trying to gain an unfair advantage for Coleman in this case by designating certain portions as confidential and protecting other portions that are in their best interest. And I think that's what The Court should encompass.

Morgan Stanley has not explained why, all of a sudden, Mr. Ianno and the other attorneys from Carlton Fields cannot perform Andersen-related functions.

Even if Carlton Fields somehow were precluded from taking positions adverse to

Andersen, Morgan Stanley still would not need Kellogg Huber attorneys admitted *pro hac vice*. In the separate lawsuit pending before Judge Miller that Morgan Stanley filed against Andersen, Morgan Stanley is represented by a Florida attorney of its own choosing, D. Culver Smith III. Mr. Smith, whom Morgan Stanley already has retained and entrusted with the responsibility of prosecuting its claims against Andersen, can sign pleadings and perform any other Andersen-related function in this litigation. There is no need for this Court to grant the *pro hac vice* applications of the Kellogg Huber attorneys to perform functions that Morgan Stanley's existing Florida attorneys can perform.

Second, the concern stated previously about Kirkland & Ellis attorneys not being able to take positions adverse to Andersen is purely pretextual, because Kirkland & Ellis attorneys unhesitatingly have taken positions adverse to Andersen on repeated occasions. In six separate depositions taken in this case, Kirkland & Ellis attorneys already have cross-examined Arthur Andersen witnesses adversely: Vance Kistler on October 29, 2003; Donald Denkhaus on November 6, 2003; Lawrence Bornstein on January 15, 2004, Mark Brockelman on January 6, 2004; Dennis Pastrana on January 12, 2004; and William Pruitt on January 13, 2004.

Mr. Bemis previously has attempted to distinguish between cross-examining current clients during discovery and cross-examining them during trial (Ex. C, 4/30/04 Tr. 107:19-109:0, but as a matter of legal ethics, there is no difference. That is confirmed by the very ABA Formal Opinion that Mr. Bemis apparently has referred to from time to time (*see, e.g., id.* at 62:14-64:12), which provides that "[a] lawyer who in the course of representing a client examines another client as an adverse witness in a matter unrelated to the lawyer's representation of the other client, or conducts third party discovery of the client in such a matter, will likely face a conflict that is disqualifying in the absence of appropriate client consent. Any such disqualification also will be imputed to other lawyers in the lawyer's firm." *See* Ex. D, ABA

Formal Opinion 92-367 (emphasis added).

When Kirkland & Ellis attorneys cross-examined Andersen witnesses during depositions in this case, that third-party discovery was obviously adverse to Andersen's interests. Indeed, Morgan Stanley named two of the Andersen witnesses that Kirkland & Ellis has cross-examined — Donald Denkhaus and William Pruitt — as defendants in the New Morgan Stanley Litigation filed on March 1, 2004.

Moreover, with respect to Morgan Stanley's desire to add an affirmative defense against Andersen, the supposed concern that Morgan Stanley's current attorneys cannot sign such a pleading also is pretexual because those attorneys have been taking positions directly adverse to Andersen's interests in written pleadings from the beginning of this case. Indeed, as early as the filing on June 23, 2003 of Morgan Stanley's answer, Morgan Stanley's present attorneys have been taking positions that undoubtedly are very similar to those that will appear in Morgan Stanley's undisclosed affirmative defense against Andersen. *See* Ex. E, MS&Co. Answer to CPH's Complaint, ¶ 3 (MS&Co. "relied solely on documentation and information provided by Sunbeam and Sunbeam's audited financial statements"); *id.* ¶ 32 ("MS&Co. further admits that it assembled marketing materials based on financial documentation and audited financial statements provided to MS&Co. by Sunbeam and Arthur Andersen"); *id.* ¶ 43 (MS&Co's "fairness opinion" regarding the acquisition price of Coleman "was based on financial information provided to MS&Co. by Sunbeam, Coleman, and Arthur Andersen, and on synergy analyses which MS&Co. received from CPH"); *id.* ¶ 54 ("MS&Co. denies that Strong or any other MS&Co. employee was accurately apprised of Sunbeam's financial condition because MS&Co. at all times relied on information provided by Sunbeam management and Arthur Andersen, including Sunbeam's audited financial statements"); *id.* ¶ 55 ("any information communicated by MS&Co. is based on financial data and information provided to it by Sunbeam

and Arthur Andersen"); *id.* ¶ 91 ("MS&Co. denies that it performed an independent financial analysis of Sunbeam; to the contrary, MS&Co. informed CPH that it was relying solely on financial data and information provided to it by Sunbeam and Arthur Andersen"); *id.* ¶ 94 ("MS&Co. informed CPH that it was relying solely on financial data and information provided to it by Sunbeam and Arthur Andersen").

Morgan Stanley's present attorneys also have taken positions directly adverse to Arthur Andersen in other pleadings filed in this case. For example, in the opposition to CPH's rule to show cause motion that was signed by Morgan Stanley's present attorneys, Morgan Stanley asserted that Morgan Stanley "lost hundreds of millions of dollars" as a result of Andersen's wrongdoing (Ex. F at 10):

> Morgan Stanley lost hundreds of millions of dollars in reliance on the truth and accuracy of those same Andersen-audited financial statements. Thus, the claims that Morgan Stanley has against Arthur Andersen do not arise from the Settlement Agreement and Morgan Stanley is not using the Settlement Agreement as the basis for its claims.
>
> It is a matter of public record that Arthur Andersen audited Sunbeam's financial statements in 1996 and 1997. It is also a matter of public record that Morgan Stanley suffered significant financial losses when Sunbeam's financial statements turned out to be false and were restated in October of 1998. Sunbeam ultimately filed for bankruptcy in 2001. Thus, Morgan Stanley had valid claims against Arthur Andersen *years* before CPH filed this lawsuit against Morgan Stanley, and *years* before CPH even entered into the Settlement Agreement between CPH and Arthur Andersen.

Finally, the pretextual nature of Morgan Stanley's stated concerns about its present attorneys taking positions adverse to Andersen was confirmed yet again at the recent hearing before this Court on August 27, 2004, during which this Court entertained argument on whether the Andersen settlement agreement should be kept confidential. Months before that hearing, Arthur Andersen's attorneys wrote to Kirkland & Ellis objecting to its attempts on behalf of Morgan Stanley to remove the confidential designation from the Andersen settlement agreement and stating that "[i]t goes without saying that any action to remove the Confidential Designation

would be adverse to Andersen's interests and we formally advise you of this fact." *See* Ex. G, Letter from E. Lauer to T. Clare. At the August 27 hearing, Andersen's Florida counsel (Steven L. Schwarzberg) appeared before this Court and argued that the settlement agreement should be kept confidential. Nonetheless, despite Andersen's stated position at the hearing and Andersen's clear admonition to Kirkland & Ellis in its earlier letter, Mr. Bemis argued to this Court vigorously and successfully that the settlement agreement should not be kept confidential. *See* Ex. H, 3/27/04 Tr. 65:10-74:25.

Thus, in light of the fact that Morgan Stanley's present attorneys consistently and repeatedly have taken positions adverse to Arthur Andersen in this litigation, the assertion that Kellogg Huber attorneys need to be admitted *pro hac vice* so that Morgan Stanley can take positions adverse to Andersen does not come close to ringing true.

Conclusion

The motion by the attorneys from Kellogg Huber to appear *pro hac vice* in this litigation should be denied.

Dated: October 7, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC. and
MACANDREWS & FORBES HOLDINGS INC.

By: _____
One of Its Attorneys

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 7th day of October, 2004.

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Total Number of Pages Being Transmitted, Including Cover Sheet: 34

Message:

To follow please find the Joint Submission of the Parties for October 14, 2004 Case Management Conference.

☐ **Original to follow Via Regular Mail** ☐ **Original will Not be Sent** ☐ **Original will follow via Overnight Courier**

****

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

CASE NO.: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO.CA 03-5 165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC., *et al.*,

Defendant.
_____/

JOINT SUBMISSION OF THE PARTIES FOR OCTOBER 14, 2004 CASE MANAGEMENT CONFERENCE

Pursuant to the Court's Order of February 24, 2004, the parties in the above-referenced action hereby submit the following Joint Submission in advance of the October 14, 2004 Case Management Conference.

I. Agreed-Upon Statement Of Background And Procedural History

The following is the parties' agreed-upon summary of the two companion cases now pending before this Court, which have been consolidated for trial.

A. Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co. Incorporated. (Case No. 03 CA-005045 AI)

Background. This case arises out of an acquisition transaction that was negotiated and consummated in late 1997 and early 1998, in which Coleman (Parent) Holdings Inc. ("CPH") sold its 82% interest in The Coleman Company, Inc. ("Coleman") to Sunbeam Corporation. ("Sunbeam"). Morgan Stanley & Co., Inc. ("Morgan Stanley") served as financial advisor to Sunbeam for parts of the acquisition transaction and served as the lead underwriter for a $750,000,000 debenture offering that Sunbeam used to finance the acquisition.

CPH's Complaint alleges claims arising from this transaction for fraudulent misrepresentation, negligent misrepresentation, aiding and abetting fraud, and conspiracy. CPH's Complaint has sought damages of at least $485 million and has reserved the right to seek punitive damages. Morgan Stanley denies the material allegations in CPH's Complaint and also denies CPH's entitlement to damages.

Procedural History. CPH filed its Complaint on May 8, 2003 (the "CPH Action"). Morgan Stanley filed its Answer on June 23, 2003 and, on June 25, 2003 filed its Motion to Dismiss Pursuant To Florida Rule of Civil Procedure 1.061 Or, In the Alternative, For Judgment On The Pleadings. The Court held a hearing on these motions on December 12, 2003. On December 15, 2003, the Court issued an Order denying both motions. On January 9, 2004, Morgan Stanley timely filed a Notice of Appeal regarding the denial of its motion to dismiss. *See* Florida Rule of Appellate Procedure 9.130(a)(3)(A) (providing for interlocutory appellate review of non-final orders "concerning venue"). On February 20, 2004, the Court consolidated CPH's action against Morgan Stanley with Morgan Stanley Senior Funding's action against CPH and MacAndrews & Forbes Holdings Inc.

B. Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., *et al.* (Case No. 03 CA-005165 AI)

Background. This action arises out of the same series of financial transactions as the CPH Action. In 1998, Morgan Stanley Senior Funding, Inc. ("MSSF") and other lenders entered into a credit agreement with Sunbeam under which MSSF agreed to provide senior secured financing to Sunbeam in connection with Sunbeam's acquisition of Coleman and two smaller companies.

MSSF's Complaint alleges that, in the course of Sunbeam's acquisition of Coleman, Defendants MacAndrews & Forbes Holdings Inc. ("MAFCO") and CPH provided false information to MSSF about the "synergies" that Sunbeam would achieve from the combination of Sunbeam and Coleman. MSSF alleges that Defendant's inflated synergy projections caused Sunbeam to pay a higher price to acquire Coleman and consequently caused Sunbeam's lenders (including MSSF) to make larger loans to finance the acquisition. MSSF's Complaint alleges that it suffered hundreds of millions of dollars in damages when Sunbeam declared bankruptcy in February 2001 and defaulted on acquisition-related loans. MSSF has alleged claims for fraud and negligent misrepresentation. CPH denies the material allegations in MSSF's Complaint and also denies MSSF's entitlement to damages.

Procedural History. MSSF filed its Complaint against MAFCO and CPH on May 12, 2003 (the "MSSF Action"). The MSSF Action was initially assigned to Division AG. Because the MSSF Action and the CPH Action involve the same series of financial transactions and arise from a common set of operative facts, the parties agreed that the two cases are companion cases under Local Rule 2.009 and requested a transfer to Division AI, where the first-filed, lower numbered CPH Action was assigned. The motion to transfer was granted on June 9, 2003. Defendants CPH and MAFCO filed their Answer on June 25, 2003. On February 20, 2004, the

Court consolidated MSSF's action against CPH and MAFCO with CPH's action against Morgan Stanley.

II. Report On Discovery In The Two Cases

A. Morgan Stanley's And MSSF's Position On Discovery

1. Merits Discovery

CPH, MAFCO, Morgan Stanley, and MSSF are actively pursuing written and deposition discovery in these consolidated actions. The parties have exchanged hundreds of thousands of pages of documents, have served and answered multiple sets of interrogatories and requests for admission, and have deposed more than two dozen party and non-party witnesses. Discovery in both cases is ongoing.

At the February 20, 2004 Case Management Conference, counsel for Morgan Stanley informed the Court that — according to counsel's best estimates — approximately seventy (70) additional depositions would need to be completed before the close of fact discovery. Thereafter, on or about March 11, the parties agreed to take alternate weeks for taking and defending depositions.

Since the February 20 Case Management Conference, thirty-three (33) additional depositions have been completed. Seven (7) more depositions have been scheduled and are confirmed for the weeks ahead. Morgan Stanley has multiple outstanding requests for deposition dates of CPH, MAFCO, and Coleman witnesses — and has attempted to secure deposition dates for several additional non-party witnesses.

At the July 23 Case Management Conference, counsel for Morgan Stanley advised the Court that — according to counsel's best estimates approximately forty-three (43) days of deposition testimony remain to be completed. The number of depositions has only increased,

however, in light of additional depositions requested by CPH and MAFCO since the July 23 Case Management Conference. CPH and MAFCO have requested the depositions of four (4) additional current or former Morgan Stanley employees since that date — and have requested one (1) additional Rule 1.310 deposition (bringing the total number to 7).

In their Position on Discovery (below), CPH and MAFCO state that thirty-two (32) depositions have been taken by CPH and MAFCO, and twenty-one (21) have been taken by MS&Co. and MSSF. But those figures — and the table prepared by CPH and MAFCO to summarize the depositions — do not accurately reflect the depositions taken by Morgan Stanley. Seven (7) of the third-party witnesses identified by CPH and MAFCO as "taken by" CPH and MAFCO were, in reality, examined by Morgan Stanley as well. Moreover, CPH and MAFCO count the Rule 1.310 deposition of Steven Fasman (taken by Morgan Stanley) as a single deposition, when in fact Mr. Fasman appeared for two separate Rule 1.310 depositions.[1] In reality, twenty-seven (27) witnesses have been deposed by Morgan Stanley.

The parties have experienced considerable difficulty scheduling depositions in light of scheduling conflicts for counsel on both sides and the location of the witnesses, almost all of whom are located outside of Florida. CPH and MAFCO have offered witnesses for depositions outside of Florida on dates previously established by the Court for Case Management Conferences (or on the day before in New York) and have, on several occasions, confirmed (and then canceled or postponed) depositions previously set to go forward.

For example, CPH and MAFCO twice postponed the deposition of Barry Schwartz (now completed), postponed the deposition of Bruce Slovin (now completed), and postponed the deposition of James Robinson, for various reasons ranging from "unavoidable conflicts" to

[1] CPH and MAFCO count the corresponding Rule 1.310 depositions of Morgan Stanley witnesses as two separate depositions.

"medical emergencies." Another CPH/MAFCO witness, Lawrence Jones, was only available on a day that had been previously scheduled by the Court for a Case Management Conference, and is now expected to be unavailable for an unspecified amount of time due to upcoming surgery. Similar scheduling considerations have required Morgan Stanley to postpone the depositions of other deposition witnesses, many of whom no longer work for Morgan Stanley and are no longer under its control.

Even when depositions have been successfully scheduled, the parties have experienced difficulties beyond their control that have prevented the deposition from going forward. When Mr. Schwartz's deposition was finally scheduled and confirmed for June 18, for example, the deposition needed to be postponed (for a third time) because Morgan Stanley's attorneys were unable to make it to New York for the deposition due to inclement weather and cancelled flights.

Morgan Stanley is of course willing to accommodate the legitimate scheduling considerations of witnesses and their counsel — but these schedule conflicts and difficulties have prevented the parties from proceeding with depositions at the pace contemplated during the February 20 Case Management Conference.

Finally, for more than six months, the parties had to divert resources away from deposition discovery to address collateral issues unrelated to the merits of these consolidated actions. These issues are discussed in the next section.

2. Non-Merits Discovery

On March 12, CPH filed its Motion For A Rule To Show Cause. On May 14, 2004, the Court converted CPH's Motion for a Rule To Show Cause into a Motion for Contempt. On July 30, 2004, Morgan Stanley filed its Motion to Dismiss or Strike Plaintiff's Motion For Contempt. On September 15, 2004, the Court granted Morgan Stanley's to Dismiss or Strike Plaintiff's

Motion for Contempt. Although the Court's September 15, 2004 Order allowed the parties to return their full attention to the merits of the proceedings, nearly six months were lost litigating issues related to the motion for contempt.

On March 19, CPH served its first set of interrogatories relating to its motion for contempt. Morgan Stanley responded to those Interrogatories on June 16, 2004 and provided supplemental responses to CPH on June 29, 2004. On July 12, 2004, the Court entered an Order directing Morgan Stanley to supplement its responses to those Interrogatories within twenty days, including certain responses to be filed directly with the Court under seal. Morgan Stanley provided the non-privileged portions of its amended responses to CPH on August 2, 2004.

On May 28, CPH served its second set of interrogatories relating to its motion for contempt — together with a set of document requests relating to that motion. On that same date, Morgan Stanley served its own interrogatories and requests for documents on CPH relating to CPH's motion for contempt. The parties served responses and objections to this "second wave" of non-merits discovery on June 28, 2004.

CPH's contempt motion, together with CPH's related Motion to Allow Arthur Andersen Access to Confidential Transcript (filed May 5, 2004) and other motions relating to the confidentiality of documents and pleadings, have required extensive additional briefing, necessitated attendance of counsel at multiple specially-set hearings in Florida, and the preparation of non-merits discovery requests and responses. CPH's objections also have prevented attorneys from Kellogg, Huber, Hansen, Todd, and Evans P.L.L.C. ("KHHTE") from participating as co-counsel and assisting with discovery. CPH's reasons for objecting to the admission of KHHTE attorneys appear to be purely tactical, as CPH has maintained its

objections even after the Court's September 15, 2004 Order dismissing the contempt proceedings.

The satellite issues created by CPH's contempt motion and CPH's objections to the admission of the KHHTE attorneys have prevented the parties from conducting depositions at the pace originally contemplated during the February 20, 2004 Case Management Conference.

B. CPH's And MAFCO's Position On Discovery

CPH and MAFCO stipulate only to the first paragraph of Section II.A above. CPH and MAFCO object to the remaining statements concerning discovery as incomplete, misleading, and self-serving on the part of Morgan Stanley and MSSF. Consequently, CPH and MAFCO provide the account of discovery that follows:

1. Deposition Discovery

As of October 7, 2004, 52 depositions have been taken, and Morgan Stanley has taken only three since the last joint statement submitted on September 16. Of those depositions, 32 have been taken by CPH and MAFCO, and 21 have been taken by Morgan Stanley and MSSF:

MS/MSSF WITNESSES	AFFILIATION AT RELEVANT TIME	DATE	TAKEN BY
Boone, Shani	Morgan Stanley	04/22/2004	CPH/MAFCO
Burchill, Thomas	Morgan Stanley	08/27/2004	CPH/MAFCO
Chang, Tyrone	Morgan Stanley	01/08/2004	CPH/MAFCO
Conway, Andrew	Morgan Stanley	06/04/2004	CPH/MAFCO
Fuchs, Alexandre	Morgan Stanley	02/13/2004	CPH/MAFCO
Hart, Michael	MSSF	05/19/2004	CPH/MAFCO
Kitts, Robert	Morgan Stanley	02/12/2004	CPH/MAFCO
Kunreuther, Jason	Morgan Stanley	09/24/2004	CPH/MAFCO
MS/MSSF (by John Plotnick)	Morgan Stanley	09/09/2003	CPH/MAFCO
MS E-mail Rep.(Robert Saunders)	Morgan Stanley	02/10/2004	CPH/MAFCO
Rafii, Lily	Morgan Stanley	04/02/2004	CPH/MAFCO
Savarie, Andrew	Morgan Stanley	01/22/2004	CPH/MAFCO

Seth, Ishaan	Morgan Stanley	07/30/2004	CPH/MAFCO
Smith, R. Bram	MSSF	02/24/2004	CPH/MAFCO
Strong, William	Morgan Stanley	12/04/2003	CPH/MAFCO
Stynes, James	Morgan Stanley	07/13/2004	CPH/MAFCO
Tyree, John	Morgan Stanley	09/15/2003	CPH/MAFCO
Tyree, John	Morgan Stanley	11/14/2003	CPH/MAFCO
Webber, Joshua	Morgan Stanley	05/18/2004	CPH/MAFCO
Whelan, Christopher	Morgan Stanley	07/14/2004	CPH/MAFCO
Wright, William	Morgan Stanley	07/01/2004	CPH/MAFCO
Yoo, Gene	Morgan Stanley	06/16/2004	CPH/MAFCO
MAFCO/CPH/COLEMAN WITNESSES			
Drapkin, Donald	MAFCO	06/24/2004	MS
Engelman, Irwin	MAFCO	08/04/2004	MS
Gifford, Frank	MAFCO	07/22/2004	MS
Ginstling, Norman	MAFCO	04/06/2004	MS
Jones, Lawrence	MAFCO	09/03/2004	MS
MAFCO (by Steven Fasman)	MAFCO	09/15/2003 01/21/2004	MS
Moran, John	MAFCO	09/14/2004	MS
Nesbitt, William	MAFCO	08/31/2004	MS
Nesbitt, William	MAFCO	09/01/2004	MS
Page, Joseph	MAFCO	04/27/2004	MS
Salig, Joram	MAFCO	07/08/2004	MS
Schwartz, Barry	MAFCO	06/25/2004	MS
Shapiro, Paul	MAFCO	06/08/2004	MS
Shapiro, Paul	MAFCO	07/28/2004	MS
Slotkin, Todd	MAFCO	07/07/2004	MS
Slovin, Bruce	MAFCO	05/12/2004	MS
THIRD PARTY WITNESSES			
Bornstein, Lawrence	Arthur Andersen	01/15/2004	CPH/MAFCO
Brockelman, Mark	Arthur Andersen	01/14/2004	CPH/MAFCO
Denkhaus, Donald	Arthur Andersen	11/06/2003	CPH/MAFCO
Duffy, Robert	Credit Suisse First Boston	07/08/2004	MS
Emmerich, Adam	Wachtell Lipton Rosen & Katz	09/28/2004	MS
Geller, Steven	Credit Suisse First Boston	07/30/2004	MS

Isko, Steven	American Household f/k/a Sunbeam	10/05/2004	MS
Kistler, Vance	Arthur Andersen	10/29/2003	CPH/MAFCO
Pastrana, Dennis	Arthur Andersen	01/12/2004	CPH/MAFCO
Pruitt, William	Arthur Andersen	01/13/2004	CPH/MAFCO
Dean, Alan	Davis Polk & Wardwell	06/03/2004	CPH/MAFCO
Lurie, James	Davis Polk & Wardwell	06/18/2004	CPH/MAFCO
Stack, Heather	Davis Polk & Wardwell	05/25/2004	CPH/MAFCO
Yales, Scott	Sunbeam	11/24/2003	CPH/MAFCO

We have been able to schedule five additional depositions as follows:

DEPONENT	AFFILIATION	DATE
Petrick, Mitchell	Morgan Stanley employee	Set for 10/18-19/2004
Hart, Michael (half day)	Morgan Stanley employee	Set for 10/18/2004
Eltrich, Karen	Morgan Stanley employee	Set for 10/15/2004
Foley, Jake	Morgan Stanley employee	Set for 10/22/2004
Harris, Brooks	Former Morgan Stanley employee	Set for 10/26/2004

Concerning the remaining depositions to be taken by CPH and MAFCO, we have experienced considerable difficulty in obtaining deposition dates from Morgan Stanley. After extensive but fruitless attempts to obtain deposition dates, we noticed the depositions as shown in the chart below.

DEPONENT	AFFILIATION	DATE DEPOSITION FIRST REQUESTED	DATE NOTICED
MS and MSSF Representative: Value of American Household, MS/MSSF's interest in American Household	MS/MSSF	07/14/2004	10/12/2004

MS and MSSF Representative: Procedures of Equity Commitment Committee and Leveraged Finance Commitment Committee / Highly Confident Letters	MS/MSSF	07/07/2004	10/13/2004
MS and MSSF Representative: All misrepresentations/omissions by MAFCO and CPH	MS/MSSF	07/30/2004	10/14/2004
Michael Rankowitz	Former Morgan Stanley Employee	07/13/2004	10/25/2004
William Kourakas	Morgan Stanley employee	07/13/2004	10/26/2004
MS and MSSF Representative: All fees, expenses, etc. billed by, paid to, or due to MS or MSSF re SOC	MS/MSSF	07/27/2004	10/27/2004
MS and MSSF Representative: Evidentiary issues re personnel records	MS/MSSF	07/14/2004	10/29/2004

Morgan Stanley since has proposed some alternative dates for these depositions — virtually all after the discovery cutoff being proposed by CPH and MAFCO.

We also are attempting to finalize the scheduling of the depositions of Johannes Groeller, a Morgan Stanley employee who is overseas; Simon Rankin, another Morgan Stanley employee who also is overseas; Ruth Porat, a Morgan Stanley employee who we have been told has been ill; and Dwight Sipprelle, a former Morgan Stanley employee whose deposition was subject to recent motion practice before the Court.

Concerning the remaining depositions of current and former CPH/MAFCO employees to be taken by Morgan Stanley, we have offered dates — often, multiple dates — for all remaining witnesses where Morgan Stanley has requested dates except for three. As for one of those three

witnesses, Morgan Stanley recently advised us that it no longer was requesting the dates originally sought.

2. Discovery concerning CPH's motion for contempt

Contempt discovery has been rendered moot by this Court's Order striking CPH's motion for contempt.

III. Pretrial Schedule

In the Court's September 29, 2004 Order following the last Case Management Conference, the Court ruled "that trial in this action shall begin no later than February 22, 2005." In addition, the Court directed the parties to "confer and attempt to agree" on a modified pretrial schedule. Finally, the Court ordered the parties to submit, no later than October 7, either an Agreed Order modifying the pretrial schedule set on March 19, 2004 or their own Proposed Orders if no agreement can be reached.

Dated: October 7, 2004

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#1161794

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,
vs. CASE NO: CA 03-5045 AI
MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,
vs. CASE NO: CA 03-5165 AI
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.
_____/

MORGAN STANLEY'S MOTION
TO ENTER PRETRIAL SCHEDULE

Simple fairness requires that, even taking the February 22, 2005 trial as a given, Morgan Stanley must have a full and fair opportunity to complete the remaining discovery in these consolidated actions. Morgan Stanley's proposed pretrial schedule is the only fair and reasonable way to do so. Defendant Morgan Stanley & Co. Incorporated and Plaintiff Morgan Stanley Senior Funding, Inc. (collectively "Morgan Stanley"), respectfully request that the Court enter an order, in the form attached as Exhibit 1, adopting Morgan Stanley's proposed pretrial schedule, which will at least give the parties a chance to complete the necessary discovery in a fair and orderly manner while still honoring the trial date established by the Court. In support of its motion, Morgan Stanley states as follows:

The Court Does Not Have Subpoena Power Over The Key Witnesses

1. The epicenter of these consolidated actions is New York City, where virtually all of the significant witnesses reside, both party and non-party. These out-of-state witnesses, who

are expected to deliver the bulk of evidence at trial, are not within this Court's subpoena power. Accordingly, dozens of out-of-state witnesses must be deposed, and their sworn testimony must be recorded and then designated, subjected to objection, for presentation to the jury during trial by videotape. Indeed, video testimony will probably constitute the majority of testimony presented at trial.

2. On February 20, 2004, the Court held the first Case Management Conference on the two actions. Given the fact that a majority of the witnesses are beyond the subpoena power of the Court and confronted with the potential reality of a "trial by television," counsel for Morgan Stanley advised the Court that approximately seventy fact depositions needed to be completed. Counsel also advised the Court that Morgan Stanley intended to retain additional counsel. The Court set the trial for January 18, 2005.

The "Contempt" Proceeding And The "March" Trial Date

3. Four weeks later, on March 12, 2004, Plaintiff Coleman (Parent) Holdings, Inc. ("CPH") filed its Motion for Rule to Show Cause (later renominated a Motion for Contempt). CPH objected to the admission of the additional counsel retained by Morgan Stanley, attorneys from the law firm of Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C. ("KHHTE"), pending the Court's ruling on its Motion for Contempt. During the next six months, the parties engaged in substantial collateral discovery, briefing, and motion practice wholly unrelated to the merits of these actions.

4. On July 15, 2004, Morgan Stanley filed a Motion to Set a Hearing on the Contempt Motion and Extend Merits Discovery. Morgan Stanley asked the Court to consider the substantial diversion of resources made necessary by CPH's Motion for Contempt, to conduct a prompt hearing on the Motion for Contempt, and to re-set the trial date and other pretrial dates accordingly.

5. After a full hearing on the issue at the July 23 Case Management Conference, the Court agreed with Morgan Stanley. On July 27, 2004, the Court entered an Order directing that "[t]rial in this case shall be reset to occur in March, 2005." (July 27, 2004 Order on MS Mot. to Set a Hrg. on the Contempt Mot. & Extend Merits Discovery (Ex. 2).) The parties proceeded on the assumption of a March 2005 trial date for the next ninety days.

6. Notwithstanding the time and resources devoted to the Motion to Contempt, the parties continued to actively pursue written and deposition discovery, including depositions virtually every week in New York City and other cities outside Florida, while CPH's Motion for Contempt was pending.[1]

7. On September 15, 2004, the Court issued an order striking the Motion for Contempt and dismissing all related contempt proceedings, which by that time had consumed more than six months of the parties' time. In striking CPH's Motion for Contempt, the Court correctly noted that "[p]reparation of that motion for hearing has consumed substantial time by the parties and the Court." (Sept. 15, 2004 Order on MS & Co. & MSSF's Mot. to Dismiss or Strike Plf.'s Mot. for Contempt at 2 (Ex. 3).)

The February 22, 2005 Trial Date

8. In advance of the September 23 Case Management Conference, the Court directed the parties to address, in detail, the feasibility of re-setting the trial to the original January 18, 2005 trial setting. Counsel for Morgan Stanley did that, presenting a detailed listing of the forty-six depositions that Morgan Stanley and CPH intended to take before trial, and explaining the substantial pretrial tasks the parties and the Court would have to tackle after the close of

[1] In March, the parties agreed to endeavor to alternate weeks for taking depositions.

discovery and before the cases could be ready for trial. Based on this information and a detailed analysis of alternate trial dates, Morgan Stanley proposed a May 17, 2005 trial date. CPH provided no information regarding the feasibility of its preferred trial date, stating only that it would be "ready for trial" whenever directed by the Court. Over Morgan Stanley's objection, the Court re-set the trial date to February 22, 2005.

9. Since the September 23, 2004 Case Management Conference, the discovery schedule has become even more crowded. CPH has served additional discovery requests on Morgan Stanley, as described below. The Court has ordered Morgan Stanley to produce additional debenture-related documents. Sunbeam has produced an additional ***58,000 pages*** of documents to the parties. CPH has filed (and the Court has scheduled for hearing) a motion seeking leave to add punitive damages. The parties are still having difficulty scheduling the depositions, more than half of which involve third parties beyond the control of the parties and outside the subpoena power of the Court. All the while, CPH continues to oppose the *pro hac vice* admission of the additional counsel retained by Morgan Stanley in February 2004.

10. In response to these developments, Morgan Stanley once again reviewed its discovery needs, reduced the number of depositions it proposes to take, and developed a proposed schedule that will give the parties a reasonable chance to complete the remaining discovery and also permit the trial to begin on February 22, 2005. Morgan Stanley proposes a discovery cut-off of December 17, 2004.

A December 16 Discovery Cut-Off Is Aggressive
A November 1 Cut-Off Is Neither Fair Nor Sensible

11. Morgan Stanley submits that even with the aggressive trial date set by the Court, a discovery cut-off of December 17, 2004, is the only "fair" deadline for the completion of discovery given the complexity of these cases. And a December 17, 2004 discovery cut-off is

more than sixty days before the trial date established by the Court.

12. CPH, on the other hand, proposes that discovery should be completed by November 1, 2004, with the trial commencing on February 22, 2005 as ordered. (Sept. 30, 2004 CPH Proposed Schedule (Ex. 4).) When counsel for Morgan Stanley asked how the parties could possibly complete more than forty depositions by November 1, counsel for CPH did not propose a schedule to complete the depositions. Instead, CPH counsel suggested only that the parties should "double-track or triple-track" the remaining depositions. (Oct. 7, 2004 Clare Decl. ¶ 10 (Ex. 5).)

13. Since both proposed schedules result in the same February 22 trial date, the question for the Court is which of the two proposals for ending discovery — November 1 or December 17 — is fair? The answer is simple. The remaining discovery cannot fairly be completed by November 1. Under CPH's proposed schedule, both parties would have just fifteen business days — during the weeks of October 11, 18, and 25 — left in which to take more than forty depositions. While Morgan Stanley has repeatedly attempted to reduce the number of depositions it needs to take, it still needs to take, at a minimum, sixteen additional depositions, at least two of which will involve multiple days of testimony. CPH seeks twenty-six additional depositions. One witness has been requested by both Morgan Stanley and CPH.

14. The forty-three remaining depositions can be summarized as follows:

Witness	By	Location	Days	Status	Role
Amorison, Alison	MS	New York	1	Non-Party	Sunbeam outside counsel
Clark, Karen	MS	Los Angeles	1	Non-Party	Coleman Finance
Deitz, Adrian	MS	London	1	Non-Party	Sunbeam outside counsel
Dickes, Glenn	MS	New York	1	Non-Party	MAFCO official involved in hedge decision
Den Danto, Deidra	CPH	Unknown	1	Non-Party	Sunbeam Internal Audit
Dunlap, Al	CPH	Florida	1	Non-Party	Sunbeam Chairman and CEO
Eltrich, Karen	CPH	New York	1	Non-Party	Morgan Stanley Fixed Income Division
Fannin, David	CPH	Florida	1	Non-Party	Sunbeam Exec. VP and General Counsel
Fogg, Finn	MS	New York	1	Non-Party	Sunbeam outside counsel
Foley, Jake	CPH	New York	1	Non-Party	Morgan Stanley High Yield Research

Witness	By	Location	Days	Status	Role
Freed, Todd	CPH	Unknown	1	Non-Party	Sunbeam outside counsel
Gittis, Howard	MS	New York	2	Party	Senior MAFCO executive / decision-maker
Goudis, Richard	CPH	Unknown	1	Non-Party	Sunbeam Investor Relations
Griffith, Lee	CPH	Unknown	1	Non-Party	Sunbeam Household Products
Groeller, Johannes	CPH	London	1	Party	Morgan Stanley Client Services Group
Harris, Brooks	CPH	New York	1	Non-Party	Morgan Stanley Equity Capital Markets
Hart, Michael (day 2)	CPH	New York	1/2	Party	Morgan Stanley Leveraged Finance
Isko, Steve	MS	New York	1	Non-Party	Coleman Legal
Jordan, Ann	MS	New York	1	Non-Party	Coleman Board of Directors
Kelly, Janet	MS	Florida	1	Non-Party	Sunbeam Legal
Kourakos, William	CPH	New York	1	Party	Morgan Stanley Leveraged Finance
Levin, Jerry	MS	New York	1	Non-Party	Coleman CEO, Sunbeam CEO
Maher, James	MS	New York	2	Non-Party	Senior MAFCO executive / decision-maker
McDonald, Deborah	CPH	Unknown	1	Non-Party	Sunbeam Director of Corporate Planning
Perelman, Ronald	MS	New York	2	Party	Senior MAFCO executive / decision-maker
Petrick, Mitch	CPH	New York	1	Party	Morgan Stanley Managing Director
Porat, Ruth	CPH	New York	1	Party	Morgan Stanley Equity Capital Markets
R. 1.310 (Authenticity)	CPH	New York	1/2	Party	N/A
R. 1.310 (ECC)	CPH	New York	1/2	Party	N/A
R. 1.310 (Letters)	CPH	New York	1/2	Party	N/A
R. 1.310 (LFC)	CPH	New York	1/2	Party	N/A
R. 1.310 (Misrep)	CPH	New York	1/2	Party	N/A
R. 1.310 (MS Fees)	CPH	New York	1/2	Party	N/A
R. 1.310 (AHI Value)	CPH	New York	1/2	Party	N/A
Rankin, Simon	CPH	London	1	Party	Morgan Stanley Bank Group
Rankowitz, Michael	CPH	New York	1	Non-Party	Morgan Stanley Leveraged Finance
Reid, Bill	MS	New York	1	Non-Party	Morgan Stanley Managing Director
Robinson, James	MS	New York	1	Non-Party	Coleman Board of Directors
Sipprelle, Dwight	CPH	New York	1	Non-Party	Morgan Stanley Leveraged Finance
Smith, Bram (day 2)	CPH	New York	1/2	Non-Party	Morgan Stanley Leveraged Finance
Spoor, William	MS	Minneapolis	1	Non-Party	Coleman Board of Directors
Uzzi, Donald	MS&CPH	Texas	1	Non-Party	Sunbeam Executive VP, Consumer Products
Winoker, Larry	MS	New York	1	Party	MAFCO executive -- credit agreements

15. Even if all of these depositions could be scheduled before the end of October (and that is not possible), CPH's proposal that the parties double- and triple-track depositions is unfair, unnecessary, and unworkable. Despite numerous opportunities to do so, CPH has failed to articulate any reason that could justify its pell-mell deposition schedule (to which no witness has agreed). Morgan Stanley's proposed pretrial schedule, if adopted by the Court, would allow the parties a reasonable time to complete deposition discovery and meet the Court's February 22, 2005 trial setting.

The Remaining Written Discovery

16. In addition to these forty-three depositions, there are substantial written discovery tasks that will require the parties' attention. In the last thirty days, CPH has served multiple ***additional*** discovery requests on Morgan Stanley, including interrogatories and requests for production:

Request	Date Served
CPH's 4th Set of Interrogatories to MS & Co.	September 14, 2004
CPH's 5th Set of Interrogatories to MS & Co.	September 16, 2004
CPH's 6th Request for Production to MS & Co.	September 27, 2004
CPH's 2nd Request for Production to MSSF	September 27, 2004
CPH's 7th Request for Production to MS & Co.	September 30, 2004

In addition, the Court has ordered Morgan Stanley to produce additional debenture-related documents, and to amend two of its interrogatory responses. The parties also must supplement ***all*** of their prior interrogatory responses pursuant to the Court's August 16, 2004 Order.

The Schedule Between December 16 And February 22, 2005

17. What happens after the proposed close of discovery on December 17? The remainder of Morgan Stanley's proposed pretrial plan can be summarized as follows:

Morgan Stanley's Proposed Pretrial Schedule

Event	Date
Proponent Expert Reports	December 10, 2004
Rebuttal Expert Reports	December 23, 2004
Expert Depositions	January 5 - January 11, 2005
Summary Judgment Motions	January 14, 2005
Summary Judgment Responses	January 28, 2005
Summary Judgment Hearing	February 4, 2005
Exchange Deposition Designations	January 7, 2005
Counter-designations and Initial Objections	February 11, 2005
Exchange Witness Lists and Trial Exhibits	February 11, 2005
Motions In Limine	February 14, 2005
Objections to Counter-Designations	February 14, 2005
Responses to Motions in Limine	February 18, 2005
Joint Pretrial Stipulation	February 21, 2005
Pretrial Conference and Trial	February 22, 2005

Event	Date
Exchange Jury Instructions and Verdict Forms	February 28, 2005

18. Since both parties' proposed schedules allow the trial to start on February 22, 2005, there can be no good reason for adopting an interim pretrial schedule that would prejudice the ability of Morgan Stanley and its counsel to complete necessary discovery in a fair manner and to meaningfully participate in the defense and prosecution of these actions. Morgan Stanley's proposed schedule is the only fair way for Morgan Stanley and its counsel to complete the remaining depositions, to respond to the outstanding written discovery requests, and prepare for trial.

CONCLUSION

Considerations of fairness require that the parties be permitted to complete reasonably the remaining discovery in these complex cases. Morgan Stanley's proposed pretrial schedule best serves the interests of fairness. Requiring fact discovery to be completed by November 1, 2004, when there are significant additional discovery tasks to be completed on both sides, would be an injustice mitigated by no counterbalancing equities in favor of CPH. For these reasons, Morgan Stanley respectfully requests that this Court enter an Order, in the form attached to this motion, approving Morgan Stanley's proposed pretrial schedule for the consolidated actions.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 7th day of October, 2004.

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BY: _____
Joseph Ianno, Jr.
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Exhibit 1

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,
vs. CASE NO: CA 03-5045 AI
MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,
vs. CASE NO: CA 03-5165 AI
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.
_____/

ORDER CONCERNING PRETRIAL SCHEDULE

These consolidated actions came before the Court October 14, 2004 for a Case Management Conference, and on Morgan Stanley's Motion to Set Pretrial Schedule, with all counsel present. Based on the foregoing, and the Court having previously specially set this action for jury trial, it is:

ORDERED AND ADJUDGED that the proceedings relating to summary judgment will take place on the following schedule:

Summary Judgment Motions	January 14, 2005
Summary Judgment Responses	January 28, 2005
Summary Judgment Hearing	February 4, 2005

ORDERED AND ADJUDGED that the proceedings relating to expert discovery will take place on the following schedule:

Proponent Expert Reports	December 10, 2004
Rebuttal Expert Reports	December 23, 2004
Expert Depositions	January 5 - January 11, 2005

The parties agree, and the Court orders, that expert witness disclosures shall include: (a) the name and business address of the witness; (b) the subject matter about which the expert will testify; (c) the substance of the facts and opinions to which the expert will testify; (d) a summary of the grounds for each opinion; (e) a copy of any written reports issued by the expert regarding this case; (f) a copy of the expert's curriculum vitae; (g) a list of all cases in which the expert has testified during the past five years; (h) a list of all produced documents relied on by the expert; and (i) copies of all non-produced documents relied on by the expert. Expert witnesses will not be permitted to testify as to opinions, or the bases therefore, unless the opinions or bases were disclosed with particularity in accordance with this Order.

ORDERED AND ADJUDGED that the remaining pretrial proceedings will take place on the following schedule:

Completion of Fact Discovery	December 17, 2004
Exchange Deposition Designations	January 7, 2005
Counter-Designations and Initial Objections	February 11, 2005
Exchange Witness Lists and Trial Exhibits	February 11, 2005
Motions In Limine	February 14, 2005
Objections to Counter-Designations	February 14, 2005
Responses to Motion in Limine	February 18, 2005
Joint Pretrial Stipulation (in the form directed by the Court's Uniform Pretrial Procedure)	February 21, 2005

16div-007197

Pretrial Conference	February 22, 2005
Jury Trial Begins (15 trial days)	February 22, 2005
Exchange Jury Instructions and Verdict Forms	February 28, 2005

The court will receive objections to instructions and verdict forms, and the parties' counter-instructions on a date to be determined during trial.

DONE AND ORDERED in West Palm Beach County, Florida this ____ day of October, 2004.

Elizabeth T. Maass
Circuit Court Judge

Copies furnished to:

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Exhibit 2

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

ORDER ON MORGAN STANLEY'S MOTION TO SET A HEARING ON THE CONTEMPT MOTION AND EXTEND MERITS DISCOVERY

THIS CAUSE came before the Court July 23, 2004 on Morgan Stanley's Motion to Set a Hearing on the Contempt Motion and Extend Merits Discovery, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that the Motion is Granted, in part. Trial in this case shall be reset to occur in March, 2005. Counsel shall be prepared at the next case management conference to discuss the appropriate dates for trial and for the currently set pre-trial dates to be reset. It is further

ORDERED AND ADJUDGED that the Court declines to set a schedule for disposition of the Motion for Contempt, pending completion of hearings directed to the

discovery issues pertinent to that Motion.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 27 day of July, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
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Chicago, Il 60611

Exhibit 3

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER ON MORGAN STANLEY & CO. AND MORGAN STANLEY SENIOR FUNDING, INC.'S MOTION TO DISMISS OR STRIKE PLAINTIFF'S MOTION FOR CONTEMPT

THIS CAUSE came before the Court August 27, 2004 on the Court's own Motion and on Morgan Stanley & Co. ("MS & Co.") and Morgan Stanley Senior Funding, Inc.'s ("MSSF") Motion to Dismiss or Strike Plaintiff's Motion for Contempt, with all affected parties well represented by counsel.

On July 31, 2003, the Court entered a Stipulated Confidentiality Order ("Confidentiality Order"), without hearing. Paragraph 9 (a) of the Confidentiality Order provided that:

> Litigation Materials designated "Confidential" and any copies thereof, and the information contained therein, that are filed with the Court or any pleadings, motions or other papers filed with the Court, shall be filed under seal in a separate sealed

> envelope conspicuously marked "Filed Under Seal-Subject to Confidentiality Order," or with such other markings as required by Court rules, and shall be kept under seal until further order of the Court. Where possible, only those portions of filings with the Court that disclose matters designated "Confidential" shall be filed under seal.

The Confidentiality Order permitted a party to designate items as confidential, subject to any other party's right to apply to the Court for a determination of the item's protectability.

On December 4, 2003, the Court entered its Order on Defendants' Motion to Compel Production of Settlement Agreement. The Order attached as Exhibit 1 a redacted copy a settlement agreement between Coleman Parent Holdings ("CPH") and certain related entities and Arthur Andersen ("Settlement Agreement"). The exhibit redacted account information only. Pursuant to the agreement of counsel, and without independent analysis by the Court, the exhibit was deemed "Confidential" and subjected to the terms of the Confidentiality Order. The Confidentiality Order requires that Confidential items may not be used for purposes outside this litigation.

The Settlement Agreement contained a provision requiring CPH to indemnify Arthur Andersen if it was sued by MS & Co. MS & Co. sued Arthur Andersen. CPH maintains that it did so, without a colorable claim against it, to trigger the indemnification provision of the Settlement Agreement. It filed a Motion for Order to Show Cause, which the Court elected to treat as a Motion for Contempt, contending that MS & Co. violated the Court's December 4, 2003 Order. Preparation of that motion for hearing has consumed substantial time by the parties and the Court.

Contrary to counsels' obvious expectations, Exhibit 1 was not filed under seal. It has been a part of the public record since December 18, 2003. Once CPH realized the omission, it sought to have the item sealed. The Court denied the application. MS & Co. and MSSF have now moved to have the Motion for Contempt dismissed or stricken, arguing that the

item has been part of the public record and therefore exempt from the Confidentiality Order by its terms; that the Confidentiality Order improperly permitted items, including the Settlement Agreement, to be deemed confidential; and that the Settlement Agreement does not meet the requirements for protection under either the Confidentiality Order or Rule 2.051 (c) (9), Rules of Judicial Administration.

The Court concludes that the Confidentiality Order impermissibly empowered the parties to file under seal items without requirement that the public be notified and delegated to the parties the right to designate items as Confidential, without judicial intervention unless they disagreed. The Court concludes these two provisions were in error.

The Court concludes, too, that the redacted version of the Settlement Agreement does not meet the requirements to permit it to be excluded from the public domain under the Rules of Judicial Administration or case law.

Finally, the Court concludes that the Motion for Contempt should not go forward. First, it is undisputed that the terms of the Settlement Agreement alleged to have been improperly used have been part of the public record since December 18, 2003. Second, the Court finds that the redacted Settlement Agreement is not subject to protection from public disclosure.

Based on the foregoing, it is

ORDERED AND ADJUDGED that the Stipulated Confidentiality Order is amended:

1. Paragraph 9 (a) is deleted and the following substituted:

(a) The Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida (the "Court") (including Clerks and other Court personnel). No document shall be filed under seal without complying with Fla. R. Jud. Admin. 2.051;

2. A new paragraph 10 is added, and the subsequent paragraphs renumbered:

10. Any party wishing to file a paper or pleading in the court file which it contends contains information or items deemed Confidential hereunder shall simultaneously file (i) a

redacted version of the paper or pleading, with only the material deemed Confidential redacted, and (ii) an unredacted version in a separate sealed envelope conspicuously marked "Filed Under Seal-Subject to Confidentiality Order." Information redacted in the public filing shall be designated as either redacted pursuant to a prior order determining the material is subject to protection under the Confidentiality Order and the Rules of Judicial Administration, which shall reference the date of the order, or as redacted without prior determination of protectability. If material is redacted without a prior order finding it entitled to protection, it shall be the filing party's obligation to, within 30 days, file and serve a motion for a judicial determination of the material's protectability; schedule a hearing on the matter to be held within 90 days; and provide sufficient notice of the hearing to the public. See Rule 2.051 (c) (9) (D), Rules of Judicial Administration

It is further

ORDERED AND ADJUDGED that the Motion for Contempt is stricken. It is further

ORDERED AND ADJUDGED that Morgan Stanley's Motion for Reconsideration of July 12, 2004 Order on Plaintiff's Motion to Compel Responses to Interrogatories is Granted. The Court's July 12, 2004 Order on Plaintiff's Motion to Compel Responses to Interrogatories is vacated.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 15 day of September, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

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Exhibit 4

JENNER&BLOCK

September 30, 2004

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By Telecopy

Thomas A. Clare, Esq.
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Tom:

I attach a copy of our proposed pre-trial schedule that we can discuss in our telephone conference scheduled for this afternoon at 3:00 p.m. EST.

Very truly yours,

Michael T. Brody

MTB:cjg
cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.

CHICAGO_1159449_1

COLEMAN PARENT HOLDINGS V. MORGAN STANLEY & CO.
November 1, 2004 Fact Discovery Cut-Off; February 22, 2005 Trial

EVENT	NEW DATE	OLD DATE, PER 03/19 ORDER
Supplemental Interrogatory Responses	[same]	30 days before fact discovery closes
Case Management Conference	[same]	October 14
Fact Discovery Closes	November 1	September 3
Case Management Conference	[same]	November 5
Initial Expert Disclosures	November 8	September 10
Summary Judgment Briefs	November 15	September 20
Responsive Expert Disclosures	November 19	September 24
Select Mediator	December 1	November 19
Rebuttal Expert Disclosures	December 3	October 8
Case Management Conference	[same]	December 3
Summary Judgment Response Briefs	December 6	October 25
Expert Depositions	December 6 - 13	October 18-29
Summary Judgment Replies	December 17	November 8
Exchange Deposition Designations	December 20	November 19
Summary Judgment Argument	[December 20-January 10]	November 19
Motions in Limine	January 10	December 3
Exchange Counter Designations and Objections		
Joint Pretrial Stipulations	January 18	December 13
Responses to Motions in Limine		
Mediation Commences	January 24	December 6
Exchange Objections to Deposition Counter-Designations		December 8
Meet and Confer re Deposition Designations	January 28	December 10
Trial	February 22 - March	January 18

Exhibit 5

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO: CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

DECLARATION OF THOMAS A. CLARE, ESQ.

Pursuant to Florida Statute § 525(1)(b), I, Thomas A. Clare, Esq., declare:

1. I submit this declaration in support of Morgan Stanley's Motion to Enter Pretrial Schedule (the "Motion"). All facts set forth in this declaration are based upon my personal knowledge. If called as a witness, I could and would competently testify to all facts stated in this declaration.

2. I am a partner in the law firm of Kirkland & Ellis LLP. Kirkland & Ellis is counsel to Morgan Stanley in the above-captioned consolidated actions. I have been an attorney at Kirkland & Ellis since 1996. I have worked on these consolidated actions since their inception.

3. I personally supervised the preparation of the tabular information presented in the text of the Motion and exhibits that are attached thereto. As described with

particularity below, the tabular information presented in the text of the motion is derived from my personal review of the correspondence between the parties, my review of the pleadings filed by the parties, my review of orders issued by the Court, my review of transcripts and other records of depositions in these actions, my review of transcripts and other records of hearings in these actions, and my knowledge of the travel and other activities undertaken by counsel in connection with those depositions and hearings.

4. The table on pages 5 and 6 of the Motion is a compilation of the depositions the parties have scheduled or endeavored to schedule, but which have not yet been completed. The information is derived from correspondence between the parties, deposition notices and subpoenas served by the parties, my review of the documents and deposition transcripts in this and other cases regarding the roles of the individuals listed in the table, my personal knowledge of Morgan Stanley's efforts to arrange for the depositions of witnesses listed on the chart, and my personal knowledge that these depositions have not been completed as of the date of this declaration.

5. The table on page 7 of the Motion is a compilation of discovery requests served by CPH and MAFCO in the last 30 days. The information is derived from letters and discovery requests sent and served by CPH and MAFCO.

6 Exhibit 1 is a proposed order reflecting Morgan Stanley's proposed pretrial schedule.

7. Exhibit 2 is a true and correct copy of this Court's July 27, 2004 Order On Morgan Stanley's Motion to Set a Hearing on the Contempt Motion And Extend Merits Discovery.

8. Exhibit 3 is a true and correct copy of this Court's September 15, 2004 Order On Morgan Stanley & Co. and Morgan Stanley Senior Funding Inc.'s Motion To Dismiss Or Strike Plaintiff's Motion for Contempt.

9. Exhibit 4 is a true and correct copy of a letter I received from counsel for CPH in these consolidated actions on September 30, 2004. The letter attaches CPH's proposed pretrial schedule.

10. On September 30, 2004, counsel for Morgan Stanley and CPH conducted a telephone conference call to confer regarding the proposed schedule. Prior to the conference call, CPH's counsel circulated a proposed schedule, attached as Exhibit 4 to the Motion, that called for fact discovery to be completed by November 1, 2004. When counsel for Morgan Stanley asked how the parties could possibly complete more than forty depositions by November 1, counsel for CPH did not propose a schedule to complete the depositions. Instead, CPH counsel suggested only that the parties should "double-track or triple-track" the remaining depositions.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7th day of October, 2004, at Washington, D.C.

Thomas A. Clare, Esq.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

v. CASE NO: CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.
_____/

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a hearing has been set in the above-styled case as follows:

DATE:	October 14, 2004
TIME:	8:00 a.m.
PLACE:	Palm Beach County Courthouse, Courtroom 11A 205 North Dixie Highway West Palm Beach, Florida 33401
BEFORE:	Judge Elizabeth T. Maass
CONCERNING:	Morgan Stanley's Verified Motion to Admit Mark C. Hansen, Pro Hac Vice;

Morgan Stanley's Verified Motion to Admit James M. Webster, III, Pro Hac Vice;

Morgan Stanley's Verified Motion to Admit Rebecca A. Beynon, Pro Hac Vice

Morgan Stanley's Motion to Enter Pretrial Schedule

KINDLY GOVERN YOURSELVES ACCORDINGLY.

The undersigned counsel hereby certifies that a good faith attempt to resolve the issues contained in the foregoing motions or matters will be made with opposing counsel prior to hearing on these matters on the Court's Motion Calendar.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no costs to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-2431 within two (2) working days of your receipt of this notice; if you are hearing or voice impaired, call 1-800-955-8771.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 7th day of October, 2004.

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Joseph Ianno, Jr.
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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

v. CASE NO: CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.
_____/

ORDER GRANTING MORGAN STANLEY'S MOTION TO RESET HEARING

THIS CAUSE having come before the Court on October 5, 2004 upon Morgan Stanley's Motion to Reset Hearing on Coleman (Parent) Holdings, Inc.'s Motion to Amend Complaint to Seek Punitive Damages, and the Court having heard argument of counsel and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that:

1. Morgan Stanley's Motion to Reset Hearing on Coleman (Parent) Holdings, Inc.'s Motion to Amend Complaint to Seek Punitive Damages is GRANTED.

2. Coleman (Parent) Holdings, Inc.'s Motion to Amend Complaint to Seek Punitive Damages shall be reset to be heard on November 5, 2004 at 8:00 a.m..

3. Morgan Stanley shall have up to and including October 22, 2004 to serve its response to Coleman (Parent) Holdings, Inc.'s Motion to Amend Complaint to Seek Punitive Damages. Coleman shall serve any response thereto by Nov. 1, 2004.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 7th day of October, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

Copies furnished to:

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al,
Defendants.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S AND MACANDREWS & FORBES HOLDINGS INC.'S MEMORANDUM IN SUPPORT OF THEIR PROPOSED PRETRIAL SCHEDULING ORDER

Pursuant to this Court's Order of September 29, 2004, Coleman (Parent) Holdings Inc. ("CPH") and MacAndrews & Forbes Holdings Inc. ("MAFCO") respectfully submit this memorandum in support of their proposed pretrial schedule.

At the last case management conference, this Court set a trial date of February 22, 2005, and directed the parties to propose alternative pretrial schedules if they could not reach agreement on a schedule. In accordance with this Court's directions, CPH and MAFCO have assembled a proposed pretrial schedule, which is attached hereto as Exhibit A.

1. **Fact Discovery Cutoff.**

CPH and MAFCO propose a fact discovery cutoff of November 1, 2004. To put that date in perspective, under the original pretrial schedule agreed to by the parties and entered by the Court on March 19, the fact discovery cutoff for a January 18, 2005 trial was September 3, 2004.

Although the new trial date is only a month later than the original trial date, CPH's and MAFCO's proposed pretrial schedule moves the fact discovery cutoff back almost two months, to ensure that the parties have sufficient time to complete discovery.

Morgan Stanley has asserted that CPH's and MAFCO's proposed discovery cutoff cannot be achieved and Morgan Stanley has proposed a fact discovery cutoff of December 16. *See* Ex. C. But as we demonstrated at the last case management conference, to the extent Morgan Stanley finds itself with depositions remaining to be taken, Morgan Stanley has only itself to blame. Morgan Stanley took one deposition in all of 2003. Morgan Stanley's activity in 2004 has not accelerated much: Morgan Stanley took 1 deposition in January, 0 in February, 0 in March, 2 in April, 1 in May, 3 in June, 5 in July, and 1½ in August. In September, the month just completed, Morgan Stanley took 3½ depositions.[1]

For comparison purposes, CPH and MAFCO have prepared an alternative pretrial schedule that moves fact discovery two weeks further to November 14. *See* Ex. B. As the Court will see, even moving the discovery cutoff two weeks — from CPH's and MAFCO's proposed November 1 fact discovery cutoff to November 14 — unduly compresses the work to be done after fact discovery is complete. To extend fact discovery even farther, as Morgan Stanley urges, simply is not realistic.

2. Other Dates.

A comparison of the other dates set forth in the parties' proposed schedules further demonstrates that CPH's and MAFCO's schedule makes the best use of the time before trial. Under the schedule proposed by CPH and MAFCO, almost four months are allotted for pretrial tasks — from November 1, 2004 until the time the trial begins on February 22, 2005. *See* Ex. A.

Morgan Stanley's schedule, attached as Exhibit C, allots a little over two months for the

---

[1] The references to ½ days reflect the fact that the deposition of one individual commenced in August and continued into September.

pretrial tasks remaining after the close of fact discovery. Morgan Stanley's schedule drops entirely key dates from the pretrial schedule that the parties agreed to back in March. For example, although the agreed schedule entered by the Court on March 19 contemplates summary judgment reply briefs, Morgan Stanley's new proposal drops them. Morgan Stanley's schedule also makes no provision for rebuttal expert reports following initial disclosures and responses. The schedule that CPH and MAFCO propose preserves these important dates and otherwise provides sufficient time to complete the necessary pretrial tasks.

Conclusion

For the foregoing reasons, CPH and MAFCO respectfully request that this Court adopt the proposed pretrial schedule of CPH or MAFCO attached hereto as Exhibit A, and enter the pretrial scheduling Order attached hereto as Exhibit D.

Dated: October 7, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC. and
MACANDREWS & FORBES HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
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#116121

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 7th day of October, 2004.

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CPH/MAFCO Proposed Pre-Trial Schedule
Assuming Fact Discovery Cut-Off of November 1, 2004

Supplemental Interrogatory Responses	__ days before fact discovery closes
Fact Discovery Closes	November 1
Case Management Conference Scheduled (per 2/25 Order)	November 5
Initial Expert Disclosures	November 8
Summary Judgment Briefs	November 15
Responsive Expert Disclosures	November 19
Select Mediator	December 1
Rebuttal Expert Disclosures	December 3
Case Management Conference Scheduled (per 2/25 Order)	December 3
Summary Judgment Response Briefs	December 6
Expert Depositions	December 6 - 13
Summary Judgment Replies	December 17
Exchange Deposition Designations	December 20
Pre-Trial Conference Scheduled (per 3/19 Order)	December 20-22
Summary Judgment Argument	[December 20-January 10]
Motions in Limine	January 10
Exchange Deposition Counter-Designations and Objections	January 10
Exchange Witness and Exhibit Lists	January 10
Joint Pretrial Stipulations	January 18
Responses to Motions in Limine	January 18
Mediation Commences	January 24
Exchange Objections to Deposition Counter-Designations	January 24
Meet and Confer re Deposition Designations	January 28
Deposition Designations, Counter-Designations, and Objections Provided to Court	
Pre-Trial Conference (3 Days)	
Final Pre-Trial Conference	
Jury Instructions and Verdict Forms Exchanged	February 18
Initial Jury Screening	February 18
Trial	February 22

EXHIBIT
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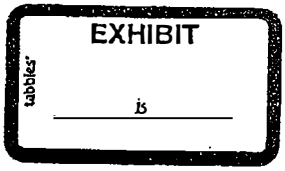
CPH/MAFCO Proposed Pre-Trial Schedule
Assuming Fact Discovery Cut-Off of November 14, 2004

Supplemental Interrogatory Responses	__ days before fact discovery closes
Case Management Conference Scheduled (per 2/25 Order)	November 5
Initial Expert Disclosures	November 8
Fact Discovery Closes	November 14
Summary Judgment Briefs	November 15
Responsive Expert Disclosures	November 19
Select Mediator	December 1
Rebuttal Expert Disclosures	December 3
Case Management Conference Scheduled (per 2/25 Order)	December 3
Summary Judgment Response Briefs	December 6
Expert Depositions	December 6 - 13
Summary Judgment Replies	December 17
Exchange Deposition Designations	December 20
Pre-Trial Conference Scheduled (per 3/19 Order)	December 20-22
Summary Judgment Argument	[December 20-January 10]
Motions in Limine	January 10
Exchange Deposition Counter-Designations and Objections	January 10
Exchange Witness and Exhibit Lists	January 10
Joint Pretrial Stipulations	January 18
Responses to Motions in Limine	January 18
Mediation Commences	January 24
Exchange Objections to Deposition Counter-Designations	January 24
Meet and Confer re Deposition Designations	January 28
Deposition Designations, Counter-Designations, and Objections Provided to Court	
Pre-Trial Conference (3 Days)	
Final Pre-Trial Conference	
Jury Instructions and Verdict Forms Exchanged	February 18
Initial Jury Screening	February 18
Trial	February 22



KIRKLAND & ELLIS LLP
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September 30, 2004

BY FACSIMILE

Michael Brody, Esq.
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Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*
MSSF v. MacAndrews & Forbes Holdings Inc. et al.

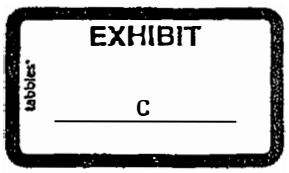
Dear Mr. Brody:

Here is a copy of Morgan Stanley's proposed schedule. We received yours. The primary difference in the schedule is the discovery cut-off date. You propose November 1; we propose December 16. Morgan Stanley has at least four outstanding requests for depositions of witnesses you represent for which you have not proposed a date, and you have not responded to our efforts to coordinate the London-based depositions and the depositions of other third-parties. Your suggestion that we double and triple track depositions between October 14 and October 31 is, to be charitable, unreasonable and could not possibly have been made in good faith. We do agree to meet and confer early next week to see whether we can reach common ground.

With regard to CPH's motion to amend the pleadings, we suggest the following schedule, which is very close to the one you proposed:

October 18	Morgan Stanley response
October 25	CPH reply (if any)
November	Hearing

Based on my own experience and that of our local counsel, we think the motion will take at least one half day to present and argue. You may recall we spent almost that much time successfully arguing for the application of New York law to CPH's claims. Accordingly, I suggest we ask the court for time during the week of November 8, with November 12 being the most convenient given the deposition scheduled for the preceding week. We agree that the confidentiality issues relating to CPH's motion to amend the pleadings may be heard during the October 14 Case Management Conference.



KIRKLAND & ELLIS LLP

Morgan Stanley's Proposed Schedule

Proponent Expert Reports	December 10, 2004
Completion of Fact Discovery	December 17, 2004
Rebuttal Expert Reports	December 23, 2004
Start Expert Depositions	January 5, 2005
Complete Expert Depositions	January 11, 2005
Summary Judgment Motions	January 14, 2005
Summary Judgment Responses	January 28, 2005
Summary Judgment Hearing	February 4, 2005
Exchange Deposition Designations	January 7, 2005
Counter-Designations and Initial Objections	February 11, 2005
Exchange Witness Lists & Trial Exhibits	February 11, 2005
Objections to Counter-Designations	February 11, 2005
Motions in Limine	February 14, 2005
Meet-and-Confer regarding Designations	February 16, 2005
Opposition to Motions in Limine	February 18, 2005
Joint Pretrial Stipulation	February 21, 2005
Start Pretrial Conference	February 22, 2005
Exchange Jury Instructions and Verdict Forms	February 28, 2005

Sincerely,

Lawrence P. Bemis

Lawrence P. Bemis

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark C. Hansen, Esq. (by facsimile)

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

CASE NO. CA 03-5045 AI

CC L :MAN (PARENT) HOLDINGS, INC.,

Plaintiff(s),

vs.

M( )F GAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

M)F .GAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),

vs

M A(:ANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

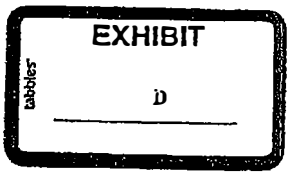
[CPH'S AND MAFCO'S PROPOSED]
ORDER CONCERNING PRETRIAL SCHEDULE

The Court, having previously specially set this action for jury trial commencing no later than February 22, 2004, it is:

ORDERED AND ADJUDGED that supplemental interrogatory responses shall be due 30 d:.y: before the close of fact discovery.

ORDERED AND ADJUDGED that the proceedings relating to summary judgment will ta ke place on the following schedule:

Summary Judgment Briefs	November 15, 2004
Summary Judgment Response Briefs	December 6, 2004
Summary Judgment Replies	December 17, 2004
Summary Judgment Hearing	_____



ORDERED AND ADJUDGED that the proceedings relating to mediation will take place on the following schedule:

Mediator Selected	December 1, 2004
Mediation	January 24, 2005

ORDERED AND ADJUDGED that the proceedings relating to expert discovery will take place on the following schedule:

Initial Expert Disclosures	November 8, 2004
Responsive Expert Disclosures	November 19, 2004
Rebuttal Expert Disclosures	December 3, 2004
Depositions of Experts	December 6-13, 2004

The parties agree, and the Court orders, that expert witness disclosures shall include: (a) the name and business address of the witness; (b) the subject matter about which the expert will testify; (c) the substance of the facts and opinions to which the expert will testify; (d) a summary of the grounds for each opinion; (e) a copy of any written reports issued by the expert regarding this case; (f) a copy of the expert's curriculum vitae; (g) a list of all cases in which the expert has testified during the past five years; (h) a list of all produced documents relied on by the expert; and (i) copies of all non-produced documents relied on by the expert. Expert witnesses will not be permitted to testify as to opinions, or the bases therefore, unless the opinions or bases were disclosed with particularity in accordance with this Order.

ORDERED AND ADJUDGED that the remaining pretrial proceedings will take place on the following schedule:

Supplemental Interrogatory Responses Due	October ___, 2004
Completion of Fact Discovery	November 1, 2004
Deposition Designations Exchanged	December 20, 2004

Deposition Counter-Designations and Initial Objections Exchanged	January 10, 2005
Motions in Limine	January 10, 2005
Witness Lists and Trial Exhibits Exchanged	January 10, 2005
Motion in Limine Oppositions	January 18, 2005
Objections to Counter-Designations Exchanged	January 24, 2005
Meet-and-Confer re Deposition Designations	January 28, 2005
Joint Pretrial Stipulation (in the form directed by the Court's Uniform Pretrial Procedure)	January 28, 2005
Deposition Designations, Counter-Designations, and Objections to Designations and Counter-Designations Provided to the Court	_____, 2005
Pretrial Conference (3 Days)	_____, 2005
Final Pretrial Conference	_____, 2005
Jury Instructions and Verdict Forms Exchanged	February 18, 2005
Initial Jury Screening	February 18, 2005
Jury Trial Begins (15 trial days)	February 22, 2005

The Court will receive objections to instructions and verdict forms, and the parties' counter-instructions on a date to be determined during trial.

DONE AND ORDERED in West Palm Beach County, Florida this ___ day of October, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:

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#1151117

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

CASE NO. 4D04-135

LT CASE NO. 03 CA-005045 AI

MORGAN STANLEY & CO., INC.,

Appellant,

v.

COLEMAN (PARENT) HOLDINGS, INC.,

Appellee.
_____/

APPELLANT'S NOTICE OF SUPPLEMENTAL AUTHORITY

Pursuant to Florida Rule of Appellate Procedure 9.225 and in support of Arguments II.B. and II.C. of its Initial Brief, Appellant, Morgan Stanley & Co. Incorporated, hereby files as Supplemental Authority the attached Order, dated August 11, 2004:

1. Order on Motion for Application of New York Law, *Coleman (Parent) Holdings, Inc., Plaintiff v. Morgan Stanley & Co., Inc., Defendant*, L.T. Case No. 03 CA-005045 AI, 15th Judicial Circuit Court in and for Palm Beach County, Florida (holding that New York law applies to plaintiff's claims for fraud and negligent misrepresentation in this case because all relevant events took place in New York, and Florida has no significant relationship to the dispute). This

Order is pertinent to Arguments II.B. and II.C.: the "private interest" and "public interest" factors at issue in this *forum non conveniens* appeal.

Dated: October 8th, 2004

Respectfully submitted,

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Attorneys for Appellant, Morgan Stanley & Co. Incorporated

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by Federal Express (pursuant to an agreement between the parties) to all counsel of record listed below on this 8th day of October 2004.

THOMAS E. WARNER

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

ORDER ON MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY SENIOR FUNDING, INC.'S MOTION FOR APPLICATION OF NEW YORK LAW

THIS CAUSE came before the Court June 28, 2004 on Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc.'s Motion for Application of New York Law, with all parties well represented by counsel.

I. Introduction

This case arises out of an acquisition transaction that was negotiated and consummated in late 1997 and early 1998, in which Coleman (Parent) Holdings, Inc. ("CPH"), sold its 82% interest in the Coleman Company, Inc. ("Coleman"), to Sunbeam Corporation ("Sunbeam"). Morgan Stanley & Co., Inc. ("MS & Co."), served as financial advisor to Sunbeam for parts of the acquisition transaction and served as the lead underwriter for a $750,000,000 debenture offering that Sunbeam used to finance the acquisition.

8/11 JVDH

In 1998, Morgan Stanley Senior Funding, Inc. ("MSSF"), and other lenders entered into a credit agreement with Sunbeam under which MSSF agreed to provide senior secured financing to Sunbeam in connection with Sunbeam's acquisition of Coleman and two smaller companies.

CPH's Complaint alleges claims against MS & Co. arising from this transaction for fraudulent misrepresentation, negligent misrepresentation, aiding and abetting fraud, and conspiracy, and seeks damages of at least $485 million.

MSSF's Complaint alleges that, in the course of Sunbeam's acquisition of Coleman, Defendants MacAndrews & Forbes Holdings, Inc. ("MAFCO"), CPH's parent company, and CPH provided false information to MSSF about the "synergies" that Sunbeam would achieve from the combination of Sunbeam and Coleman. MSSF alleges that MAFCO and CPH's inflated synergy projections caused Sunbeam to pay a higher price to acquire Coleman and consequently caused Sunbeam's lenders, including MSSF, to make larger loans to finance the acquisition. MSSF's Complaint asserts claims for fraud and negligent misrepresentation and alleges that MSSF suffered hundreds of millions of dollars in damages when Sunbeam declared bankruptcy in February 2001 and defaulted on acquisition-related loans.

II. Analysis

A. An overview

MS & Co. and MSSF (together "Morgan Stanley"), filed their Motion for Application of New York Law ("Motion"). The Motion seeks a determination that New York substantive law controls all claims in these consolidated cases.

Florida's choice of law rules govern the conflict of laws analysis. Hoffman v. Ouellette, 798 So. 2d 42 (Fla. 4th DCA 2001). A conflict of laws analysis involves a three step process. First, the court must consider whether there are potentially outcome determinative differences between the substantive laws alleged to apply. See Tune v. Philip Morris, Inc., 766 So. 2d 350 (Fla. 2d DCA 2000), rev. den. 786 So. 2d 1188 (Fla. 2001). If there are, the Court must next determine the choice of law rule to be applied for the type of

claim alleged. Finally, the court must apply the appropriate choice of law rule. Hoffman.

The parties agree that Florida applies the "significant relationship" test in tort cases. The parties disagree on whether there are potentially outcome determinative differences in New York and Florida substantive law and, if there are, which state's law prevails on application of the conflicts principles. Choice of law is made on an issue by issue basis. Crowell v. Clay Hayden Trucking Lines, Inc., 700 So. 2d 120 (Fla. 2d DCA 1997), rev. den. 705 So. 2d 569 (Fla. 1998). To resolve the dispute, then, the Court must determine whether there are material differences between New York and Florida law on each issue and, if there are, apply the appropriate conflicts principles to determine the controlling substantive law on each contested issue.

B. Step One - New York v. Florida Law

(i) Negligent Misrepresentation

Morgan Stanley contends that New York law requires Coleman to prove that it had a "special relationship" with Coleman before it can bring a claim for negligent misrepresentation. Coleman contends that the "special relationship" requirement in the New York case law is merely a term of art that designates the same group of potential recipients of misrepresentations who have a cause of action as in Florida.

Florida has adopted §552 of the Restatement (Second) of Torts as a statement of the elements for a negligent misrepresentation claim:

> Information Negligently Supplied for the Guidance of Others.
>
> (1) One who, in the course of his business, profession or employment, or in any other transaction is which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.
>
> (2) Except as stated in Subsection (3), the liability stated in Subsection (1) is limited to loss suffered

> (a) by the person or one of a limited group of persons for whose benefit and guidance he intends to supply the information or knows that the recipient intends to supply it; and
>
> (b) through reliance upon it in a transaction that he intends the information to influence or knows that the recipient so intends or in a substantially similar transaction.
>
> (3) The liability of one who is under a public duty to give the information extends to loss suffered by any of the class of persons for whose benefit the duty is created, in any of the transactions in which it is intended to protect them.

See Gilchrist Timber Co. v. ITT Rayonier, Inc., 696 So. 2d 334, 337 (Fla. 1997). Thus, in Florida, one who has a pecuniary interest in a transaction is liable if he negligently supplies incorrect information for the benefit or guidance of another who justifiably relies on it.

New York, however, circumscribes a tighter circle of potential claimants, engrafting a requirement that the information's recipient be in a position of trust or confidence to its publisher. See American Protein Corp. v. AB Volvo, 844 F. 2d 56 (2d Cir. 1988), cert. den. 488 U.S. 852 (1988); DynCorp v. GTE Corporation, 215 F. Supp. 2d 308 (S.D.N.Y. 2002); Citibank, N.A. v. Itochu International, Inc., 2003 WL 1797847 (S.D.N.Y. 2003); Fleet Bank v. Pine Knoll Corp., 736 N.Y.S. 2d 737 (A.D. 3 Dept. 2002); St. Paul Fire and Marine Insurance Co. v. Health Fielding Insurance Brokerage, Ltd., 976 F. Supp. 198 (S.D.N.Y. 1996). The difference between Florida and New York law is material, and may be outcome determinative: the parties dispute whether MS & Co. held or acquired a position of trust or confidence over CPH, and whether MAFCO and CPH held or acquired a position of trust or confidence over MSSF.

(ii) Fraudulent Misrepresentation

Morgan Stanley contends that New York law prevents a recipient of a fraudulent misrepresentation from bringing a claim if it is a "sophisticated party" with access to information which, if checked, would have allowed it to determine the representation was inaccurate. CPH maintains that New York law is merely a specific application of the

general rule that a misrepresentation is not actionable unless reliance on it was reasonable, and that it is unreasonable for a sophisticated party in an arms' length commercial transaction to rely on information provided by its opponent that could have been verified.

Under New York law, reliance on a fraudulent misrepresentation is not reasonable if the recipient "has the means available to him of knowing, by the exercise of ordinary intelligence, the truth . . ." See Schumaker v. Mather, 133 N.Y. 590; 30 N.E. 755, 757 (1892). Thus, a sophisticated investor may not claim it was fraudulently induced to enter into a transaction if it failed to use the means available to test the representations. UST Private Equity Investors Fund v. Salomon Smith Barney, 733 N.Y.S. 2d 385, 288 A.D. 2d 87 (N.Y. App. Div. 2001).

In contrast, in Florida a recipient of a fraudulent misrepresentation may rely on it unless he knows it is false or its falsity is obvious, even if it had the means to verify the representation's accuracy. See Besett v. Basnett, 389 So. 2d 995 (Fla. 1980); M/I Schottenstein Homes, Inc. v. Azam, 813 So. 2d 91 (Fla. 2002); Sheer v. Jenkins, 629 So. 2d 1033 (Fla. 4th DCA 1993).

Clearly, there is a fundamental distinction on this point between New York and Florida which could be outcome determinative. MS & Co. claims CPH had access to information which would have allowed it to test the allegedly false representations but CPH failed to do its due diligence. MAFCO and CPH claim that MSSF had access to information that would have allowed MSSF to test the synergy representations, but MSSF failed to do its due diligence. If true, a jury could find reliance that is reasonable under Florida law to be unreasonable under New York law.

C. Step Two - Choice of Law Rule

(i) Applicable Rule

Florida has adopted the Restatement (Second) of Conflict of Laws' significant relationships test. See Bishop v. Florida Specialty Paint Company, 389 So. 2d 999 (Fla. 1980). Section 145 states the general principles with respect to tort. Section 148 states the choice of law principles for fraud and misrepresentation. Counsel agree section 148 applies.

See Trumpet Vine Investments, N.V. v. Union Capital Partners I, Inc., 92 F. 3d 1110 (11th Cir. 1996).

(ii) Procedure

The Court was unable to find any cases specifically delineating the procedure to be used for a judicial choice of law determination prior to trial. However, because application of the significant relationships test is fact-dependent, the Court concludes that a pre-trial determination is controlled by the summary judgment rule, Rule 1.510, Fla. R. Civ. P. First, the Court is unaware of any other procedural vehicle that would permit a pre-trial determination of facts. Second, it appears that when summary judgment has been used by the trial courts, the appellate courts have reviewed the orders without comment on the procedure employed. See, e.g., Rush v. Joyner, 540 So. 2d 266 (Fla. 4th DCA 1989); Bishop.

(iii) The Undisputed Facts

The following facts are undisputed:

1. CPH is a wholly owned subsidiary of MAFCO. Before the transaction with Sunbeam in March 1998, CPH was a holding company with an 82% interest in Coleman. CPH is a Delaware corporation with its principal place of business in New York City, New York.

2. MS & Co. is an investment banking firm providing financial and securities services. MS & Co. is a Delaware corporation with its principal place of business in New York City, New York.

3. CPH retained the investment bank of Credit Suisse First Boston ("CSFB") to serve as its financial advisor on the Sunbeam transaction. CSFB is a global investment bank with offices in New York. CPH worked with CSFB personnel in the New York office on the Sunbeam deal.

4. MS & Co. served as Sunbeam's financial advisor during the negotiations that led to the Coleman acquisition. MS & Co.'s contract with Sunbeam was governed by New York law.

5. New York counsel represented CPH, MS & Co., and MSSF during the course of the negotiations and closing of the Sunbeam transaction.

6. CPH retained the accounting firm of Ernst & Young, a national accounting firm with offices in New York. CPH worked with accountants in the New York office on the Coleman deal.

7. MSSF is a financial services company that provides credit services to its clients. MSSF is a Delaware corporation with its principal place of business in New York .

8. MAFCO relied on New York-based personnel at CSFB for financial services; on Wachtell, Lipton Rosen & Katz, a New York based law firm, for legal advice; and on Ernst & Young for accounting services.

9. There were numerous telephone calls between MS & Co. personnel and Sunbeam personnel in Florida concerning MS & Co.'s retention; its work for Sunbeam; and the Coleman transaction.

10. MS & Co. personnel met with Sunbeam personnel in Florida several times to discuss MS & Co.'s retention as Sunbeam's financial advisor, strategy, potential acquisition candidates, and merger issues.

11. On or about September 23 and 24, 1997; October 29, 1997; and March 4 and 5, 1998, MS & Co. personnel conducted due diligence at Sunbeam's Florida offices.

12. MS & Co. corresponded with Sunbeam at its Florida offices on a variety of issues dealing with its representation of Sunbeam and the merger.

13. On or about December 18, 1997, representatives of Sunbeam and MAFCO met in Florida to discuss a potential transaction involving Sunbeam and Coleman.

14. On or about February 3, 1998, Sunbeam personnel met with an Arthur Andersen representative at Sunbeam's Florida offices in connection with the Coleman transaction.

15. On March 5, 1998, MS & Co. personnel attended a drafting session in Florida in connection with the subordinated debenture offering.

16. On or about March 12, 1998, MS & Co. personnel conducted an accounting due diligence conference call with Arthur Andersen personnel in Florida regarding Sunbeam's financial circumstances.

17. The March 19, 1998 press release was publicly issued from Sunbeam's headquarters

in Delray Beach, Florida; was drafted by Sunbeam's lawyers at the New York offices of Skadden Arps; was reviewed by MS & Co. in New York; and was received by CPH in New York.

18. The statements by Lawrence Bornstein of Arthur Andersen concerning Sunbeam's earnings shortfalls took place at the offices of Global Financial Press in New York.

19. Any representations that MAFCO and CPH made to MSSF at the December 12, 1997 and January 29, 1998 meetings were made and received in New York.

20. On February 4, 1998, Coleman sent Sunbeam a proposed Confidentiality Agreement in connection with the proposed merger. Sunbeam executed the Confidentiality Agreement. The Confidentiality Agreement provided that New York law applies to it.

21. On February 27, 1998, Sunbeam and CPH's boards of directors met in New York and approved the merger agreement. MS & Co. made a presentation to Sunbeam's Board of Directors at the meeting in New York and provided a "fairness opinion" prior to the Board's approval of the transaction.

22. Sunbeam and CPH signed the merger agreement later that day in New York.

23. The merger agreement specified that the acquisition would close in New York and that all share certificates and other consideration would be exchanged by the parties at the closing in New York.

24. Written notice of changes in circumstances having a material adverse effect was to be delivered to CPH's wholly owned subsidiary in Fort Lauderdale, Florida. No notice was received.

25. On March 29, 1998, Sunbeam and CPH entered into a Registration Rights Agreement which provided for the registration by Sunbeam of 14,099,749 shares of Sunbeam common stock that were issued to a wholly owned subsidiary of CPH. The Registration Rights Agreement provided that it was governed by New York law without regard to New York conflicts of law principles.

26. The Sunbeam transaction closed on March 30, 1998 in New York.

27. CPH tendered its shares of Coleman to Sunbeam in New York. At the time of the transaction, Coleman was a public company traded on the New York Stock Exchange.

28. CPH accepted shares of Sunbeam stock in New York. At the time of the transaction, Sunbeam was a public company traded on the New York Stock Exchange.

29. The Sunbeam financing transactions were closed in New York on March 31, 1998.

30. MSSF loaned Sunbeam $680 million in New York in part to be used for the Coleman deal.

D. *Step Three - Application of the Law to the Facts*

(i) Negligent Misrepresentation - CPH v. MS & Co.

Restatement (Second) of Conflict of Laws §148 (1971) provides:

> §148. Fraud and Misrepresentation
>
> (1) When the plaintiff has suffered pecuniary harm on account of his reliance on the defendant's false representations and when the plaintiff's action in reliance took place in the state where the false representations were made and received, the local law of this state determines the rights and liabilities of the parties unless, with respect to the particular issue, some other state has a more significant relationship under the principles stated in §6 to the occurrence and the parties, in which event the local law of the other state will be applied.
>
> (2) When the plaintiff's action in reliance took place in whole or in part in a state other than that where the false representations were made, the forum will consider such of the following contacts, among others, as may be present in the particular case in determining the state which, with respect to the particular issue, has the most significant relationship to the occurrence and the parties:
>
> (a) the place, or places, where the plaintiff acted in reliance upon the defendant's representations,
>
> (b) the place where the plaintiff received the representation,
>
> (c) the place where the defendant made the representations,
>
> (d) the domicil, residence, nationality, place of incorporation and place of business of the parties,

> (e) the place where a tangible thing which is the subject of the transaction between the parties was situated at the time, and
>
> (f) the place where the plaintiff is to render performance under a contract which he has been induced to enter by the false representations of the defendant.

MS & Co. argues that subsection (1) applies; CPH argues that subsection (2) applies. The correct answer is unclear, since subsection (1) applies only if the false statements were both made and received in the same state, and subsection (2) applies if reliance occurs in whole or in part in a different state that where the representation was made. §148 does not state a rule where the place of reliance and representation are the same, but different from the place where the representation was received.

The representations were received in New York. The actionable part of CPH's reliance occurred in New York, where the contract was entered into and closed. Finally, it is undisputed that the representations relied on in Count I of CPH's Complaint were made in New York. Consequently, New York law controls unless Florida has a more significant relationship under the principles stated in section 6 of the Restatement. It does not. While Florida's public policy provides broader protection for the recipients of false information in commercial transactions, which creates greater incentives for parties to take reasonable care that their representations are correct, that interest is not paramount to New York's, under the principles outlined in section 6. Instead, certainty and predictability in commercial transactions require that New York law apply.

Even if the choice of laws was not dictated by subsection (1), application of subsection (2) would lead to the same result: CPH relied on the statements in New York; it received the representations in New York; the representations were made in New York; the parties are domiciled in New York; and CPH was required to perform in New York.

(ii) Negligent Misrepresentation: MSSF v. MAFCO and CPH

MSSF's claims against MAFCO and CPH are centered on two meetings where MSSF alleges MAFCO and CPH gave inflated synergy projections, on December 12, 1997, and

January 29, 1998. Both were face to face meetings in New York. Consequently, the allegedly false synergy projections were made, received, and relied on in New York. Florida does not have a more significant relationship to the particular issue--the group of people to which MSSF owed a duty--under the principles listed in section 6. Consequently, New York law governs whether MSSF owed a duty to MAFCO and CPH.

(iii) Fraudulent Misrepresentation: CPH v. MS & Co.

As outlined above, section 148 (1) of the Restatement dictates the application of New York law to determine whether reliance on a fraudulent misstatement is justified. Florida does not have a more significant relationship to this issue than New York, based on application of the principles outlined in section 6 of the Restatement. Though Florida has a strong public policy dictating that "(a) person guilty of fraudulent misrepresentation should not be permitted to hide behind the doctrine of caveat emptor," that interest does not override New York's. Besset at 997. Certainty and predictability require that the standards of due diligence governing sophisticated New York domiciled corporations entering into a commercial transaction in New York be governed by New York law.

(iv) Fraudulent Misrepresentation: MSSF v. MAFCO and CPH

Section 148 (1) of the Restatement dictates the application of New York law to determine the due diligence required to find reliance on a false statement reasonable. Application of section 6's principles does not dictate a different result.

(v) Conspiracy and Aiding and Abetting-CPH v. MS & Co.

The Court is unable to apply section 148's principles or conclude whether Florida or New York has the more significant relationship to CPH's aiding and abetting fraud and conspiracy claims, found at Counts II and III of its Complaint.

Both counts claim that MS & Co. actively worked with Sunbeam personnel to manipulate Sunbeam's finances to make it appear that Sunbeam had successfully rebounded from poor performance; to conceal and misrepresent Sunbeam's true financial condition to entice a potential purchaser or investor; and to provide CPH, both through MS & Co. and by materials it scripted for Sunbeam, false and inaccurate financial information to persuade

CPH to agree to, then consummate, a merger with Sunbeam.

It is unclear to the Court how, if at all, the two claims differ. However, if MS & Co. were found liable based on allegations of its participation with Sunbeam personnel in an elaborate fraud, then it would be liable for the entire fraud. See Hoch v. Rissman, Weisberg, Barrett, 742 So. 2d 451 (Fla. 5th DCA 1999), rev. den. 760 So. 2d 948 (Fla. 2000); Ford v. Rowland, 562 So. 2d 731 (Fla. 5th DCA 1990), rev. den. 574 So. 2d 141 (1990); Nicholson v. Kellin, 481 So. 2d 931 (Fla. 5th DCA 1985). Further, MS & Co. could be liable for Sunbeam's actions prior to its retention if it joined with Sunbeam to perpetuate a fraud with knowledge of its general purpose and scope. See James v. Nationsbank Trust Co. (Florida), N.A., 639 So. 2d 1031 (Fla. 5th DCA 1994). The fraud alleged is largely Florida based, and the location of its ultimate victim incidental. Florida has a strong public policy in favor of protecting the recipients of fraudulent misrepresentations. Besset. That policy is more clearly implicated if CPH is able to prove that MS & Co. was an actor in a Florida-based fraud. The allegations of conspiracy are disputed, precluding summary judgment at this juncture on the choice of law issue.

Based on the foregoing, it is

ORDERED AND ADJUDGED that Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc.'s Motion for Application of New York Law is Granted, in part. As to Counts I and IV of CPH's Complaint and MSSF's claims against MAFCO and CPH, the Court determines that New York substantive law applies (i) to engraft a requirement that the recipient of a negligent misrepresentation be in a special relationship to its publisher for the misrepresentation to be actionable, and (ii) to engraft a requirement that a party perform reasonable due diligence as to available information in order to prove that its reliance on a misrepresentation was reasonable.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 19 day of August, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci
655 15th Street, NW, Suite 1200
Washington DC 20005

John Scarola, Esq.
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One IBM Plaza, Suite 4400
Chicago, Il 60611

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JENNER & BLOCK

Jenner & Block LLP
One IBM Plaza
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Chicago
Dallas
Washington, DC

Date: October 8, 2004

To:	Thomas A. Clare, Esq.	Fax:	(202) 879-5200
		Voice:	(202) 879-5993
	Joseph Ianno, Jr., Esq.	Fax:	(561) 659-7368
		Voice:	(561) 659-7070
	John Scarola, Esq.	Fax:	(561) 684-5816 (before 5 PM)
		Voice:	(561) 686-6350, Ext. 140
From:	Michael T. Brody 312 923-2711		

Employee Number: Client Number: 41198-10003

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITION
AND SUBPOENA DUCES TECUM

To: Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings Inc. ("CPH") requests the deposition upon oral examination of the following non-party witness pursuant to the commission issued by the Circuit Court of the Fifteenth Judicial District of Florida and Florida Rule of Civil Procedure 1.310 on the date and times set forth below:

Davis Polk & Wardwell October 28, 2004 at 9:30 a.m.

The deposition will be recorded by stenographic and videographic means at the offices of Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017-3004. The videographer will be Esquire Deposition Services. The deposition will be taken before a person authorized to administer oaths and will continue day to day until complete.

The deposition is being taken with respect to the topics described on the attached Exhibit A. Please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify. The witness also will be requested to bring to the deposition the documents specified in Exhibit B.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 8th day of October, 2004.

Dated: October 8, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Michael T. Brody
Deirdre E. Connell
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409
(561) 686-6300

Exhibit A

DEPOSITION TOPICS FOR DAVIS POLK & WARDWELL

1. The date, time, source, and circumstances surrounding Davis Polk's receipt and/or dissemination of any "comfort letters" and drafts thereof prepared by Arthur Andersen, including but not limited to, Arthur Andersen's letters dated March 19, 1998 and March 25, 1998 and any drafts thereof.

2. The authenticity, source, creation, use, maintenance, and business purpose of documents produced or created by Davis Polk bearing Bates Nos. DPW 000001-2, DPW 000012, DPW 000010, DPW 000020, and the information contained those documents. (Copies of those documents are attached hereto).

3. The authenticity, creation, use, maintenance, and business purpose of all documents produced in response to Paragraph 1 of Exhibit B hereto.

Definitions

1. "Arthur Andersen" means Arthur Andersen LLP and its present and former partners and employees.

2. "Credit Agreement" means that agreement entered into by Sunbeam Corporation, as borrower, with Morgan Stanley Senior Funding, Inc., Bank of America National Trust and Savings Association, and First Union National Bank (now known as Wachovia Bank, National Association), as lenders, dated March 30, 1998 and amended periodically thereafter by agreement of the parties.

3. "Davis Polk" means Davis Polk & Wardwell and any of its affiliates, partners, associates, employees, representatives, and agents.

4. "MS&Co." means Morgan Stanley & Co., Inc. and any of its direct or indirect parents, affiliates, subsidiaries, and present and former officers, directors, partners, employees, representatives, and agents.

5. "MSSF" means Morgan Stanley Senior Funding, Inc. and any of its direct or indirect parents, affiliates, subsidiaries, and present and former officers, directors, partners, employees, representatives, and agents.

6. "Subordinated Debenture Offering" means the offering of Sunbeam's Zero Coupon Convertible Senior Subordinated Debentures Due 2018.

7. "Sunbeam" means Sunbeam Corporation and any of its present and former officers, directors, employees, representatives, and agents.

Exhibit B

Documents

1. Davis Polk time records from March 1998 referring to any receipt and/or review of "comfort letter(s)," or any drafts of "comfort letter(s)" prepared by Arthur Andersen relating to Sunbeam.

Definitions

1. "Arthur Andersen" means Arthur Andersen LLP and its present and former partners and employees.

2. "Davis Polk" means Davis Polk & Wardwell and any of its affiliates, partners, associates, employees, representatives, and agents.

3. "Sunbeam" means Sunbeam Corporation and any of its present and former officers, directors, employees, representatives, and agents.

SERVICE LIST

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
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LAW OFFICES
JENNER & BLOCK LLP

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(312) 527-0484 FAX

DEIRDRE E. CONNELL
312-923-2661 Direct Dial
312-840-7661 Direct Facsimile

TELECOMMUNICATION TRANSMITTAL

DATE:	October 11, 2004		
TO:	**Thomas A. Clare, Esq.** KIRKLAND & ELLIS, LLP	**VOICE:** **FAX:**	(202) 879-5993 (202) 879-5200
	Joseph Ianno, Jr., Esq. CARLTON FIELDS, P.A.	**VOICE:** **FAX:**	(561) 659-7070 (561) 659-7368
FROM:	Deirdre E. Connell	**SECY. EXT.:**	6486
EMP. NO.:	035666	**CLIENT NO.:**	41198-10003

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC., et al.,
Defendants.

_____/

COLEMAN (PARENT) HOLDINGS INC.'S
FIFTH SET OF REQUESTS FOR ADMISSION

Plaintiff Coleman (Parent) Holdings Inc., by its attorneys and pursuant to Florida Rule of Civil Procedure 1.370, hereby requests that defendant Morgan Stanley & Co., Inc. answer, under oath and in writing, the following requests for admission within 30 days of the date of service of these requests.

DEFINITIONS AND INSTRUCTIONS

1. "MS&Co." means Morgan Stanley & Co., Inc. or any of its parent, affiliates, subsidiaries, divisions, predecessors, successors, present and former employees, representatives, agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

2. When good faith requires Morgan Stanley to qualify an answer or deny only part of the matter of which an admission is requested, Morgan Stanley shall specify the part of the matter which is true, and qualify or deny the remainder.

REQUESTS FOR ADMISSION

1. The opinions reflected in documents bates-numbered Morgan Stanley Confidential 0084771 through 0085783 and Morgan Stanley Confidential 0094003 through 0094032 are not capable of being expressed as fact.

2. The opinions reflected in documents bates-numbered Morgan Stanley Confidential 0084771 through 0085783 and Morgan Stanley Confidential 0094003 through 0094032 do not require special knowledge, skill, experience, or training.

3. The authors of the documents bates-numbered Morgan Stanley Confidential 0084771 through 0085783 and Morgan Stanley Confidential 0094003 through 0094032 could not readily, and with equal accuracy and adequacy, communicate the perceptions reflected in documents bates-numbered Morgan Stanley Confidential 0084771 through 0085783 and Morgan Stanley Confidential 0094003 through 0094032 without communicating in terms of opinions.

4. Documents bates-numbered Morgan Stanley Confidential 0084771 through 0085783 and Morgan Stanley Confidential 0094003 through 0094032 were created within twelve months of the performance of the employees discussed therein.

5. Documents bates-numbered Morgan Stanley Confidential 0084771 through 0085783 and Morgan Stanley Confidential 0094003 through 0094032 were prepared by MS&Co. employees with knowledge of the matters discussed therein.

6. The statements reflected in documents bates-numbered Morgan Stanley Confidential 0084771 through 0085783 and Morgan Stanley Confidential 0094003 through 0094032 were made by MS&Co. employees.

7. The statements reflected in documents bates-numbered Morgan Stanley Confidential 0084771 through 0085783 and Morgan Stanley Confidential 0094003 through 0094032 were made by MS&Co. employees during the course of their employment by MS&Co.

8. The statements reflected in documents bates-numbered Morgan Stanley Confidential 0084771 through 0085783 and Morgan Stanley Confidential 0094003 through 0094032 were made by MS&Co. employees while acting within the scope of their employment.

COLEMAN (PARENT) HOLDINGS INC.

Dated: October 11, 2004

By: Deirdre Connell
One of Its Attorneys

Jerold S. Solovy
Michael T. Brody
Deirdre E. Connell
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
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John Scarola
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

Document Number: 1163437

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a copy of the foregoing has been furnished by U.S. Mail and facsimile to the following counsel of record on this 11th day of October, 2004:

Joseph Ianno, Jr.
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Deirdre E. Connell

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Chicago
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Washington, DC

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John Scarola, Esq.	Fax:	(561) 684-5816 (before 5 PM)
	Voice:	(561) 686-6350, Ext. 140

From: Michael T. Brody
312 923-2711

Employee Number: Client Number: 41198-10003

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Secretary: Caryn Jo Geisler Extension: 6490

JENNER&BLOCK

October 12, 2004

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Chicago
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BY FACSIMILE

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655 Fifteenth Street, N.W.
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Washington, D.C. 20005

Michael T. Brody
Tel 312 923-2711
Fax 312 840-7711
mbrody@jenner.com

Re: ***Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.***
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Tom:

Today in response to CPH's application for an order to command the deposition of and the production of documents from Skadden, Arps, Slate, Meagher & Flom LLP by its Custodian of Records, the Supreme Court of the State of New York issued an order directing the issuance of a Subpoena Duces Tecum. Enclosed please find a copy of CPH's emergency affidavit in support of its application, the court's order, the Subpoena, and a Notice of Deposition setting the deposition date for November 1, 2004. Although we are not enclosing the documents attached to the Subpoena, they are clearly referenced by Bates number.

Very truly yours,

Michael T. Brody

MTB: tlm
Enclosures

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Jerold S. Solovy, Esq.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the matter of the application of COLEMAN (PARENT) HOLDINGS INC.,	Index No. _____
Petitioner,	**EMERGENCY AFFIDAVIT PURSUANT TO CPLR § 3102(e)**
for an order for the issuance of a subpoena duces tecum SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP,	
Respondent,	
pursuant to a commission issued in an action pending in the Circuit Court of the Fifteenth Judicial District of the State of Florida entitled Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co. Inc., Case No. CA 03-5045 AI / Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al., Case No. CA 03-5165 AI.	

STATE OF NEW YORK :
ss.:
COUNTY OF NEW YORK :

GARY I. LERNER, being duly sworn, deposes and says:

1. I am an attorney at law duly licensed to practice in the courts of the State of New York and am associated with the firm of Cohen Lans LLP.

2. I respectfully submit this emergency affidavit pursuant to CPLR 3102(e) in support of the application of Petitioner, Coleman (Parent) Holdings Inc. ("CPH), pursuant to a commission from the Circuit Court of the Fifteenth Judicial District of the State of Florida, Palm Beach County, for an order to command the deposition of and the production of documents from Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden Arps"), by its Custodian of Records. Prior to making this application CPH attempted voluntarily to obtain Skadden Arps's assistance. CPH seeks relief now because voluntary compliance has not proven satisfactory.

3. The deposition requested is material and necessary to an action now pending in the Circuit Court of the Fifteenth Judicial District of the State of Florida, entitled Coleman (Parent) Holdings Inc., v. Morgan Stanley & Co., Inc., Case No. CA 03-5045 AI / Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings, Inc., et al., Case No. CA 03-5165 AI (Palm Beach County) (the "Florida Action"). CPH alleges in the Florida Action that Morgan Stanley & Co., Inc. ("Morgan Stanley") participated in a massive fraud by, inter alia, misrepresenting the financial condition of Sunbeam Corporation ("Sunbeam") and concealing Sunbeam's true financial condition from CPH so that Sunbeam could complete the Morgan Stanley-brokered purchase of The Coleman Company, Inc. From CPH on March 30, 1998 using artificially inflated Sunbeam stock as consideration. Skadden Arps served as counsel to Sunbeam during the relevant time period and in that role had numerous dealings with Morgan Stanley. In its responses to CPH's discovery demands, Morgan Stanley has listed numerous Skadden Arps attorneys as possessing relevant information. The requested discovery is directed to Skadden Arps's role in the transactions at issue in the Florida Action, Skadden Arps's dealings with Morgan Stanley, and the potential biases of Skadden Arps witnesses.

4. The emergency nature of this application arises from the fact that there will be a conference held in the Florida Action on October 14, 2004, at which time petitioner believes that the Florida court is likely to establish a firm discovery cutoff date of November 1, 2004. Therefore, in order to obtain the requested discovery from Skadden Arps, CPH must respectfully request that the Court permit a subpoena duces tecum to be issued which sets a deposition date of November 1, 2004 (less than the twenty day notice period normally required by the CPLR). The reason why CPH did not bring the instant proceeding earlier is because it had been negotiating

with Skadden Arps to obtain its voluntary compliance with the Commission issued by the court in the Florida Action. Although Skadden Arps has produced some documents to CPH, those negotiations have broken down and CPH now finds it necessary to seek an order in aid of the commission from this Court.

5. The address of Skadden Arps is Four Times Square, New York, New York 10036.

6. Under the rules and practice of the Florida state courts and CPLR § 3102(e), the Circuit Court of the State of Florida's Commission authorizes the issuance of a subpoena duces tecum from this Court.

7. The Commission from the Circuit Court of the State of Florida is annexed hereto as Exhibit A. The Commissioner named therein, Michael I. Allen, has exercised the power granted to him by the Commission to authorize Wendy Boskind, C.S.R. of Esquire Deposition Services, 216 East 45th Street, 8th Floor, New York, New York 10017-3004, or in her absence any other court reporter employed by Esquire Deposition Services, to take the testimony of respondent.

8. The Commission has been served on all parties to the Florida Action.

9. A copy of this Court's order authorizing the taking of such testimony and authorizing the issuance of a subpoena duces tecum will be served on the deponent together with the subpoena duces tecum on or before such time as this Court shall direct.

10. No prior application has been made for the relief requested herein.

Gary I. Lerner

Sworn to before me this
11th day of October, 2004

Notary Public

MICHELLE ROSENTHAL
Notary Public, State of New York
No. 01RO4726496
Qualified in Bronx County
Commission Expires Nov. 30, 200[illegible]

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

COLEMAN (PARENT) HOLDINGS, INC., Plaintiff,	)	Case No.: 2003 CA 005045 AI
v.	)	Judge Elizabeth T. Maass
MORGAN STANLEY & CO., INC., Defendant.	)	

03 OCT 20 PM 2:35
CIR & CO CT CLERK
CIRCUIT CIVIL

ORDER ON APPOINTMENT OF COMMISSIONS

This cause came before the Court on Plaintiff's Motion to Appoint Commissions so that it can subpoena for depositions and documents witnesses in other jurisdictions. After reviewing the pleadings, and otherwise being advised in the premises it is ORDERED AND ADJUDGED that commissions are appointed so that plaintiff may subpoena depositions and documents from the following witnesses:

- Custodian of Records
  LLAMA COMPANY
  16 West Colt Square Drive
  Fayetteville, Arkansas 72703-2813

- Custodian of Records
  SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
  Four Times Square
  New York, New York 10036

- DEIDRA DENDANTO
  335 Glendale Avenue, N.E.
  Atlanta, Georgia 30307

CLERK OF CIRCUIT COURT PALM BEACH COUNTY, FLA.

PALM BEACH COUNTY - STATE OF FLORIDA
I HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY OF RECORD IN MY OFFICE
THIS 10 DAY OF Nov 2003
DOROTHY H. WILKEN
CLERK CIRCUIT COURT
BY _____ DC

118

The following commissions are appointed for the purposes of obtaining depositions and documents from the above listed witnesses, and other witnesses whose discovery is sought in the commissions' jurisdictions:

Kathy Bates
AFFORDABLE INVESTIGATIONS
44 Hidden Valley Drive
Conway, Arkansas 72034

or any other person duly authorized by her and able to administer oaths pursuant to the laws of Arkansas.

Jay Strongwater
STRONGWATER & ASSOCIATES, LLC
1360 Peachtree Street, N.E.
Suite 930
Atlanta, Georgia 30309

or any other person d ly authorized by him and able to administer oaths pursuant to the laws of Georgia.

Michael I. Allen
SHAPIRO MITCHELL FORMAN ALLEN & MILLER LLP
380 Madison Avenue
New York, New York 10017

or any person duly authorized by him and able to administer oaths pursuant to the laws of New York.

This Order does not authorize the issuance of subpoenas to the list witnesses, but simply appoints the commissioners for the purposes of administration of oaths and the taking of deposition testimony.

Done and Ordered in Palm Beach Co nty, Florida this 20th day of Oct., 2003.

Circuit Court Judge Elizabeth T. Maass

Coleman v. Morgan Stanley
2003 CA 005045 AI
Order on Appointment of Commissions

Copies furnished to:

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Washington, D.C. 20005
(202) 879-5000
(202) 879-5200 (fax)

ORIGINAL

(SP)

At the Ex Parte Motion Office of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse, located at 60 Centre Street, New York, New York, 10007 on the 12th day of October, 2004.

PRESENT:

HON. _____
Justice.

In the matter of the application of COLEMAN (PARENT) HOLDINGS INC.,	Index No. 114428/04
Petitioner,	**ORDER PURSUANT TO CPLR § 3102(e) DIRECTING THE ISSUANCE OF A SUBPOENA DUCES TECUM**
for an order for the issuance of a subpoena duces tecum SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP,	
Respondent,	
pursuant to a commission issued in an action pending in the Circuit Court of the Fifteenth Judicial District of the State of Florida entitled Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co. Inc., Case No. CA 03-5045 AI / Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al., Case No. CA 03-5165 AI.	

An application having been made by Petitioner, COLEMAN (PARENT) HOLDINGS INC., pursuant to CPLR § 3102(e) for the issuance of a subpoena duces tecum to Respondent, SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP, pursuant to a Commission issued in connection with an action pending in the Circuit Court of the Fifteenth Judicial District of the State of Florida, Palm Beach County; and

Upon reading the emergency affidavit of Gary I. Lerner, Esq., sworn to on the 11th day of

[redacted] duces tecum is necessary and proper, it is hereby

ORDERED, that pursuant to CPLR § 3102(c), Respondent, SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP, is directed to appear for deposition by its Custodian of Records on November 1, 2004, at 9:30 a.m., at the offices of Esquire Deposition Services, 216 East 45th Street, 8th Floor, New York, New York 10017-3004, before Wendy Boskind, C.S.R., who has been duly authorized by Michael I. Allen (as set forth in the Commission issued by the Circuit Court of the State of Florida) and is able to administer oaths pursuant to the laws of the State of New York (or before any other individual court reporter employed by Esquire Deposition Services as has also been duly authorized by Michael I. Allen), and to bring to the deposition the documents listed in an appropriate New York subpoena duces tecum, and it is further;

ORDERED, that personal service of a copy of this order and an appropriate New York subpoena duces tecum shall be made upon Respondent, SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP, on or before the 14th day of October, 2004; and it is further;

ORDERED, that a copy of this order and the subpoena duces tecum be mailed or faxed to all attorneys in the out-of-state action on or before the above date.

ENTER,

J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the matter of the application of COLEMAN (PARENT) HOLDINGS INC.,	Index No. _____
Petitioner,	
for an order for the issuance of a subpoena duces tecum SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP,	
Respondent,	**SUBPOENA DUCES TECUM**
pursuant to a commission issued in an action pending in the Circuit Court of the Fifteenth Judicial District of the State of Florida entitled Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co. Inc., Case No. CA 03-5045 AI / Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al., Case No. CA 03-5165 AI.	

THE PEOPLE OF THE STATE OF NEW YORK

TO: **CUSTODIAN OF RECORDS**
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Four Times Square
New York, New York 10036

GREETINGS:

We Command You, that all business and excuses being laid aside, you appear and attend at the offices of Esquire Deposition Services, 216 East 45th Street, 8th Floor, New York, New York 10017-3004, on the 1st day of November, 2004 at 9:30 a.m., and at any recessed or adjourned date, to give testimony at deposition in this action and to bring with you and produce at the time and place aforesaid, the documents described in Schedule A hereto now in your custody or control.

The reasons or circumstances for seeking or requiring such disclosure from you are as follows: You are believed to have material and relevant documents, information and knowledge concerning the liability issues in this action -- in particular, the topics described in Schedule B hereto.

Failure to comply with this subpoena duces tecum is punishable as a contempt of

Court and shall make you liable to the person on whose behalf this subpoena duces tecum was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

Cohen Lans LLP
Attorneys for Petitioner
Coleman (Parent) Holdings Inc.

By: Gary I. Lerner
Gary I. Lerner

885 Third Avenue
New York, New York 10022
(212) 980-4500

SCHEDULE A

You are hereby requested to produce the following documents pursuant to the definitions and instructions set forth below.

DOCUMENTS REQUESTED

1. All documents constituting or relating to the February 1998, March 1998, and April 1998 calendars of Skadden attorneys who worked on Sunbeam matters during the relevant time period, including but not limited to the calendars of Mr. Deitz, Mr. Easton, Mr. Fernicola, Mr. Fogg, Mr. Freed, and Ms. Amorison.

2. All documents constituting or relating to billing records, expense reports, and/or attorney timesheets for work performed for Sunbeam by Skadden during February 1998, March 1998, and April 1998.

3. All documents constituting or relating to March 1998 e-mail communications between or among Skadden, MS&Co., MSSF, Davis Polk, and Arthur Andersen, not previously produced to CPH in the course of litigation.

4. All documents sufficient to show Skadden's total billings, by matter, for engagements by Sunbeam, and engagement by all other entities for which Al Dunlap served as an officer.

5. All documents sufficient to show Skadden's total annual billings to any MS&Co. and/or MSSF entity from 1993 through and including 1998.

6. All evaluations of Mr. Deitz, Mr. Easton, Mr. Fernicola, Mr. Fogg, Mr. Freed, and Ms. Amorison for 1996, 1997, 1998, and 1999.

7. All documents sufficient to show Mr. Fogg's compensation and/or percentage ownership interest in Skadden in 1996, 1997, 1998, and 1999.

DEFINITIONS

1. "Skadden" means Skadden, Arps, Slate, Meagher & Flom LLP and any of its present and former affiliates, partners, associates, employees, representatives, and agents.

2. "CPH" means Coleman (Parent) Holdings, Inc., its predecessors, successors, subsidiaries, and present and former officers, directors, and employees.

3. "Sunbeam" means Sunbeam Corporation and any of its present and former officers, directors, employees, representatives, and agents.

4. "MS&Co." means Morgan Stanley & Co., Inc. and any of its direct or indirect parents, affiliates, subsidiaries, and present and former officers, directors, partners, employees, representatives, and agents.

5. "MSSF" means Morgan Stanley Senior Funding, Inc. and any of its direct or indirect parents, affiliates, subsidiaries, and present and former officers, directors, partners, employees, representatives, and agents.

6. "Davis Polk" means Davis Polk & Wardwell and any of its present and former affiliates, partners, associates, employees, representatives, and agents.

7. "Arthur Andersen" means Arthur Andersen LLP and its present and former partners, employees, representatives, and agents.

8. "Documents" shall be given the broad meaning provided in CPLR 3120 and refers to any form or means, whether physical, visual, or electronic, in or by which words, numbers,

or ideas are recorded or preserved, whether fixed in tangible medium or electronically stored, including any and all drafts of any final document. The word "documents" shall include, by way of example and not by way of limitation, all of the following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, notes, messages, reports, studies, press releases, comparisons, books, accounts, checks, audio and video recordings and transcriptions thereof, pleadings, testimony, articles, bulletins, pamphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk calendars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, minutes for meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements, memoranda of understanding, letters of intent, computer tapes, computer drives or memories, computer diskettes or disks, e-mail, CD-ROMs, or any other tangible thing on which any handwriting, typing, printing, photostatic, electronic, or other form of communication or information is recorded or reproduced, together with all notations on any of the foregoing, all originals, file copies, or other unique copies of the foregoing, and all versions or drafts thereof, whether used or not.

9. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise) by letter, memorandum, facsimile, orally, electronically or otherwise.

10. "You" or "Your" means Skadden, Arps, Slate, Meagher & Flom LLP and any of its present and former partners, employees, representatives, and agents.

INSTRUCTIONS

1. Documents shall be produced as they are kept in the usual course of business, or organized and labeled to correspond to the categories in this Request. Documents attached to each other should not be separated.

2. All documents shall be produced in the file folder, envelope or other container in which the documents are kept or maintained by you. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks.

3. The relevant period, unless otherwise indicated, shall be April 1, 1997 through the date of service of this subpoena, and shall include all documents and information which relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received prior or subsequent to that period. Please supplement or correct your responses to these requests if, at any time, you become aware that your responses are incomplete or incorrect in any respect.

4. If you claim the attorney-client privilege, or any other privilege or work-product protection for all or any portion of a document, you shall provide a privilege log that describes the withheld material sufficiently to allow CPH to test the privilege or protection asserted.

5. The following rules of construction apply:

a. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be outside of their scope;

b. The term "including" shall be construed to mean "without limitation"; and

c. The use of the singular form of any word includes the plural and vice versa.

SCHEDULE B

You are hereby requested to respond to the following topics pursuant to the definition and instructions set forth in Schedule A.

RULE 1.310 TOPICS

1. The authenticity, source, creation, use, maintenance, and business purpose of documents produced by Skadden bearing Bates Nos. SASMF 10699-10705 and information contained therein. (Copies of SASMF 10699-10705 are attached hereto).

2. The authenticity, source, creation, use, maintenance, and business purpose of documents produced by Skadden bearing Bates Nos. SASMF 10807-10808 and information contained therein. (Copies of SASMF 10807-10808 are attached hereto).

3. The authenticity, source, creation, use, maintenance, and business purpose of the document produced by Skadden bearing Bates Nos. SASMF 10709 and information contained therein. (Copy of SASMF 10709 is attached hereto).

4. The authenticity, source, creation, use, maintenance, and business purpose of documents produced by Skadden bearing Bates Nos. SASMF 10710-10711 and information contained therein. (Copies of SASMF 10710-10711 are attached hereto).

5. The authenticity, source, creation, use, maintenance, and business purpose of documents produced by Skadden bearing Bates Nos. SASMF 14139-14143 and information contained therein. (Copies of SASMF 14139-14143 are attached hereto).

6. The authenticity, source, creation, use, maintenance, and business purpose of documents produced by Skadden bearing Bates Nos. SASMF 10951-10952 and information contained

therein. (Copies of SASMF 10951-10952 are attached hereto).

7. The authenticity, source, creation, use, maintenance, and business purpose of documents produced by Skadden bearing Bates Nos. SASMF 10708-10711 and information contained therein. (Copies of SASMF 10708-10711 are attached hereto).

8. The authenticity, source, creation, use, maintenance, and business purpose of documents produced by Skadden bearing Bates Nos. SASMF 17749-17753 and information contained therein. (Copies of SASMF 17749-17753 are attached hereto).

9. The authenticity, source, creation, use, maintenance, and business purpose of documents produced by Skadden bearing Bates Nos. SASMF 07633-07721 and information contained therein. (Copies of SASMF 07633-07721 are attached hereto).

10. The authenticity, source, creation, use, maintenance, and business purpose of the document produced by Skadden bearing Bates Nos. SASMF 07797 and information contained therein. (Copy of SASMF 07797 is attached hereto).

11. The authenticity, source, creation, use, maintenance, and business purpose of documents produced by Skadden bearing Bates Nos. SASMF 07828-07865 and information contained therein. (Copies of SASMF 07828-07865 are attached hereto).

12. The authenticity, source, creation, use, maintenance, and business purpose of documents produced by Skadden bearing Bates Nos. SASMF 07722-07753 and information contained therein. (Copies of SASMF 07722-07753 are attached hereto).

13. The authenticity, source, creation, use, maintenance, and business purpose of all February 1998, March 1998, and April 1998 calendars produced by Skadden in response to document

request No. 1 set forth in Schedule A.

14. The authenticity, creation, use, maintenance, and business purpose of all documents constituting or relating to Skadden's billing records, expense reports, and/or attorney timesheets for work performed for Sunbeam during February 1998, March 1998, and April 1998, produced by Skadden in response to document request No. 2 set forth in Schedule A.

15. The authenticity, creation, use, maintenance, and business purpose of all documents constituting or relating to March 1998 e-mail communications between Skadden and MS&Co., MSSF, Davis Polk, or Arthur Andersen, produced by Skadden in response to document request No. 3 set forth in Schedule A.

16. The authenticity, creation, use, maintenance, and business purpose of all documents sufficient to show Skadden's total billings, by matter, for engagements by Sunbeam and for engagements by all other entities for which Al Dunlap served as an officer, produced by Skadden in response to document request No. 4 set forth in Schedule A.

17. The authenticity, creation, use, maintenance, and business purpose of all documents sufficient to show Skadden's total annual billings to any MS&Co. and/or MSSF entity from 1993 through and including 1998, produced by Skadden in response to document request No. 5 set forth in Schedule A.

18. The authenticity, creation, use, maintenance, and business purpose of all documents constituting or relating to evaluations of Mr. Deitz, Mr. Easton, Mr. Fernicola, Mr. Fogg, Mr. Freed, and Ms. Amorison for 1996, 1997, 1998, and 1999, produced by Skadden in response to document request No. 6 set forth in Schedule A.

19. The authenticity, creation, use, maintenance, and business purpose of all documents sufficient to show Mr. Fogg's compensation and/or percentage ownership interest in Skadden in 1996, 197, 1998, and 1999, produced by Skadden in response to document request No. 7 set forth in Schedule A.

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITIONS

To: Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings Inc. ("CPH") requests the deposition upon oral examination of the following non-party witness pursuant to the commission issued by the Circuit Court of the Fifteenth Judicial District of Florida and Florida Rule of Civil Procedure 1.310 and the subpoena issues in aid of that commission by the Supreme Court of the State of New York on the date and times set forth below:

Custodian of Records
Skadden, Arps, Slate, Meagher & Flom LLP November 1, 2004 at 9:30 a.m.

The deposition will be recorded by stenographic and videographic means at the offices of Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017-3004. The videographer will be Esquire Deposition Services. The deposition will be taken before a person authorized to administer oaths and will continue day to day until complete.

The witness will be requested to bring to the deposition the documents specified in Schedule A. The deposition is being taken with respect to the topics described on the attached Schedule B.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 12th day of October, 2004.

Dated: October 12, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Michael T. Brody
Deirdre E. Connell
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409
(561) 686-6300

A

SCHEDULE A
TO SUBPOENA TO NON-PARTY
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

You are hereby requested to produce the following documents pursuant to the definitions and instructions set forth below.

DOCUMENTS REQUESTED

1. All documents constituting or relating to the February 1998, March 1998, and April 1998 calendars of Skadden attorneys who worked on Sunbeam matters during the relevant time period, including but not limited to the calendars of Mr. Deitz, Mr. Easton, Mr. Fernicola, Mr. Fogg, Mr. Freed, and Ms. Amorison.

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9. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise) by letter, memorandum, facsimile, orally, electronically or otherwise.

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3. The relevant period, unless otherwise indicated, shall be April 1, 1997 through the date of service of this subpoena, and shall include all documents and information which relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received prior or subsequent to that period. Please supplement or correct your responses to these requests if, at any time, you become aware that your responses are incomplete or incorrect in any respect.

4. If you claim the attorney-client privilege, or any other privilege or work-product protection for all or any portion of a document, you shall provide a privilege log that describes the withheld material sufficiently to allow CPH to test the privilege or protection asserted.

5. The following rules of construction apply:

a. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be outside of their scope;

b. The term "including" shall be construed to mean "without limitation"; and

c. The use of the singular form of any word includes the plural and vice versa.

SCHEDULE B
TO SUBPOENA TO NON-PARTY
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

You are hereby requested to respond to the following topics pursuant to the definitions and instructions set forth in Schedule A.

RULE 1.310 TOPICS

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4. The authenticity, source, creation, use, maintenance, and business purpose of documents produced by Skadden bearing Bates Nos. SASMF 10710-10711 and information contained therein. (Copies of SASMF 10710-10711 are attached hereto).

5. The authenticity, source, creation, use, maintenance, and business purpose of documents produced by Skadden bearing Bates Nos. SASMF 14139-14143 and information contained therein. (Copies of SASMF 14139-14143 are attached hereto).

6. The authenticity, source, creation, use, maintenance, and business purpose of documents produced by Skadden bearing Bates Nos. SASMF 10951-10952 and information contained therein. (Copies of SASMF 10951-10952 are attached hereto).

7. The authenticity, source, creation, use, maintenance, and business purpose of documents produced by Skadden bearing Bates Nos. SASMF 10708-10711 and information contained therein. (Copies of SASMF 10708-10711 are attached hereto).

8. The authenticity, source, creation, use, maintenance, and business purpose of documents produced by Skadden bearing Bates Nos. SASMF 17749-17753 and information contained therein. (Copies of SASMF 17749-17753 are attached hereto).

9. The authenticity, source, creation, use, maintenance, and business purpose of documents produced by Skadden bearing Bates Nos. SASMF 07633-07721 and information contained therein. (Copies of SASMF 07633-07721 are attached hereto).

10. The authenticity, source, creation, use, maintenance, and business purpose of the document produced by Skadden bearing Bates Nos. SASMF 07797 and information contained therein. (Copy of SASMF 07797 is attached hereto).

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13. The authenticity, source, creation, use, maintenance, and business purpose of all February 1998, March 1998, and April 1998 calendars produced by Skadden in response to document request No. 1 set forth in Schedule A.

14. The authenticity, creation, use, maintenance, and business purpose of all documents constituting or relating to Skadden's billing records, expense reports, and/or attorney timesheets for work performed for Sunbeam during February 1998, March 1998, and April 1998, produced by Skadden in response to document request No. 2 set forth in Schedule A.

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17. The authenticity, creation, use, maintenance, and business purpose of all documents sufficient to show Skadden's total annual billings to any MS&Co. and/or MSSF entity from 1993 through and including 1998, produced by Skadden in response to document request No. 5 set forth in Schedule A.

18. The authenticity, creation, use, maintenance, and business purpose of all documents constituting or relating to evaluations of Mr. Deitz, Mr. Easton, Mr. Fernicola, Mr.

Fogg, Mr. Freed, and Ms. Amorison for 1996, 1997, 1998, and 1999, produced by Skadden in response to document request No. 6 set forth in Schedule A.

19. The authenticity, creation, use, maintenance, and business purpose of all documents sufficient to show Mr. Fogg's compensation and/or percentage ownership interest in Skadden in 1996, 1997, 1998, and 1999, produced by Skadden in response to document request No. 7 set forth in Schedule A.

SERVICE LIST

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue, Suite 1400
West Palm Beach, FL 33401

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff, Case No. CA 03-5045 AI

vs.
MORGAN STANLEY & CO., INC.,
Defendant,
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff, Case No. CA 03-5165 AI

vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant,
_____/

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: October 14, 2004

TIME: 8:00 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

Coleman (Parent) Holdings Inc.'s Supplemental Motion
For Commission for Out-of-State Deposition.

Moving counsel certifies that he or she contacted opposing counsel and attempted to resolve the discovery dispute without hearing.

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Co., Inc.
Case No.: 2003 CA 005045 AI
Notice of Hearing

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all Counsel on the attached list, this 12th day of Oct., 2004.

JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 478-0754
Attorney for CPH and MAFCO

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Co., Inc.
Case No.: 2003 CA 005045 AI
Notice of Hearing

COUNSEL LIST

Joseph Ianno, Jr., Esquire
Carlton Fields, et al.
222 Lakeview Avenue
Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci, P.C.
Thomas A. Clare
Brett McGurk
Kirkland and Ellis
655 15th Street, N.W., Suite 1200
Washington, DC 20005

Jerold S. Solovy, Esq.
Jenner & Block LLP
One IBM Plaza
Suite 4400
Chicago, IL 60611

FAX TRANSMITTAL

JENNER & BLOCK

Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611
Tel 312 222-9350
www.jenner.com

Chicago
Dallas
Washington, DC

Date:	October 11, 2004		
To:	Thomas A. Clare, Esq.	Fax:	(202) 879-5200
		Voice:	(202) 879-5993
	Joseph Ianno, Jr., Esq.	Fax:	(561) 659-7368
		Voice:	(561) 659-7070
	John Scarola, Esq.	Fax:	(561) 684-5816 (before 5 PM)
		Voice:	(561) 686-6350, Ext. 140
From:	Michael T. Brody 312 923-2711		
Employee Number:		Client Number:	41198-10003

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Secretary: Caryn Jo Geisler

Time Sent:

Sent By:

Extension: 6490

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
et al.,
Defendants.

NOTICE OF TAKING VIDEOTAPED DEPOSITION

To: Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following witness pursuant to Florida Rule of Civil Procedure 1.310 on the date, time, and location set forth below, which previously has been agreed to by the parties:

DEPONENT	DATE AND TIME	LOCATION
Michael Hart	October 18, 2004, at 9:30 a.m.	Esquire Deposition Services 216 E. 45th St., 8th Floor New York, NY 10017

The deposition will be recorded by stenographic and audio-visual means and will be taken before a person authorized to administer oaths and will continue day to day until completed. The videographer will be Esquire Deposition Services in New York.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 11th day of October, 2004.

Dated: October 11, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: Michael T. Brody
One of Its Attorneys

Jerold S. Solovy
Michael T. Brody
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
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SERVICE LIST

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LAW OFFICES
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ONE IBM PLAZA
CHICAGO, ILLINOIS 60611

(312) 222-9350
(312) 527-0484 FAX

DEIRDRE E. CONNELL
312-923-2661 Direct Dial
312-840-7661 Direct Facsimile

TELECOMMUNICATION TRANSMITTAL

DATE:	October 12, 2004		
TO:	**Thomas A. Clare, Esq.** KIRKLAND & ELLIS, LLP	**VOICE:** **FAX:**	(202) 879-5993 (202) 879-5200
	Joseph Ianno, Jr., Esq. CARLTON FIELDS, P.A.	**VOICE:** **FAX:**	(561) 659-7070 (561) 659-7368
FROM:	Deirdre E. Connell	**SECY. EXT.:**	6486
EMP. NO.:	035666	**CLIENT NO.:**	41198-10003

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OR (312) 222-9350, EXT. 6120, 6121

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS INC. and
COLEMAN (PARENT) HOLDINGS INC.,
Defendant(s).
_____/

COLEMAN (PARENT) HOLDINGS INC.'S REQUEST FOR PRODUCTION OF SUPPLEMENTAL DOCUMENTS TO MORGAN STANLEY & CO., INC.

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys Searcy Denney Scarola Barnhart & Shipley P.A. and Jenner & Block LLP, hereby serves its Request for Production of Supplemental Documents upon Morgan Stanley & Co., Inc. ("MS&Co."), and requests responses and the production of documents at the office of Searcy Denney Scarola Barnhart & Shipley P.A., 2139 Palm Beach Lakes Blvd., West Palm Beach, Florida, within thirty (30) days from the date of service.

DEFINITIONS AND INSTRUCTIONS

CPH incorporates by reference its Definitions and Instructions set forth in CPH's First Request for Production of Documents, served on MS&Co. on May 9, 2003. In addition, the following definition applies:

1. "Litigation" means the above-captioned cases, Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., No. CA-03-5045 AI, and Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc. and Coleman (Parent) Holdings Inc., No. CA-03-5165 AI, pending in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

DOCUMENTS REQUESTED

1. All documents not previously provided by MS&Co. that are responsive to any Request for the Production of Documents that CPH previously has served upon MS&Co. in the Litigation, including documents obtained by MS&Co. or its counsel after the date of MS&Co.'s prior productions.

2. All documents provided or produced by you in *Prescott Group Small Cap, L.P. v. The Coleman Company,* No. 17802 (Del. Ch.) and all subpoenas, subpoena responses, objections, privilege logs, affidavits, declarations, communications, correspondence, motions, memoranda, briefs, rulings, orders, or transcripts concerning or relating to your production of documents in that case.

3. All transcripts of and exhibits to any deposition testimony or trial proceedings in *Prescott Group Small Cap, L.P. v. The Coleman Company,* No. 17802 (Del. Ch.).

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 12th day of October, 2004.

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
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Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART
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Suite 1400
West Palm Beach, Florida 33401

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS INC. and
COLEMAN (PARENT) HOLDINGS INC.,
Defendant(s).
_____/

DEFENDANT COLEMAN (PARENT) HOLDINGS INC.'S REQUEST FOR SUPPLEMENTAL DOCUMENTS TO MORGAN STANLEY SENIOR FUNDING, INC.

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys Searcy Denney Scarola Barnhart & Shipley P.A. and Jenner & Block LLP, hereby serves its Request for Production of Supplemental Documents upon Morgan Stanley Senior Funding ("MSSF"), and requests responses and the production of documents at the office of Searcy Denney Scarola Barnhart & Shipley P.A., 2139 Palm Beach Lakes Blvd., West Palm Beach, Florida, within thirty (30) days from the date of service.

DEFINITIONS AND INSTRUCTIONS

CPH incorporates by reference its Definitions and Instructions set forth CPH's First Request for Production of Documents, served on MSSF on June 17, 2003. In addition, the following definition applies:

1. "Litigation" means the above-captioned cases, Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., No. CA-03-5045 AI, and Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc. and Coleman (Parent) Holdings Inc., No. CA-03-5165 AI, pending in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

DOCUMENTS REQUESTED

1. All documents not previously provided by MSSF that are responsive to any Request for the Production of Documents that CPH previously has served upon MSSF in the Litigation, including documents obtained by MSSF or its counsel after the date of MSSF's prior production.

2. All documents provided or produced by you in *Prescott Group Small Cap, L.P. v. The Coleman Company,* No. 17802 (Del. Ch.) and all subpoenas, subpoena responses, objections, privilege logs, affidavits, declarations, communications, correspondence, motions, memoranda, briefs, rulings, orders, or transcripts concerning or relating to your production of documents in that case.

3. All transcripts of and exhibits to any deposition testimony or trial proceedings in *Prescott Group Small Cap, L.P. v. The Coleman Company,* No. 17802 (Del. Ch.).

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 12th day of October, 2004.

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
JENNER & BLOCK LLP
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Suite 4400
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Suite 1400
West Palm Beach, Florida 33401

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S SIXTH SET OF INTERROGATORIES TO MORGAN STANLEY & CO., INC.

Pursuant to Florida Rules of Civil Procedure 1.280 and 1.340, Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, hereby requests that Morgan Stanley & Co., Inc. answer the following Interrogatory within thirty (30) days from the date of service.

DEFINITION

"Morgan Stanley" means Morgan Stanley & Co., Inc., or any of its direct or indirect parents or subsidiaries, and present or former officers, directors, employees, representatives, or agents.

INSTRUCTIONS

1. Morgan Stanley's obligation to undertake a reasonable investigation in responding these interrogatories includes making inquiry of its current personnel and any former personnel to the extent that those former personnel are under Morgan Stanley's control or being represented or advised by Morgan Stanley's counsel in this litigation.

2. The purpose of this interrogatory is to have Morgan Stanley reveal everything presently known by Morgan Stanley that bears on Morgan Stanley's refusal to admit. At the time of trial, CPH will move the Court for an order excluding from evidence all tangible or intangible things known to Morgan Stanley at the time of its response to this interrogatory that are not disclosed in Morgan Stanley's response to this interrogatory.

INTERROGATORY

INTERROGATORY NO. 1: For each of CPH's Fifth Set of Requests for Admission that Morgan Stanley has denied, in whole or in part, state each fact that supports the denial. If Morgan Stanley's denial is related to its objection to CPH's definition of the term "Morgan Stanley" in the Fifth Set of Requests for Admission, state how Morgan Stanley's response to the Request for Admission would change if Morgan Stanley applied CPH's definition.

RESPONSE:

Dated: October 12, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Deirdre E. Connell
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409
(561) 686-6300

Counsel for Plaintiff Coleman (Parent) Holdings Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to counsel listed below on this 12th day of October, 2004:

Thomas A. Clare, Esq.
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lakeview Avenue
Suite 1400
West Palm Beach, FL 33401

By: Deirdre E. Connell

Deirdre E. Connell

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC., *et al.*
Defendants.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S SUPPLEMENTAL MOTION FOR COMMISSION FOR OUT-OF-STATE DEPOSITION

Coleman (Parent) Holdings Inc. ("CPH"), pursuant to Fla. Stat. § 92.251 and this Court's Order of September 24, 2004, hereby files this supplemental motion requesting that this Court grant CPH a commission to take the deposition of Dwight Sipprelle in the State of New Jersey and appoint a commissioner to cause service of the subpoena for that deposition. In support of this motion, CPH states as follows:

1. This motion is a supplement to the earlier motion CPH filed on this subject that was heard at the last case management conference. During the case management conference, this Court raised questions about the propriety of appointing a commissioner for an out-of-state deposition and directed CPH in an Order dated September 24 to file a supplemental motion "addressing the Court's authority to authorize a non-resident to subpoena a third party for a deposition." *See* Ex. A. By this supplemental motion, CPH is not asking this Court to appoint someone to issue a subpoena; CPH must file a petition with the New Jersey Superior Court in

order to have a subpoena issued. However, CPH cannot request a subpoena unless it has an Order from this Court issuing a commission for an out-of-state deposition and appointing a commissioner in the State of New Jersey to serve the subpoena for that deposition. The need for an Order issuing a commission and appointing a commissioner is confirmed by the information package issued by the Superior Court of New Jersey entitled, "*Information for Out-of-State Attorneys on the Procedure to Pursue Discovery of a New Jersey Resident for Use in Out-of-State Litigation,*" which is available at www.judiciary.state.nj.us/civil/forms/fore-lit.pdf. *See* Ex. B. The introductory information on the first page of the package states that "[a] Commission, Letters Rogatory or other similar judicial certificate issued in the forum state must support the petition" for the issuance of a subpoena. Moreover, as Paragraph 4a of the form petition contained in the information package confirms, the Order issued by the forum state must appoint a commissioner in the State of New Jersey to cause service of the subpoena for the deposition. *See id.*, Form A. CPH has confirmed these requirements with New Jersey court officials.

2. Thus, in accordance with the requirements of the Superior Court of New Jersey, CPH respectfully requests that this Court issue an Order granting CPH's request for a commission to take the out-of-state deposition of the following witness: Dwight Sipprelle, 155 Lincoln Street, Englewood, New Jersey 07631. CPH further requests that this Court appoint the following individual, or any person duly authorized by him, to cause service of a subpoena for the deposition and for documents upon Mr. Sipprelle: Claire Cecchi, Esq., McElroy, Deutsch, Mulvaney & Carpenter, Three Gateway Center, 100 Mulberry Street, Newark, New Jersey. CPH's proposed Order is attached as Exhibit C.

Date: October 12, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC. and
MACANDREWS & FORBES HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
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#1 60 94

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West Palm Beach, Florida 33402-3626
(561) 686-6300

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 12th day of Oct, 2004.

JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 684-5816
Attorneys for Coleman(Parent)Holdings Inc.
and MacAndrews & Forbes Holdings, Inc.

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Suite 4300
Chicago, IL 60611

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER ON COLEMAN (PARENT) HOLDINGS, INC.'S MOTION TO APPOINT COMMISSION

THIS CAUSE came before the Court September 23, 2004 on Coleman (Parent) Holdings, Inc.'s Motion to Appoint Commission, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that the Court defers ruling, pending filing a supplemental motion addressing the Court's authority to authorize a non-resident to subpoena a third party for a deposition.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 24 day of September, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

EXHIBIT
tabbies
A

OCT 01 2004

cc: Furnished:
Joseph Yanno, Jr., Esq.
2255 Glades Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci
655 15th Street, NW, Suite 1200
Washington DC 20005

John Scarola, Esq.
2300 Palm Beach Lakes Blvd.
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Jerold S. Solovy, Esq.
One IBM Plaza, Suite 4400
Chicago, IL 60611

INFORMATION FOR OUT-OF-STATE ATTORNEYS ON THE PROCEDURE TO PURSUE DISCOVERY OF A NEW JERSEY RESIDENT FOR USE IN OUT-OF-STATE LITIGATION

(Superior Court of New Jersey - Law Division)

PURPOSE OF THIS PACKAGE

Where foreign litigation requires a nonparty witness' written interrogatory answers, oral deposition or the production of a thing or writing, and the witness, located in New Jersey, will not voluntarily answer interrogatories, appear at an oral deposition or produce a thing or writing, the employment of the power of New Jersey's courts to aid foreign litigation may be requested. New Jersey's Court Rules provide a procedure to issue the necessary process through an *ex-parte* application.

A New Jersey-licensed attorney may apply to the Superior Court *ex parte* with a pleading designated "A Petition Pursuant to *R.* 4:11-4." The petition requests that the New Jersey Superior Court exercise its judicial power and issue the necessary process to effectuate the foreign court's decree concerning an out-of-state discovery. The New Jersey attorney will file the petition, a proposed form of order and the appropriate filing fee with the Superior Court Clerk. Although not explicitly addressed in the Court Rules, venue should be in the county where the witness resides or works. A Commission, Letters Rogatory or other similar judicial certificate issued in the forum state must support the petition.

This package provides information for an out-of-state attorney on New Jersey's procedure to directing a New Jersey resident to comply with discovery requests for use in litigation in another state.

Note: These materials have been prepared by the New Jersey Superior Court Clerk's Office and the Administrative Office of the Courts. The guides, instructions, and forms will be periodically updated as necessary to reflect current New Jersey statutes and court rules. The most recent version of the forms will be available at the county courthouse or on the Judiciary's Internet site (www.njcourtsonline.com). However, you are ultimately responsible for the content of your court papers.

EXHIBIT

tabbies

B

The numbered steps listed below outline the procedure for obtaining a subpoena to pursue discovery of a New Jersey resident for use by an out-of-state attorney in use in another jurisdiction.

STEP 1: REVIEW AND COMPLY WITH THE REQUIREMENTS OF THE FORUM STATE TO PURSUE DISCOVERY OUT-OF-STATE.

Obtain a Commission or Letters Rogatory under the seal of the appropriate court clerk or public official authorized in the forum state to issue such a document.

STEP 2: RETAIN A NEW JERSEY-LICENSED ATTORNEY TO PETITION THE SUPERIOR COURT OF NEW JERSEY FOR AN ORDER AUTHORIZING THE ISSUANCE OF A SUBPOENA COMMANDING THE NEW JERSEY RESIDENT TO ANSWER WRITTEN INTERROGATORIES OR TO APPEAR AT AND SUBMIT TO A DEPOSITION.

The New Jersey attorney will file with the Superior Court, Law Division in the county in which the witness resides, an ex parte petition (**Form A**), a proposed form of order (**Form B**), and a proposed subpoena There is a $35.00 fee which may be paid by money order or check made payable to "Clerk of the Superior Court."

STEP 3: UPON RECEIPT OF THE SIGNED ORDER AND SUBPOENA, HAVE THE NEW JERSEY ATTORNEY SERVE THE SUBPOENA OR NOTICE IN LIEU OF SUBPOENA.

If the witness resists the subpoena or fails to appear, then the New Jersey attorney may defend its issuance or apply to the court for appropriate sanctions, as the case may be.

Note: Out-of-state counsel should consult their state's court rules concerning the need to serve the out-of state witness with a notice of a deposition or a judicial subpoena from the forum state. If required, counsel should attach the same to the Commission, Letters Rogatory or other judicial certificate. The time, date and place of the deposition should be indicated in the petition. The location of the deposition must be in the county where the person to be deposed lives, works or does business.

Sample forms for the petition and order follow. Note: The New Jersey Administrative Office of the Courts has prepared these materials to give out-of-state attorneys insight into the New Jersey's procedure. Retained New Jersey counsel is ultimately responsible for the content of the pleadings filed and, therefore, New Jersey legal counsel must tailor any pleading to the facts, circumstances and New Jersey statutes and court rules then in effect.

References:

Court Rule 1: 5-6 – Filing
Court Rule 1:9-1 – Subpoenas; For Attendance of Witnesses; Forms; Issuance; Notice in Lieu of Subpoena
Court Rule 1:9-2 – For Production of Documentary Evidence; Notice in Lieu of Subpoena
Court Rule 1:9-5 – Failure to Appear
Court Rule 1:9-6 – Enforcement of Subpoena of Public Officer or Agency
Court Rule 1:21-1 – Who May Practice; Appearance in Court
Court Rule 4:11-4 -- Testimony for Use in Foreign Jurisdictions
Court Rule 4:12-1 -- Persons Who May Take Depositions; Within State
Court Rule 4:14-7 – Subpoena for Taking Depositions
N.J.S.A. 22A:2-7 – Law Division of Superior Court, Other Fees

FORM A

At orney Name
At orney Address

At orney Telephone
At orney for Petitioner

Superior Court of New Jersey
Law Division - _____ County

I/M/O APPLICATION FOR THE ISSUANCE OF A SUBPOENA TO _____	Docket Number: CIVIL ACTION *EX-PARTE* PETITION FOR ISSUANCE OF SUBPOENA PURSUANT TO *COURT RULE* 4:11-4

Petitioner, _____, applying for the authority to issue a Rule 4:11-4 subpoena, hereby certifies and says:

1. I have been retained as local counsel by the firm of _____ in their capacity as attorney for _____ in an action in the State of _____ captioned _____, plaintiff(s), v. _____, defendant(s), bearing docket number _____.

2. A Commission was issued out of the _____ Court of the State of _____ authorizing the [*deposition on oral testimony*] [*deposition on written interrogatory*] [a *subpoena duces tecum for the production of things or documents*] of _____, who lives, works or does business at _____, in the City/Township/Borough of _____, County of _____ and State of New Jersey. A copy of the Commission [Letters Rogatory] is attached to this petition as Exhibit A.

FORM A

3. I submit this petition in support of my application for an Order pursuant to *Rule* 4:11-4 authorizing that a subpoena be issued to _____ at the aforementioned address requiring that he/she/it [*give his/her/its deposition on written interrogatory*] [*appear at _____ o'clock in the _____ noon on _____ (date) at the office of _____ located at _____, New Jersey for taking his/her/its deposition on oral testimony*] [*requiring that he/she/it produce the following things or documents*]: _____

_____

_____. The deposition on oral testimony shall continue from day to day until completed.

4. _____ [*out-of-state attorney*] has advised me of the following relevant facts:

a. On or about _____ a motion was made in the aforementioned litigation in the State of _____ for the appointment of a Commissioner in the State of New Jersey to cause service of a subpoena upon and [*for taking the deposition of _____ on oral testimony*][*for taking the deposition of _____ by written interrogatory*][*for the production of things or documents in the possession of _____*].

b. On _____ the Honorable _____, Judge of the _____ Court, signed an order directing the undersigned be appointed Commissioner for the above stated purpose. A copy of the order is attached as Exhibit B.

c. The [*deposition on oral testimony*] [*deposition on written interrogatory*] [*the production of the thing or documents by*] of this witness is essential to this case because

_____

_____

_____.

d. No previous application has been made for the relief herein requested.

WHEREFORE, the petitioner respectfully requests that an order be entered:

a. authorizing the issuance of a subpoena, in aid of foreign litigation, directing _____ [*to appear and give oral testimony*] [*give answers under oath to written interrogatories*][*produce (here describe the things or documents)*] pursuant to the Commission issued by the State of _____; and

b. authorizing the petitioner the right to [*adjourn, recess or reschedule the deposition on oral testimony*] [*extend the time for answering written interrogatories*] [*extend the time to produce things or documents*] by consent without any further application to this court.

c. for such other relief as is just and proper.

_____
Petitioner

Dated:

VERIFICATION

1. I am the petitioner in the within matter.

2. I have read the foregoing petition and on my own personal knowledge, except those facts related to me by out-of-state counsel, I know that the facts therein are true.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

_____
Petitioner

Dated: _____

BEFORE FILING, BE SURE TO REMOVE THIS SENTENCE FROM THE DOCUMENT AS WELL AS THE DESCRIPTIVE INSTRUCTIONS INCLUDED IN BRACKETS.

Form B

Attorney Name
Attorney Address

Attorney Telephone
Attorney for Petitioner

Superior Court of New Jersey
Law Division - _____ County

I/M/O APPLICATION FOR THE ISSUANCE OF A SUBPOENA TO _____	Docket Number CIVIL ACTION ORDER PURSUANT TO COURT RULE 4:11-4

This matter having come before the Court on the application of _____ for an order authorizing the issuance of a subpoena to _____, and it appearing that the _____ Court of the State of _____ has issued a Commission [Letters Rogatory] in a pending case captioned _____, plaintiff(s), v. _____, defendant(s), docket/case number _____ authorizing _____ to *[take the deposition on oral testimony][take the deposition on written interrogatory][issue a subpoena duces tecum for the production of things or documents]* of _____ who lives, resides or does business in the City/Township/Borough of _____, New Jersey, and it further appearing that good cause exists.

IT IS on this _____ day of _____, 20__, ORDERED that a subpoena may issue commanding _____ to appear before _____ on (date) _____, 20__ at _____ o'clock in the ____ noon at the office of _____, located at

Form B

_____ to [*give oral testimony under oath*] [*provide answers under oath to written interrogatories*] [*produce things or documents*] in the above captioned matter; and it is further

ORDERED that the petitioner may [*adjourn and reschedule the time, date and place of the deposition by oral testimony*] [*extend the time for answering written interrogatories*][*extend the time to produce things or documents*] by consent without any further application to this court.

_____
, J.S.C.

BEFORE FILING, BE SURE TO REMOVE THIS SENTENCE FROM THE DOCUMENT AS WELL AS THE DESCRIPTIVE INSTRUCTIONS INCLUDED IN BRACKETS.

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

CO LE MAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MC R GAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

MC R GAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

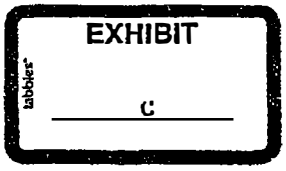
MA C ANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

CASE NO. CA 03-5165 AI

ORDER APPOINTING COMMISSIONER REGARDING THE DEPOSITION OF DWIGHT SIPPRELLE

This cause comes before the Court on Coleman (Parent) Holdings Inc.'s motion for commission for out-of-state deposition. After reviewing the pleadings and otherwise being advised in the premises, it is ORDERED AND ADJUDGED that CPH's commission to take an out-of-state deposition in connection with the above-captioned litigation is granted so that CPH may subpoena the deposition and documents of the following witness: Dwight Sipprelle, 155 Lincoln Street, Englewood, New Jersey 07631

It is further ORDERED AND ADJUDGED that the following commissioner, or any person duly authorized by him, is appointed to cause service of a subpoena for the deposition and documents with respect to Mr. Sipprelle: Claire Cecchi, Esq., McElroy, Deutsch, Mulvaney & Carpenter, Three Gateway Center, 100 Mulberry Street, Newark, New Jersey 07102.



DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this _____ day of October, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

Copies furnished:

Joseph Ianno, Jr., Esq.
222 Lakeview Ave. - Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci, Esq.
655 15th Street, NW - Suite 1200
Washington, DC 20005

John Ricarola, Esq.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy, Esq.
One IBM Plaza - Suite 4400
Chicago, IL 60611

#11 11 1

ATLANTA
MIAMI
ORLANDO
ST. PETERSBURG
TALLAHASSEE
TAMPA
WEST PALM BEACH

CARLTON FIELDS
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Esperanté
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West Palm Beach, Florida 33402-0150

561.659.7070
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E-MAIL: jianno@carltonfields.com

October 12, 2004

VIA HAND-DELIVERY

The Honorable Elizabeth Maass
Palm Beach County Courthouse
205 North Dixie Highway, Room 11.1208
West Palm Beach, Florida 33401

Re: *Coleman (Parent) Holdings Co. v. Morgan Stanley & Co.*, Case No: CA 03-5045 AI
Morgan Stanley v. MacAndrews & Forbes Holdings, Inc., Case No: CA 03-5165 AI

Dear Judge Maass:

Pursuant to Your Honor's ruling on October 7, 2004, enclosed please find a courtesy copy of the "Filed Under Seal – Subject To Confidentiality Order" and "Material Redacted Without Prior Determination of Protectability by Court" versions of Morgan Stanley's Opposition to Non-Party Sunbeam's Motion for Protective Order and Reply In Support of Its Motion to Compel Documents. Sunbeam's motion is scheduled to be heard at the Case Management Conference scheduled for 8:00 a.m. on October 14, 2004. We request your Judicial Assistant place these versions, along with the enclosed supportive case authority, under Tab 18 of the Case Management Conference binder previously submitted to Your Honor on October 8, 2004.

Respectfully,

Joseph Ianno, Jr.

/jed

Enclosures

cc: Jack Scarola (by facsimile w/out encl. and Federal Express with encl.)
Jerold Solovy (by facsimile w/out encl and Federal Express with encl.)
Mark Bideau (by facsimile w/out encl and Federal Express with encl.)

WPB#566751.37

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,

vs.

MAC ANDREWS & FORBES HOLDINGS INC.,
et al.
Defendants.
_____/

ORDER APPOINTING COMMISSIONER REGARDING THE DEPOSITION OF DWIGHT SIPPRELLE

This cause comes before the Court on Coleman (Parent) Holdings Inc.'s motion for commission for out-of-state deposition. After reviewing the pleadings and otherwise being advised in the premises, it is ORDERED AND ADJUDGED that CPH's commission to take an out-of-state deposition in connection with the above-captioned litigation is granted so that CPH may subpoena the deposition and documents of the following witness: Dwight Sipprelle, 155 Lincoln Street, Englewood, New Jersey 07631

It is further ORDERED AND ADJUDGED that the following commissioner, or any person duly authorized by him, is appointed to cause service of a subpoena for the deposition and documents with respect to Mr. Sipprelle: Claire Cecchi, Esq., McElroy, Deutsch, Mulvaney & Carpenter, Three Gateway Center, 100 Mulberry Street, Newark, New Jersey 07102.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this _____ day of October, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

Copies furnished:

Joseph Ianno, Jr., Esq.
2255 Lakeview Ave. - Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci, Esq.
655 15th Street, NW - Suite 1200
Washington, DC 20005

John Scarola, Esq.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy, Esq.
One IBM Plaza - Suite 4400
Chicago, IL 60611

#115111

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff, Case No. CA 03-5045 AI

vs.
MORGAN STANLEY & CO., INC.,
Defendant,
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff, Case No. CA 03-5165 AI

vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant,
_____/

ORDER ON MORGAN STANLEY'S MOTION FOR ENLARGEMENT OF TIME TO FILE AMENDED AFFIRMATIVE DEFENSES

THIS CAUSE having come to be considered upon the Morgan Stanley's Motion for Enlargement of Time to File Amended Affirmative Defenses, and the Court having reviewed the file and being fully advised in the premises, it is hereby,

ORDERED and ADJUDGED: The Mot- is Denied, without prejudice to renewal.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this 12 day of Oct, 2004.

ELIZABETH T. MAASS
CIRCUIT COURT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

COUNSEL LIST

Joseph Ianno, Jr., Esquire
Carlton Fields, et al.
222 Lakeview Avenue
Suite1400
West Palm Beach, FL 33401

Thomas D. Yannucci, P.C.
Thomas A. Clare
Brett McGurk
Kirkland and Ellis
655 15th Street, N.W., Suite 1200
Washington, DC 20005

Jerold S. Solovy, Esq.
Jenner & Block LLP
One IBM Plaza
Suite 4400
Chicago, IL 60611

FAX TRANSMITTAL

JENNER & BLOCK

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One IBM Plaza
Chicago, IL 60611
Tel 312 222-9350
www.jenner.com

Chicago
Dallas
Washington, DC

Date:	October 13, 2004		
To:	Thomas A. Clare, Esq.	Fax:	(202) 879-5200
		Voice:	(202) 879-5993
	Joseph Ianno, Jr., Esq.	Fax:	(561) 659-7368
		Voice:	(561) 659-7070
	John Scarola, Esq.	Fax:	(561) 684-5816 (before 5 PM)
		Voice:	(561) 686-6350, Ext. 140
From:	Michael T. Brody 312 923-2711		
Employee Number:		Client Number:	41198-10003

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Secretary: Caryn Jo Geisler	Extension: 6490

JENNER&BLOCK

October 13, 2004

Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611
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www.jenner.com

Chicago
Dallas
Washington, DC

Michael T. Brody
Tel 312 923-2711
Fax 312 840-7711
mbrody@jenner.com

By Telecopy

Thomas A. Clare, Esq.
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Tom:

I write regarding the deposition William Kourakas.

We are able to go forward with the deposition of Mr. Kourakas on October 29, 2004 as you propose, and confirm the deposition for that date.

I enclose a notice for the deposition of Mr. Kourakas, individually and as corporate designee. Please contact me if you have any issues concerning the enclosed notice.

Very truly yours,

Michael T. Brody

MTB:cjg
cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC., et al.,
Defendants.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITIONS

To: Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the date, time, and location set forth below, which previously has been agreed to by the parties:

DEPONENT	DATE AND TIME	LOCATION
William Kourakos	October 29, 2004, at 9:30 a.m.	Esquire Deposition Services 216 E. 45th St., 8th Floor New York, NY 10017
Morgan Stanley & Co., Inc.	October 29, 2004, following individual deposition	Esquire Deposition Services 216 E. 45th St., 8th Floor New York, NY 10017
Morgan Stanley Senior Funding, Inc.	October 29, 2004, following individual deposition	Esquire Deposition Services 216 E. 45th St., 8th Floor New York, NY 10017

The depositions of Morgan Stanley & Co., Inc. and Morgan Stanley Senior Funding, Inc., by their corporate designee William Kourakos, are being taken with respect to the topics described on the attached Exhibit A.

The deposition will be recorded by stenographic and audio-visual means and will be taken before a person authorized to administer oaths and will continue day to day until completed. The videographer will be Esquire Deposition Services in New York.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 13th day of October, 2004.

Dated: October 13, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: Michael T. Brody
One of Its Attorneys

Jerold S. Solovy
Michael T. Brody
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409
(561) 686-6300

Exhibit A

CORPORATE DEPOSITION TOPICS

1. All of the procedures of, rules for, and activities of the Leveraged Finance Commitment Committee and/or the Leveraged Finance Committee from 1997 to the present.

2. The role of the Leveraged Finance Commitment Committee and/or the Leveraged Finance Committee in 1997 and 1998.

3. All documents typically or ordinarily generated by and for the Leveraged Finance Commitment Committee and/or the Leveraged Finance Committee in the course of a transaction in 1997 and 1998.

4. The process, procedures, and requirements for preparing, approving, or issuing "highly confident" letters in 1997 and 1998.

5. All non-transaction specific documents generated in connection with preparing, approving, or issuing "highly confident" letters in 1997 and 1998.

SERVICE LIST

Thomas A. Clare, Esq.
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655 Fifteenth Street, N.W.
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Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
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West Palm Beach, FL 33401

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY PA
Attorneys at Law

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517 NORTH CALHOUN STREET
TALLAHASSEE, FL 32301-1231
P.O. DRAWER 1230
TALLAHASSEE, FLORIDA 32302
(850) 224-7600
1-888-549-7011
FAX: (850) 224-7602

October 13, 2004

ATTORNEYS AT LAW:
ROSALYN SIA BAKER-BARNES
F. GREGORY BARNHART*
LANCE BLOCK*
EARL L. DENNEY, JR.*
SEAN C. DOMNICK*
JAMES W. GUSTAFSON, JR.
JACK P. HILL
DAVID K. KELLEY, JR.*
WILLIAM B. KING
DARRYL L. LEWIS*
WILLIAM A. NORTON*
DAVID J. SALES*
JOHN SCAROLA*
CHRISTIAN D. SEARCY*
HARRY A. SHEVIN
JOHN A. SHIPLEY III*
CHRISTOPHER K. SPEED*
KAREN E. TERRY*
C. CALVIN WARRINER III*
DAVID J. WHITE*

*SHAREHOLDERS

PARALEGALS:
VIVIAN AYAN-TEJEDA
LAURIE J. BRIGGS
DEANE L. CADY
DANIEL J. CALLOWAY
EMILIO DIAMANTIS
RANDY M. DUFRESNE
DAVID W. GILMORE
TED E. KULESA
JAMES PETER LOVE
CHRISTOPHER J. PILATO
ROBERT W. PITCHER
KATHLEEN SIMON
STEVE M. SMITH
WALTER A. STEIN
BRIAN P. SULLIVAN
KEVIN J. WALSH
JUDSON WHITEHORN

Honorable Elizabeth T. Maass
Palm Beach County Courthouse
Room #11.1208
205 North Dixie Highway
West Palm Beach, FL 33401

Re: Coleman (Parent) Holdings Inc. vs Morgan Stanley & Co., Inc.
Matter No.: 029986-230580

Dear Judge Maass:

Enclosed please find courtesy copies of Coleman (Parent) Holdings Inc.'s Supplemental Motion for Commission for Out of State Deposition. Also enclosed is a copy of the Notice of Hearing for October 14th at 8:00 a.m. during the next Case Management Conference in this matter.

Respectfully,

JACK SCAROLA
JS/mep
Enc.

cc: Joseph Ianno, Esq. (Via Fax)
Thomas Clare, Esq. (Via Fax)
Jenner & Block LLP (Via Fax)

GREENBERG
ATTORNEYS AT LAW
TRAURIG

Transmittal Cover Sheet

TO

Name: Joseph Ianno, Jr., Esq..
Company: Carlton Fields, P.A.
Fax No.: 659-7368
Phone No.: 659-7070

Name: Jerold S. Solovy, Esq.
Company: Jenner & Block, LLC
Fax No.: 312-840-7671
Phone No.: 312-923-2711

Name: Jack Scarola, Esq.
Company: Searcy, Denney et al.
Fax No.: 478-0754
Phone No.: 686-6300

Name: Michael Brody, Esq.
Company: Jenner & Block, LLC
Fax No.: 312-840-7711
Phone No.: 312-923-2711

Name: Thomas D. Yannucci, Esq.
Copy to: Lawrence P. Bemis, Esq.
Copy to: Thomas A. Clare, Esq.
Copy to: Zhonette M. Brown, Esq.
Company: Kirkland & Ellis LLP
Fax No.: 202-879-5200
Phone No.: 202-879-5000

FROM Lorie Gleim, Esq.

File Number 16560.071300

Comments

Date October 13, 2004

No. Pages Including this cover sheet 7

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777 South Flagler Drive, Suite 300 East. West Palm Beach, Florida 33401 (561) 650-7900 Fax (561) 655-6222

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

COLEMAN (PARENT) HOLDINGS, INC., CASE NO. 03 CA 5045 AI

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

v.

MACANDREWS & FORBES HOLDING, INC., et al.,

Defendants.

_____/

NOTICE OF FILING AFFIDAVIT OF CHRISTOPHER P. MALLOY

Non-Party, SUNBEAM CORPORATION, n/k/a AMERICAN HOUSEHOLD, INC., by and through its undersigned counsel, hereby files this Notice of Filing Affidavit of Christopher P. Malloy, which is attached hereto.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via facsimile and regular U.S. Mail this 13 day of October, 2004, to the parties on the attached Service List.

GREENBERG TRAURIG, P.A.
777 South Flagler Drive, Suite 300 East
West Palm Beach, FL 33401
Telephone: (561) 650-7900
Facsimile: (561) 655-6222

By: _____
MARK F. BIDEAU, ESQ.
Florida Bar No. 564044
LORIE M. GLEIM, ESQ.
Florida Bar No. 0069231

SERVICE LIST

Joseph Ianno, Esq.
Carlton Fields, P.A.
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West Palm Beach, FL 33401

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Lawrence P. Bemis, Esq.
Thomas A. Clare, Esq.
Zhonette M. Brown, Esq.
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Jack Scarola, Esq.
Searcy Denney Scarola Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33401

Jerold S. Solovy, Esq.
Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza, Suite 400
Chicago, IL 60611

WPB-FS1\GLEIML\513370v01\FLWQ01!_.DOC\10/2/04\16560.071300

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

COLEMAN (PARENT) HOLDINGS, INC., CASE NO. 03 CA 5045-I

Plaintiff,

vs

MORGAN STANLEY & CO., INC.,

Defendant.

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

v.

MACANDREWS & FORBES HOLDING, INC., et al

Defendants.

AFFIDAVIT OF CHRISTOPHER P. MALLOY

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

BEFORE ME, the undersigned authority, personally appeared **CHRISTOPHER P. MALLOY**, who after being duly sworn, states as follows:

1. I am a partner at the law firm of Skadden Arps Meagher & Flom, LLP ("Skadden").

2. I have personal knowledge of the facts set forth below. If called to testify as a witness, I would be competent to testify to the facts set forth in this affidavit.

3. On or about June 29, 1998, Skadden was retained by the Board of Directors of Sunbeam Corporation ("Sunbeam") to investigate the events that occurred during prior management for purposes of reporting our findings and advising the Board regarding the legal implications of what had occurred.

4. The results of Skadden's work were set forth in a preliminary report (the "Report") which was presented to the Sunbeam Board on February 4, 1999. Attorneys from Skadden drafted the report with some assistance from accountants at Chicago Partners LLC and Deloitte & Touche LLP who had been retained by Skadden for the purpose of assisting it in rendering legal advice to Sunbeam. Skadden did not share drafts of the Report with anyone else.

5. On February 4, 1999, Robert Zimet and Rita Gordon, who are also attorneys at Skadden, and I presented our preliminary findings to the Board of Directors during a Board meeting. At the time when Skadden presented its Report, the only persons present were Sunbeam's Board of Directors, Officers of Sunbeam and attorneys from Skadden.

6. On April 22, 1999, I forwarded a copy of the Report to other outside counsel for Sunbeam and Barry F. Schwartz, Esq. of MacAndrews & Forbes Holdings, Inc.'s ("Mafco") legal department, in anticipation of a litigation strategy meeting. At the time, I understood that a Mafco affiliate was party to an agreement with Sunbeam whereby it would provide certain management assistance relating, among other things, to litigation matters, to Sunbeam. Thus, it was my understanding that Mr. Schwartz was acting as a legal advisor to Sunbeam. When I sent

the Report, it was my expectation that it would remain confidential and was to be used for the purpose of providing legal advice to Sunbeam in the prosecution and/or defense of claims involving Sunbeam. The Report and my April 22, 1999 cover memorandum both bear the legend "Privileged and Confidential — Subject to Attorney-Client and Attorney Work Product Privileges."

7. Skadden has always maintained the privilege of the Report and has included the Report on any privilege log produced by Skadden in the various lawsuits filed against Sunbeam.

8. Skadden also acted as counsel for Sunbeam before the United States Securities & Exchange Commission ("SEC"). Skadden never provided the SEC with a copy of the Report nor did it communicate its contents to the SEC.

FURTHER AFFIANT SAYETH NOT.

Christopher P. Malloy, Affiant

SWORN TO AND SUBSCRIBED before me, by **CHRISTOPHER P. MALLOY**, ☑ who is personally known to me, or ☐ who produced _____ as identification on this _____ day of _____, 2004.

MARQUEA RICE
Notary Public, State of New York
No. 01RI6092942
Qualified in Queens County
Commission Expires November 8, 2005

Print Name: _____
Notary Public – State of New York
My Commission Expires: _____

CARLTON FIELDS, P.A.

ATTORNEYS AT LAW

Esperanté
222 Lakeview Avenue, Suite 1400
West Palm Beach, Florida 33401-6149

MAILING ADDRESS
P.O. Box 150, West Palm Beach, FL 33402-0150
Tel 561.659.7070 Fax 561.659.7368

FAX COVER SHEET

		Phone Number	Fax Number
Date:	October 14, 2004		
To:	Jack Scarola, Esq.	(561) 689-6300	(561) 684-5816
	Jerold Solovy, Esq	(312) 923-2711	(312) 840-7671
	Michael Brody		(312) 840-7711
	Thomas Clare, Esq.		(202) 879-5200
From:	Joyce Dillard, CLA to Joseph Ianno, Jr.	(561) 659.7070	(561) 659.7368

Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 4

Message: To follow please find a copy of Joe Ianno's letter to Judge Maass with enclosures.

☐ **Original to follow Via Regular Mail** ☐ **Original will Not be Sent** ☐ **Original will follow via Overnight Courier**

****

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (if long distance, please call collect) and return the original message to us at the above address via the U.S. Postal Service. Thank you.

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Telecopier operator: _____

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WEST PALM BEACH

CARLTON FIELDS
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P.O. Box 150
West Palm Beach, Florida 33402-0150

561.659.7070
561.659.7368 fax
www.carltonfields.com

E-MAIL: jianno@carltonfields.com

October 14, 2004

The Honorable Elizabeth Maass
Palm Beach County Courthouse
205 North Dixie Highway, Room 11.1208
West Palm Beach, Florida 33401

VIA FACSIMILE

Re: *Coleman (Parent) Holdings Co. v. Morgan Stanley & Co.*, Case No: CA 03-5045 AI
Morgan Stanley v. MacAndrews & Forbes Holdings, Inc., Case No: CA 03-5165 AI

Dear Judge Maass:

Pursuant to our discussion this morning in Court, enclosed please find a joint document containing Morgan Stanley's and Coleman's proposed Pre-trial Schedule with a column included for the Court's use in entering the dates for each pre-trial event based on the parties' competing schedules. Also enclosed is the schedule provided to the Court by Mr. Scarola this morning.

If there is anything further the Court requires in this regard, please contact our office.

Respectfully,

Joseph Ianno, Jr.

/jed

Enclosures

cc: Jack Scarola (by facsimile w/encls.)
Jerold Solovy (by facsimile w/encls.)

WPB#566751.38

Proposed Pretrial Schedules

Event	Morgan Stanley	CPH	Court
Close of Discovery	December 17	December 1	November 24
Supplement Interrogatories	December 24	November 24	
Proponent Expert Reports	December 10	November 24	
Responsive Expert Reports	December 23	December 3	
Rebuttal Expert Reports	None required	December 10	
Expert Depositions	January 5 - January 11	December 13 - December 20	
Summary Judgment Motions	January 14	December 6	
Summary Judgment Responses	January 28	December 20	
Summary Judgment Reply	Unnecessary	January 3	
Summary Judgment Hearing	February 4	January 7 - January 14	
Exchange Deposition Designations	January 7	December 20	
Counter-designations and Initial Objections	February 11	January 17	
Exchange Witness Lists and Trial Exhibits	February 11	January 17	
Motions In Limine	February 14	January 17	
Objections to Counter-Designations	February 14	January 24	
Responses to Motions in Limine	February 18	January 28	
Joint Pretrial Stipulation	February 21	January 28	
Pretrial Conference and Trial	February 22	3 days	
Meet-and-Confer	February 15	January 31	
Select Mediator	December 1	December 1	
Mediation	Decided by mediator	January 24	
Initial Jury Screening	February 18	February 18	
Exchange Jury Instructions and Verdict Forms	February 28	February 18	

CPH/MAFCO Proposed Pre-Trial Schedule
Assuming Fact Discovery Cut-Off of ~~December 1~~, 2004
Nov. 24

Supplemental Interrogatory Responses Nov. 24	~~30~~ days ~~before~~ fact discovery closes
Case Management Conference Scheduled (per 2/25 Order)	November 5
Initial Expert Disclosures	November 24
Fact Discovery Closes	~~December 1~~ Nov. 24
Select Mediator	December 1
Case Management Conference Scheduled (per 2/25 Order)	December 3
Responsive Expert Disclosures	December 3
Summary Judgment Briefs	December 6
Rebuttal Expert Disclosures	December 10
Expert Depositions	December 13-20
Summary Judgment Response Briefs	December 20
Exchange Deposition Designations	December 20
Pre-Trial Conference Scheduled (per 3/19 Order)	December 20-22
Summary Judgment Replies	January 3
Summary Judgment Argument	[January 7-14]
Motions in Limine	January 17
Exchange Deposition Counter Designations and Objections	January 17
Exchange Witness and Exhibit Lists	January 17
Mediation Commences	January 24
Exchange Objections to Deposition Counter-Designations	January 24
Joint Pretrial Stipulations	January 28
Responses to Motions in Limine	January 28
Meet and Confer re Deposition Designations	January 31
Deposition Designations, Counter-Designations, and Objections Provided to Court	
Pre-Trial Conference (3 Days)	
Jury Instructions and Verdict Forms Exchanged	February 18
Initial Jury Screening	February 18
Trial	February 22

CARLTON FIELDS, P.A.

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FAX COVER SHEET

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Client/Matter No.: 47877/14092 **Employee No.:**

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Message:

Coleman v. Morgan Stanley & Co., Inc.

Morgan Stanley Senior Funding, Inc. v. Macandrews & Forbes Holdings, Inc.

To follow please find a copy of Appellant's Motion to Strike.

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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

CASE NO. 4D04-135

LT CASE NO. 03 CA-005045 AI

MORGAN STANLEY & CO., INC.,

Appellant,

v.

COLEMAN (PARENT) HOLDINGS, INC.,

Appellee.

_____/

APPELLANT'S MOTION TO STRIKE APPELLEE'S RESPONSE TO APPELLANT'S NOTICE OF SUPPLEMENTAL AUTHORITY

Pursuant to Fla. R. App. P. 9.300, Appellant, Morgan Stanley & Co. Incorporated, hereby moves to strike Appellee's Response to Appellant's Notice of Supplemental Authority. As grounds therefore, Morgan Stanley states:

1. The response constitutes improper and unauthorized argument.

2. As to whether Appellant, Morgan Stanley (or now, Appellee) has accurately represented the nature and substance of the "Order on Motion for Application of New York Law", the "order" speaks for itself.

October 14, 2004

Respectfully submitted,

Thomas E. Warner (FL Bar No. 176725)
Joseph Ianno, Jr. (FL Bar No. 655351)
Michael K. Winston (FL Bar No. 051403)
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Attorneys for Appellant, Morgan Stanley & Co. Incorporated

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by facsimile and Federal Express (pursuant to an agreement between the parties) to all counsel of record listed below on this 14th day of October 2004.

THOMAS E. WARNER

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FACSIMILE TRANSMISSION

TO:	**Joseph Ianno, Jr.**	**FAX NO.:**	**561-659-7368**
	Jack Scarola		**561-684-5816**
	Jerold Solovy, Michael Brody		**312-840-7711**
	Thomas Clare		**202-879-5200**
FROM:	Rebecca Beynon	**CLIENT NO.:**	04123
PHONE:	202-326-7934		
DATE:	October 15, 2004		

MESSAGE:

Attached please find Morgan Stanley's Motion for Leave to Amend Pleadings.

TOTAL NUMBER OF PAGES: __6__ **(INCLUDING THIS SHEET)**

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,
vs.
MORGAN STANLEY & CO., INC.,
Defendant.
/

CASE NO: CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,
vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.
/

CASE NO: CA 03-5165 AI

MORGAN STANLEY'S MOTION FOR LEAVE TO AMEND PLEADINGS

Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc. (collectively "Morgan Stanley"), by and through its undersigned counsel, move this Court for leave to amend its answer in the above-captioned case of *Coleman (Parent) Holdings v. Morgan Stanley & Co., Inc.*, Case No. CA-03-5045 AI, to include the attached seventh affirmative defense. In support of its motion, Morgan Stanley states as follows:

1. Pursuant to the agreement of the parties, amendments to the pleadings were due September 21, 2004.

2. The attached seventh affirmative defense could not be filed until this Court had ruled upon certain *pro hac vice* motions. Those motions were decided on October 14, 2004, and received by counsel to Morgan Stanley on October 15, 2004.

3. There will be no prejudice to any party if this motion is granted and the Court permits the filing of the seventh affirmative defense. *See* Florida Rule of Civil Procedure 1.190 ("[L]eave of court [to amend pleadings] shall be given freely when justice so requires"); *EAC USA, Inc. v. Kawa*, 805 So. 2d 1, 5 (Fla. 2d DCA 2001) ("All doubts must be resolved in favor of allowing amendment of pleadings.") (citing *Thompson v. Publix Supermarkets, Inc.*, 615 So.2d 796 (Fla. 1st DCA 1993)); *Dimick v. Ray*, 774 So. 2d 830, 833 (Fla. 4th DCA 2000) ("It is axiomatic that under Florida law, the trial court must liberally allow amendments to a complaint unless the defendant would be 'prejudiced' thereby.").

WHEREFORE, Morgan Stanley respectfully requests that this Court grant leave to amend to file its amended seventh affirmative defense together with such other and further relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 15th day of October, 2004.

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By: _____
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James M. Webster, *admitted pro hac vice*
Rebecca A. Beynon, *admitted pro hac vice*

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ATTACHMENT TO MORGAN STANLEY'S MOTION FOR LEAVE TO AMEND PLEADINGS

Seventh Affirmative Defense

To the extent that CPH sustained any cognizable damages, the damages claimed by CPH were the result, in whole or in part, of the negligence or fault of one or more third parties for whom MS & Co. bears no responsibility and over whom MS & Co. had no dominion, authority, or control. As a result thereof, MS & Co. is entitled to have its liability to CPH, if any, reduced pursuant to N.Y. Gen. Oblig. § 15-108 or Florida Statute § 768.81. More specifically, fault should be apportioned to Arthur Andersen LLP, Andersen Worldwide, Société Coopérative, individual partners in Arthur Andersen LLP and members of Andersen Worldwide, Société Coopérative, and member firms in the Andersen Worldwide Organization (collectively "Andersen"), for their negligence or fault in preparing Sunbeam's financial statements and providing information regarding those statements to CPH, MS & Co., and third parties. Andersen's negligence caused or contributed to CPH's damages in the following ways:

(a) In 1996 and 1997, Andersen was Sunbeam's auditor and issued unqualified audit opinions regarding Sunbeam's financial statements. These audit opinions were included, with Andersen's consent, in Sunbeam's filings with the Securities and Exchange Commission. As Sunbeam's auditor, Andersen knew or should have known that Sunbeam's financial statements were replete with accounting irregularities; that the information in Sunbeam's 1996 and 1997 financial statements was materially false and misleading; and that its 1996 and 1997 unqualified audit opinions were materially false and misleading. Andersen had a duty to those it knew or should have known would rely on the accuracy of its audit opinions.

(b) Andersen was aware that, in the course of Sunbeam's negotiations with CPH, Sunbeam provided CPH with information relating to Sunbeam's financial statements, including

Andersen's unqualified opinions of Sunbeam's 1996 and 1997 financial statements. Andersen knew, or should have known in the exercise of reasonable care, that the information that Sunbeam provided CPH was incorrect. In particular, in March 1998 (when Andersen issued its opinion of Sunbeam's 1997 financial statements and consented to the publication of that opinion in Sunbeam's March 1998 10-K filing), Andersen knew that Sunbeam had warranted and represented to CPH that its filings with the Securities and Exchange Commission and audited financial statements, including Andersen's audit opinions, were accurate. Andersen expected that CPH would rely on Andersen's 1997 audit report. Andersen also knew and expected that CPH would rely on Andersen's previously issued 1996 audit report, which Andersen did not retract until long after Sunbeam's acquisition of Coleman closed. Andersen failed to exercise reasonable care in obtaining or communicating the information contained in its audit reports regarding Sunbeam's 1996 and 1997 financial statements.

(c) Andersen participated in the investigation of Sunbeam Information undertaken by a special committee of Sunbeam's board of directors in June 1998. In October 1998, Andersen acknowledged that, among other things, a restatement of Sunbeam's financial statements for 1996 and 1997 was necessary, thereby acknowledging that Andersen's 1996 and 1997 audit opinions, which has been provided to and relied upon by CPH and MS & Co., were inaccurate, incomplete, and not in accordance with generally accepted accounting principles or generally accepted auditing principles

(d) Andersen's negligence in preparing and providing accurate and truthful information regarding Sunbeam's 1996 and 1997 financial statements as aforesaid is the sole proximate cause of CPH's damages.

CARLTON FIELDS, P.A.

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	Thomas Clare	(202) 879-5993	(202) 879-5200
	Rebecca Beynon/Mark Hansen	(202) 326-7900	(202) 326-7999
From:	Joyce Dillard, CLA	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:**

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Coleman v. Morgan Stanley & Co., Inc.

Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings, Inc.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

v. CASE NO: CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.
_____/

NOTICE OF COMPLIANCE WITH COURT ORDER

Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc, by and through their undersigned counsel, hereby give notice that they have complied with this Court's Order on Morgan Stanley & Co., Inc. and Morgan Stanley Senior Funding, Inc.'s Verified Motion to Admit Rebecca A. Beynon, *Pro Hac Vice*; Verified Motion to Admit Mark C. Hansen, *Pro Hac Vice*, and Verified Motion to Admit James M. Webster, III, *Pro Hac Vice* of October 14, 2004 by providing payment of the *Pro Hac Vice* fee to the Clerk of the Court. A copy of the Court's Order is attached hereto.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the service list below by facsimile and Federal Express on this 15th day of October, 2004.

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Counsel for Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

ORDER ON MORGAN STANLEY & CO., INC., AND MORGAN STANLEY SENIOR FUNDING, INC.'S VERIFIED MOTION TO ADMIT REBECCA A. BEYNON, PRO HAC VICE; VERIFIED MOTION TO ADMIT MARK C. HANSEN, PRO HAC VICE; AND VERIFIED MOTION TO ADMIT JAMES M. WEBSTER, III, PRO HAC VICE

THIS CAUSE came before the Court October 14, 2004 on Morgan Stanley & Co., Inc., and Morgan Stanley Senior Funding, Inc.'s Verified Motion to Admit Rebecca A. Beynon, Pro Hac Vice; Verified Motion to Admit Mark C. Hansen, Pro Hac Vice; and Verified Motion to Admit James M. Webster, III, Pro Hac Vice, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that the Motions are Granted. Rebecaa A. Beynon, Mark C. Hansen, and James M. Webster, III, are hereby authorized to appear on behalf of Morgan Stanley & Co., Inc., and Morgan Stanley Senior Funding, Inc., upon payment of the

Clerk's fee.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 14 day of October, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

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GREENBERG
ATTORNEYS AT LAW
TRAURIG

Transmittal Cover Sheet

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Company:	Searcy, Denney et al.	Company:	Jenner & Block, LLC
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Name: Thomas D. Yannucci, Esq.
Copy to: Lawrence P. Bemis, Esq.
Copy to: Thomas A. Clare, Esq.
Copy to: Zhonette M. Brown, Esq.
Company: Kirkland & Ellis LLP
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FROM Lorie Gleim, Esq.

File Number 16560.071300

Comments

Date October 15, 2004

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

COLEMAN (PARENT) HOLDINGS, INC., CASE NO. 03 CA 5045 AI

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

v.

MACANDREWS & FORBES HOLDING, INC., et al.,

Defendants.

_____/

NOTICE OF FILING ORIGINAL AFFIDAVIT OF CHRISTOPHER P. MALLOY

Non-Party, SUNBEAM CORPORATION, n/k/a AMERICAN HOUSEHOLD, INC., by and through its undersigned counsel, hereby files this Notice of Filing Original Affidavit of Christopher P. Malloy, which is attached hereto.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via facsimile and regular U.S. Mail this 15 day of October, 2004, to the parties on the attached Service List.

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

COLEMAN (PARENT) HOLDINGS, INC., CASE NO. 03 CA 5045-I

Plaintiff,

vs

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

v.

MACANDREWS & FORBES HOLDING, INC., et al

Defendants.
_____/

AFFIDAVIT OF CHRISTOPHER P. MALLOY

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

BEFORE ME, the undersigned authority, personally appeared **CHRISTOPHER P. MALLOY**, who after being duly sworn, states as follows:

1. I am a partner at the law firm of Skadden Arps Meagher & Flom, LLP ("Skadden").

2. I have personal knowledge of the facts set forth below. If called to testify as a witness, I would be competent to testify to the facts set forth in this affidavit.

3. On or about June 29, 1998, Skadden was retained by the Board of Directors of Sunbeam Corporation ("Sunbeam") to investigate the events that occurred during prior management for purposes of reporting our findings and advising the Board regarding the legal implications of what had occurred.

4. The results of Skadden's work were set forth in a preliminary report (the "Report") which was presented to the Sunbeam Board on February 4, 1999. Attorneys from Skadden drafted the report with some assistance from accountants at Chicago Partners LLC and Deloitte & Touche LLP who had been retained by Skadden for the purpose of assisting it in rendering legal advice to Sunbeam. Skadden did not share drafts of the Report with anyone else.

5. On February 4, 1999, Robert Zimet and Rita Gordon, who are also attorneys at Skadden, and I presented our preliminary findings to the Board of Directors during a Board meeting. At the time when Skadden presented its Report, the only persons present were Sunbeam's Board of Directors, Officers of Sunbeam and attorneys from Skadden.

6. On April 22, 1999, I forwarded a copy of the Report to other outside counsel for Sunbeam and Barry F. Schwartz, Esq. of MacAndrews & Forbes Holdings, Inc.'s ("Mafco") legal department, in anticipation of a litigation strategy meeting. At the time, I understood that a Mafco affiliate was party to an agreement with Sunbeam whereby it would provide certain management assistance relating, among other things, to litigation matters, to Sunbeam. Thus, it was my understanding that Mr. Schwartz was acting as a legal advisor to Sunbeam. When I sent

the Report, it was my expectation that it would remain confidential and was to be used for the purpose of providing legal advice to Sunbeam in the prosecution and/or defense of claims involving Sunbeam. The Report and my April 22, 1999 cover memorandum both bear the legend "Privileged and Confidential — Subject to Attorney-Client and Attorney Work Product Privileges."

7. Skadden has always maintained the privilege of the Report and has included the Report on any privilege log produced by Skadden in the various lawsuits filed against Sunbeam.

8. Skadden also acted as counsel for Sunbeam before the United States Securities & Exchange Commission ("SEC"). Skadden never provided the SEC with a copy of the Report nor did it communicate its contents to the SEC.

FURTHER AFFIANT SAYETH NOT.

Christopher P. Malloy, Affiant

SWORN TO AND SUBSCRIBED before me, by **CHRISTOPHER P. MALLOY,** ☑ who is personally known to me, or ☐ who produced _____ as identification on this _____ day of _____, 2004.

MARQUEA RICE
Notary Public, State of New York
No. 01RI6092942
Qualified in Queens County
Commission Expires November 8, 2005

Print Name: _____
Notary Public – State of New York
My Commission Expires: _____

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER AND DIRECTIONS TO THE CLERK

THIS CAUSE came before the Court, in Chambers, on its own Motion. Based on the foregoing, it is

ORDERED AND ADJUDGED that the Clerk is directed to docket and file the copy of the October 5, 2004 deposition of Steven Isko.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 14 day of October, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci
655 15th Street, NW, Suite 1200
Washington DC 20005

John Scarola, Esq.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy, Esq.
One IBM Plaza, Suite 4400
Chicago, Il 60611

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER AND DIRECTIONS TO THE CLERK

THIS CAUSE came before the Court, in Chambers, on its own Motion. Based on the foregoing, it is

ORDERED AND ADJUDGED that the Clerk is directed to docket and file attorney Joseph Ianno's facsimile transmission dated October 14, 2004.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 14 day of October, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci
655 15th Street, NW, Suite 1200
Washington DC 20005

John Scarola, Esq.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy, Esq.
One IBM Plaza, Suite 4400
Chicago, Il 60611

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER AND DIRECTIONS TO THE CLERK

THIS CAUSE came before the Court October 14, 2004 on Coleman (Parent) Holdings Inc.'s Motion for Determination of Protectability of Material Redacted From Court Records, with all counsel present. In open Court the Motion was withdrawn. Based on the foregoing, it is

ORDERED AND ADJUDGED that the Clerk is directed to unseal and place in the Court file docket entry numbers 562-565, inclusive.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 14 day of October, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci
655 15th Street, NW, Suite 1200
Washington DC 20005

John Scarola, Esq.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy, Esq.
One IBM Plaza, Suite 4400
Chicago, Il 60611

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

CASE NO. CA 03-5165 AI

ORDER APPOINTING COMMISSIONER REGARDING THE DEPOSITION OF DWIGHT SIPPRELLE

This cause comes before the Court on Coleman (Parent) Holdings Inc.'s motion for commission for out-of-state deposition. After reviewing the pleadings and otherwise being advised in the premises, it is ORDERED AND ADJUDGED that CPH's commission to take an out-of-state deposition in connection with the above-captioned litigation is granted so that CPH may subpoena the deposition and documents of the following witness: Dwight Sipprelle, 155 Lincoln Street, Englewood, New Jersey 07631

It is further ORDERED AND ADJUDGED that the following commissioner, or any person duly authorized by him, is appointed to cause service of a subpoena for the deposition and documents with respect to Mr. Sipprelle: Claire Cecchi, Esq., McElroy, Deutsch, Mulvaney & Carpenter, Three Gateway Center, 100 Mulberry Street, Newark, New Jersey 07102.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this _____ day of October, 2004.

SIGNED & DATED

OCT 14 2004

JUDGE ELIZABETH T. MAASS

ELIZABETH T. MAASS
Circuit Court Judge

Copies furnished:

Joseph Ianno, Jr., Esq.
222 Lakeview Ave. - Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci, Esq.
655 15th Street, NW - Suite 1200
Washington, DC 20005

John Scarola, Esq.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy, Esq.
One IBM Plaza - Suite 4400
Chicago, IL 60611

#1161111

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO ALLOW CPH IN EXCESS OF 30 INTERROGATORIES

THIS CAUSE came before the Court October 7, 2004 on Coleman (Parent) Holdings, Inc.'s Motion to Allow CPH in Excess of 30 Interrogatories, with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that the Motion is Granted. Plaintiff's second, third, fourth, and fifth sets of interrogatories are hereby deemed properly served. Defendant shall serve its responses to the interrogatories by the later of (i) 14 days from the date hereof or (ii) the date for responses established by the Florida Rules of Civil Procedure.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 11 day of October, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci
655 15th Street, NW, Suite 1200
Washington DC 20005

John Scarola, Esq.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy, Esq.
One IBM Plaza, Suite 4400
Chicago, Il 60611

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER ON MORGAN STANLEY & CO., INC., AND MORGAN STANLEY SENIOR FUNDING, INC.'S VERIFIED MOTION TO ADMIT REBECCA A. BEYNON, PRO HAC VICE; VERIFIED MOTION TO ADMIT MARK C. HANSEN, PRO HAC VICE; AND VERIFIED MOTION TO ADMIT JAMES M. WEBSTER, III, PRO HAC VICE

THIS CAUSE came before the Court October 14, 2004 on Morgan Stanley & Co., Inc., and Morgan Stanley Senior Funding, Inc.'s Verified Motion to Admit Rebecca A. Beynon, Pro Hac Vice; Verified Motion to Admit Mark C. Hansen, Pro Hac Vice; and Verified Motion to Admit James M. Webster, III, Pro Hac Vice, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that the Motions are Granted. Rebecaa A. Beynon, Mark C. Hansen, and James M. Webster, III, are hereby authorized to appear on behalf of Morgan Stanley & Co., Inc., and Morgan Stanley Senior Funding, Inc., upon payment of the

Clerk's fee.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 14 day of October, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci
655 15th Street, NW, Suite 1200
Washington DC 20005

John Scarola, Esq.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy, Esq.
One IBM Plaza, Suite 4400
Chicago, Il 60611

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER CONCERNING PRETRIAL SCHEDULE AND FOLLOWING CASE MANAGEMENT CONFERENCE

THIS CAUSE came before the Court October 14, 2004 for a case management conference, with all parties well represented by counsel. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that objections to all discovery served on or after October 14, 2004 shall be served within 14 days. It is further

ORDERED AND ADJUDGED that this action is specially set for jury trial commencing February 18, 2004. It is further

ORDERED AND ADJUDGED that the proceedings relating to summary judgment will take place on the following schedule:

Summary Judgment Briefs	December 6, 2004
Summary Judgment Response Briefs	December 17, 2004

Summary Judgment Replies	December 31, 2004
Summary Judgment Hearing	January 21, 2005

It is further

ORDERED AND ADJUDGED that the proceedings relating to mediation will take place on the following schedule:

Mediator Selected	December 1, 2004
Mediation	January 24, 2005

It is further

ORDERED AND ADJUDGED that the proceedings relating to expert discovery will take place on the following schedule:

Initial Expert Disclosures	December 1, 2004
Responsive Expert Disclosures	December 13, 2004
Rebuttal Expert Disclosures	December 20, 2004
Depositions of Experts	December 21, 2004 - January 7, 2005

The parties agree, and the Court orders, that expert witness disclosures shall include: (a) the name and business address of the witness; (b) the subject matter about which the expert will testify; (c) the substance of the facts and opinions to which the expert will testify; (d) a summary of the grounds for each opinion; (e) a copy of any written reports issued by the expert regarding this case; (f) a copy of the expert's curriculum vitae; (g) a list of all cases in which the expert has testified during the past five years; (h) a list of all produced documents relied on by the expert; and (i) copies of all non-produced documents relied on by the expert. Expert witnesses will not be permitted to testify as to opinions, or the bases therefore, unless the opinions or bases were disclosed with particularity in accordance with this Order. It is further

ORDERED AND ADJUDGED that the remaining pretrial proceedings will take place on the following schedule:

Supplemental Interrogatory Responses Due	December 24, 2004

Completion of Fact Discovery	November 24, 2004
Deposition Designations Exchanged-Fact Witnesses	December 20, 2004
Deposition Designations Exchanged-Expert Witnesses	January 14, 2004
Deposition Counter-Designations and Initial Objections Exchanged-Fact Witnesses	January 17, 2005
Deposition Counter-Designations and Initial Objections Exchanged-Expert Witness	January 21, 2005
Motions in Limine	January 10, 2005
Witness Lists and Trial Exhibits Exchanged	January 10, 2005
Motion in Limine Oppositions	January 18, 2005
Objections to Counter-Designations Exchanged-Fact Witnesses	January 24, 2005
Objections to Counter-Designations Exchanged-Expert Witnesses	January 28, 2005
Meet-and-Confer re: Deposition Designations	February 4, 2005
Joint Pretrial Stipulation (in the form directed by the Court's Uniform Pretrial Procedure)	February 9, 2005
Deposition Designations, Counter-Designations, and Objections to Designations and Counter-Designations Provided to the Court	February 11, 2005
Pretrial Conference (3 days)	February 14, 15, and 16, 2004
Final Pretrial Conference	February 17, 2005
Jury Instructions and Verdict Forms Exchanged	February 18, 2005
Initial Jury Screening	February 18, 2005
Jury Trial Begins (15 trial days)	February 22, 2005

The Court will receive objections to instructions and verdict forms, and the parties'

counter-instructions on a date to be determined during trial. It is further

ORDERED AND ADJUDGED that hearing on Motions in Limine and objections to deposition designations set December 20 - 22, 2004 is canceled, to be reset after the deadlines established by this Order.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 14 day of October, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci
655 15th Street, NW, Suite 1200
Washington DC 20005

John Scarola, Esq.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy, Esq.
One IBM Plaza, Suite 4400
Chicago, Il 60611

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER SPECIALLY SETTING HEARING

THIS CAUSE having come before the Court, it is hereby

ORDERED AND ADJUDGED that hearing on all Motions for Summary Judgment are specially set before the Honorable Elizabeth T. Maass on January 21, 2005, at 8:00 a.m., in Courtroom 11A, 205 N. Dixie Hwy, WPB, FL 33401. This is a specially set hearing which shall be limited to 4 hours.

This hearing shall not be canceled unless the issues of this motion have been settled, and an order entered, or the motion withdrawn.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 14th day of October, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci
655 15th Street, NW, Suite 1200
Washington DC 20005

John Scarola, Esq.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy, Esq.
One IBM Plaza, Suite 4400
Chicago, Il 60611

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-4380 within two (2) working days of your receipt of this [describe notice]; if you are hearing or voice impaired, call 1-800-955-8771.

SPANISH

Si Ud. es una persona incapacitada que necesita de un servicio especial para participar en este proceso, Ud. tiene derecho a que le provean cierta ayuda sin costo alguno. Por favor pongase en contacto con el Coordinador de la Oficina Administrativa de la Corte ADA, situada en el 205 North Dixie Highway, Oficina 5.2500, West Palm Beach, Florida, 33401, teléfono (561) 355-4380, dentro de los dos (2) próximos días hábiles después de recibir esta [describa la notificación]; si tiene incapacidad de oir ó hablar llame al 1-800-955-8771.

CREOLE

Si ou sé yon moun ki Infim, ki bézwen ninpôt akomodasyon pou ka patisipé nan pwosè sa-a, ou gen dwa, san'l pa kouté'w anyin, pou yo ba'w kèk sèvis. Tanpri kontakté koôdinatè ADA ya nan Biro Administratif Tribinal nan cité Palm Beach la, ki nan 205 North Dixie Highway, Cham 5.2500, West Palm Beach, Florida 33401, niméro téléfonn-nan sé (561) 355-4380, rélé dé (2) jou dé lè ou résévwa [notis sa-a]; si ou bèbè ou byen soud rélé 1-800-955-8771.

FRENCH

Si vous êtes infirme, et en besoin de n'importe accommodation pour pouvoir participer á ces procédures, vous pouvez gratuitement recevoir, certains services. S'il-vous-plait contactez le coordinateur du Bureau Administratif du Tribunal de Palm Beach, située à 205 North Dixie Highway, Chambre 5.2500, West Palm Beach, Florida 33401, numéro de téléphone (561) 355-4380 durant deux (2) jours suivant la réception de [cette note]; si vous êtes muets ou sourds, appelez 1-800-955-8771.

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER ON NON-PARTY SUNBEAM'S MOTION FOR PROTECTIVE ORDER AND DEFENDANT MORGAN STANLEY'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS

THIS CAUSE came before the Court October 14, 2004 on Non-Party Sunbeam's Motion for Protective Order and Morgan Stanley's Motion to Compel Production of Documents, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that within 10 days, counsel for non-party Sunbeam shall submit directly to the undersigned, in a sealed envelope marked "DO NOT OPEN PURSUANT TO THE COURT'S ORDER ON NON-PARTY SUNBEAM'S MOTION FOR PROTECTIVE ORDER AND MORGAN STANLEY'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS ENTERED OCTOBER 14, 2004" a copy of (i) the Special Committee Report prepared by Skadden Arps, Meagher & Flom, LLP; (ii) the Report's exhibits; and (iii) the transmittal letter to MAFCO. The Court defers ruling on Non-Party Sunbeam's Motion for Protective Order and Morgan Stanley's Motion to Compel

Production of Documents, pending receipt and review of the items under seal.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 15 day of October, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci
655 15th Street, NW, Suite 1200
Washington DC 20005

John Scarola, Esq.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy, Esq.
One IBM Plaza, Suite 4400
Chicago, Il 60611

GREENBERG
ATTORNEYS AT LAW
TRAURIG

Transmittal Cover Sheet

TO

Name:	Joseph Ianno, Jr., Esq..	Name:	Jerold S. Solovy, Esq.
Company:	Carlton Fields, P.A.	Company:	Jenner & Block, LLC
Fax No.:	659-7368	Fax No.:	312-840-7671
Phone No.:	659-7070	Phone No.:	312-923-2711
Name:	Jack Scarola, Esq.	Name:	Michael Brody, Esq.
Company:	Searcy, Denney et al.	Company:	Jenner & Block, LLC
Fax No.:	478-0754	Fax No.:	312-840-7711
Phone No.:	686-6300	Phone No.:	312-923-2711

Name: Thomas D. Yannucci, Esq.
Copy to: Lawrence P. Bemis, Esq.
Copy to: Thomas A. Clare, Esq.
Copy to: Zhonette M. Brown, Esq.
Company: Kirkland & Ellis LLP
Fax No.: 202-879-5200
Phone No.: 202-879-5000

FROM Lorie Gleim, Esq.

File Number 16560.071300

Comments

Date October 15, 2004

No. Pages Including this cover sheet 24

Please notify us immediately if not received properly at 561-650-7900.

The information contained in this transmission is attorney privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone collect and return the original message to us at the address below via the U.S. Postal Service. We will reimburse you for your postage. Thank you.

777 South Flagler Drive, Suite 300 East, West Palm Beach, Florida 33401 (561) 650-7900 Fax (561) 655-6222

WPB-FS1\GLEIML\509879v01\8/25/04\16560.071300

Greenberg Traurig

LORIE M. GLEIM, ESQ.
WEST PALM BEACH OFFICE
DIRECT DIAL: (561) 650-7948
Email: GleimL@gtlaw.com
http://www.gtlaw.com

October 15, 2004

HAND DELIVERED
The Honorable Elizabeth T. Maass
Circuit Court Judge
Palm Beach County Courthouse
205 North Dixie Highway, Room 11.1208
West Palm Beach, FL 33401

Re: Coleman (Parent) Holdings, Inc. vs Morgan Stanley & Co., Inc., et al.
Case No. 03-CA-5045-AI

MSSF vs MacAndrews & Forbes Holding, Inc.
Case No. 03-CA-5165-AI

Dear Judge Maass:

Enclosed please find non-party Jerry W. Levin's Motion for Protective Order with regard to a deposition that has been set on October 21st and 22nd, 2004. As explained in the Motion and the letters attached thereto, the parties in the above referenced cases seem unable to cooperate with each other at the expense of Mr. Jerry W. Levin, CEO of American Household, Inc.

I understand from your Judicial Assistant that you are on vacation this week, and therefore, the matter may need to be forwarded to another Judge hearing your matters. We appreciate your forwarding this Motion to another Judge, so we can have a ruling on Mr. Levin's Motion for Protective Order prior to the deposition set for Thursday and Friday of next week. Because Mr. Levin's deposition has been set for Thursday/Friday, Mr. Levin's Motion for Protective Order has become an emergency matter and must be heard before October 21, 2004.

I thank you for your consideration in this matter.

Respectfully submitted,

Lorie M. Gleim

LMG/rr
Enclosures

cc: Mark F. Bideau, Esq.
Joseph Ianno, Esq. (by fax)
Jack Scarola, Esq. (by fax)
Michael Brody, Esq. (by fax)
Thomas A. Clare, Esq. (by fax)
Lawrence P. Bemis, Esq. (by fax)
Jerold S. Solovy, Esq. (by fax)

WPB/515619.01/16560.071300

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WILMINGTON
ZURICH

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

CASE NO. 03 CA 5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

v.

MACANDREWS & FORBES HOLDING, INC., et al.,

Defendants.

CASE NO. CA 03-5165 AI

NON-PARTY JERRY W. LEVIN'S MOTION FOR PROTECTIVE ORDER

Jerry W. Levin, by and through his undersigned counsel, hereby files this Motion for Protective Order regarding a Subpoena for Deposition which was served on October 14, 2004 on an officer of American Household, Inc. f/k/a Sunbeam Corporation ("Sunbeam") and in support thereof states as follows:

1. Morgan Stanley contacted undersigned counsel regarding setting the deposition of American Household Inc.'s Chief Executive Officer, Jerry W. Levin. Rather than require Morgan Stanley to subpoena Mr. Levin, undersigned counsel agreed to cooperate and find mutually acceptable dates for Mr. Levin's deposition.

2. Undersigned counsel agreed to make Mr. Levin available on Thursday, October 21, 2004 from 9:30 a.m. to 5:00 p.m. and on Friday, October 22, 2004 from 9:30 a.m. to 12:00 noon.

3. Accordingly, Morgan Stanley sent a letter dated September 22, 2004 attaching the Notice of Deposition of Jerry Levin to counsel of record.

4. Unbeknownst to undersigned counsel, Morgan Stanley failed to clear the dates with Coleman Parent Holdings, Inc. ("CPH") / MacAndrews & Forbes Holding, Inc. ("MAFCO").

5. Unfortunately, rather than Morgan Stanley and CPH being able to agree to the dates and the amount of time each party would be provided during Mr. Levin's deposition, the parties chose to engage in a letter writing campaign failing to ever reach agreement regarding Mr. Levin's deposition. See letters dated September 22, 29, 30 and October 1, 7, 8 and 11, 2004 attached hereto as Exhibit "A."

6. Not wishing to referee the fight any longer, and to protect Mr. Levin from a deposition taking longer than the allotted day and a half, undersigned counsel wrote a letter on October 6, 2004, informing the parties that, absent an agreement as to the duration of Mr. Levin's deposition, Mr. Levin would not be appearing on October 21 and October 22, 2004. See October 6, 2004 letter attached hereto as Exhibit "B."

7. Instead of working out the issues with CPH, Morgan Stanley issued a subpoena on Mr. Levin for deposition. Morgan Stanley's subpoena is ineffective as it was only served on an officer of American Household, Inc., rather than serving Mr. Levin personally. Nonetheless, Mr. Levin and American Household Inc., like always, are attempting to cooperate with the parties and with this Court.

8. Mr. Levin is available and willing to sit for the deposition on October 21, 2004 from 9:30 a.m. to 5:00 p.m. and on October 22, 2004 from 9:30 a.m. to 12:00 p.m. in Boca Raton, Florida. Mr. Levin is the CEO of American Household Inc., a non-party to this action. There is absolutely no basis, reason or justification to require Mr. Levin to sit for a deposition any longer than a day and a half. As the Court is aware, the Federal Rules of Civil Procedure only allows seven hours for a deposition. Mr. Levin comes before this Court seeking a protective order which will limit his deposition to the day and one-half which he has agreed to set aside.

9. There is absolutely no justification to require Mr. Levin, the CEO of a non-party, to sit for a deposition for longer than a day and one-half. Mr. Levin has been deposed before in other cases on the same events at issue in this case. Mr. Levin has a very busy schedule, and has already offered a day and a half to accommodate a deposition in this case. Mr. Levin should not be punished for the parties' inability to cooperate in discovery.

10. Moreover, there is no reason that the deposition must go forward in West Palm Beach. Mr. Levin is located in Boca Raton, Florida and counsel taking the deposition are all flying in from out of town.

11. Mr. Levin therefore moves for a protective order and requests that this Court limit the time for his deposition to 9:30 a.m. to 5:00 p.m. on October 21, 2004 with a reasonable lunch break, and from 9:30 a.m. to 12:00 p.m. on October 22, 2004, and instruct the parties as to the amount of time each party will have to question the witness so that both sides complete their questioning within this time frame. Additionally, Mr. Levin requests that the Court allow the deposition to be conducted in Greenberg Traurig's Boca Raton office.

WHEREFORE, Jerry W. Levin hereby respectfully requests that this Court enter a protective order restricting the duration of his deposition to 9:30 a.m. to 5:00 p.m. on October 21, 2004 with a reasonable lunch break, and from 9:30 a.m. to 12:00 p.m. on October 22, 2004. Mr. Levin requests that this Court instruct counsel as to the amount of time each party may have to question the witness so that counsel for both parties complete their questioning within this time frame. Further, Mr. Levin respectfully requests this Court order that the deposition be conducted at Greenberg Traurig's Boca Raton office rather than at Carlton Fields' office in West Palm Beach.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via facsimile and mail to the addressees on the attached Service List, this 15th day of October, 2004.

GREENBERG TRAURIG, P.A.
777 South Flagler Drive - Suite 300E
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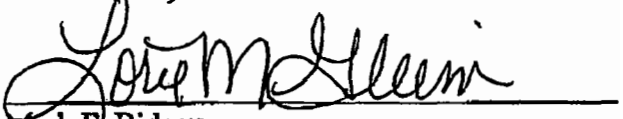
By: 
Mark F. Bideau
Florida Bar No. 564044
Lorie M. Gleim
Florida Bar No. 0069231

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WPB-FS1\515493v01\16560.071300

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September 22, 2004

BY FACSIMILE

Michael Brody, Esq.
Jenner & Block, LLP
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*
MSSF v. MacAndrews & Forbes Holdings Inc. et al.

Dear Mike:

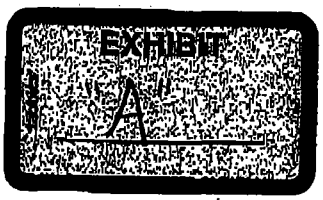
Mr. Levin has advised us that he is available for a deposition in Florida on October 21 and 22. Given Mr. Levin's schedule and limited availability in the weeks ahead, we intend to proceed with the deposition on that date.

Sincerely,

Thomas A. Clare /MP

Thomas A. Clare

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark C. Hansen, Esq. (by facsimile)



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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.
MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO: CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

NOTICE OF VIDEOTAPED DEPOSITION

PLEASE TAKE NOTICE that Morgan Stanley & Company Incorporated and Morgan Stanley Senior Funding, Inc. will take the videotaped deposition of Jerry Levin, pursuant to Florida Rules of Civil Procedure 1.280 and 1.310. The oral examination will take place on October 21 & 22, 2004, at 9:30 a.m. and continue from day to day until completed at the offices of Carlton Fields, P.A., 222 Lakeview Ave., Suite 1400, West Palm Beach, Florida 33401. The deposition will be taken before a person authorized to administer oaths and recorded by stenographic and videographic means. The video operator will be Esquire Deposition Services Courthouse Tower, 44 West Flagler Street, 14th Floor, Miami, Florida. The witness is instructed to bring all books, papers, and other things in his possession or under his control relevant to this lawsuit (and not previously produced in discovery) to the examination.

16div-007407

Dated: September 23, 2004

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar # 618349)
Thomas A. Clare
Zhonette M. Brown
Michael C. Occhuizzo
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Counsel for Morgan Stanley & Co. Incorporated & Morgan Stanley Senior Funding

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Telephone: (561) 659-7070
Facsimile: (561) 659-7368
e-mail: jianno@carltonfields.com

BY: _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and federal express on this 23rd day of September, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar # 618349)
Thomas A. Clare
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BY: _____

SERVICE LIST

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JENNER&BLOCK

September 29, 2004

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mbrody@jenner.com

By Telecopy

Thomas A. Clare, Esq.
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Tom:

I write concerning your letter and notice of deposition scheduling Jerry Levin's deposition for October 21-22, 2004.

Contrary to our existing agreements, you did not consult with us before scheduling Mr. Levin's deposition for October 21-22. Please advise us of the amount of time Mr. Levin has agreed to make available on each of these dates. Also, please confirm that, as with other non-party witnesses, you agree to divide the time equally.

Very truly yours,

Michael T. Brody

Michael T. Brody

cc: Lorie Gleim, Esq. (by telecopy)
Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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September 30, 2004

BY FACSIMILE

Michael Brody, Esq.
Jenner & Block, LLP
One IBM Plaza
Chicago, IL 60611-7603

Re: ***Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.***
MSSF v. MacAndrews & Forbes Holdings Inc. et al.

Dear Mike:

I write in response to your September 29 letter regarding the deposition of Jerry Levin. Mr. Levin will appear for his deposition from 9:30 am to 5:00 pm on October 21, and from 9:30 am to 12:00 noon on October 22. We understand that Mr. Levin may have a commitment in the afternoon on October 22. We believe that we will be able to complete our questioning in the time allotted.

Sincerely,

Thomas A. Clare

Thomas A. Clare

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark C. Hansen, Esq. (by facsimile)

JENNER&BLOCK

JEROLD S. SOLOVY
CHAIRMAN OF THE FIRM

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October 1, 2004

VIA FACSIMILE

Lorie M. Gleim, Esq.
Greenberg Traurig, LLP
777 South Flagler Drive
West Palm Beach, FL 33401

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Lorie:

As we advised you, Kirkland set the deposition of Jerry Levin without consulting us. We are able to proceed with Mr. Levin's deposition on October 21 and 22, as noticed, provided that the time available for Mr. Levin's deposition is divided equally between Coleman (Parent) Holdings and Morgan Stanley. As you know, we asked Morgan Stanley to confirm that we would receive an equal amount of time to conduct our examination of Mr. Levin. In its response, Morgan Stanley states that Morgan Stanley will be able to complete its questioning in the time that Mr. Levin has available, but Morgan Stanley fails to address Coleman (Parent)'s examination of Mr. Levin. I attach the correspondence concerning Mr. Levin's deposition for your convenience.

If Mr. Levin does not have sufficient time on October 21 and 22 so that Coleman (Parent) is allowed an equal amount of time for its examination, please propose new dates for his deposition so that both parties will be able to conduct their examinations.

Very truly yours,

Jerold S. Solovy

JSS/sae
Attachment
cc: Mark Bideau, Esq.
Thomas A. Clare, Esq.

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October 7, 2004

VIA FACSIMILE (561) 655-6222

Lorie M. Gleim, Esq.
Greenberg Traurig, P.A.
P.O. Box 20629
West Palm Beach, FL 33416-0629

Re: ***Coleman (Parent) Holding Inc. v. Morgan Stanley & Co. Incorporated MSSF v. MacAndrews & Forbes Holdings Inc. et al.***

Dear Ms. Gleim:

I am responding to your letter of October 6, 2004. I also left you a voice mail on October 6.

We have tried to cooperate with Mr. Levin and you to schedule his deposition. The date of the deposition was set before we received Mr. Brody's letter of September 29, 2004. His letter was the first communication we have identified in which CPH expressed any intention to depose Mr. Levin or even had any questions for him, if he was deposed by Morgan Stanley. And Mr. Clare confirmed that there is no "equal time" agreement for non-party witnesses.

Having said that, we scheduled Mr. Levin's deposition based around his schedule, which included a meeting that he had on October 22. Although I believe I can finish his deposition within the allotted time, I am not in a position to say that I can finish his deposition in *one-half* of the allotted time. Mr. Levin is a key witness in these consolidated actions.

My suggestion is that we proceed with the deposition, and if CPH is unable to complete its cross-examination, if any, we reschedule Mr. Levin to appear at another time that is convenient for him and the parties. The trial date is not until February 22, 2005.

As an alternative to this procedure, if you do not intend to produce Mr. Levin as agreed on October 21, 2004, we will immediately issue a subpoena for his appearance in Florida. You can then seek a protective order to set a time limit on his deposition. I will tell you, however, that when we suggested such an approach to the Court at a recent case management conference involving certain Morgan Stanley witnesses that we thought were peripheral to this action, the Court refused to impose such time limits.

Please let me know by October 8, 2004, whether we will need to issue a subpoena for Mr. Levin's deposition.

We look forward to your anticipated cooperation in scheduling and completing Mr. Levin's deposition.

Best regards.

Very truly yours,

Lawrence P. Bernis

Lawrence P. Bernis

cc: Michael Brody, Esq.
Joseph Ianno, Esq.

JENNER&BLOCK

October 8, 2004

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Fax 312-840-7711
mbrody@jenner.com

VIA FACSIMILE

Lorie M. Gleim, Esq.
Greenberg Traurig, LLP
777 South Flagler Drive
West Palm Beach, FL 33401

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Lorie:

We received a copy of Mr. Bemis' October 7, 2004 letter concerning the deposition of Mr. Levin. I write to advise you that CPH objects to the bifurcated approach to Mr. Levin's deposition suggested by Mr. Bemis whereby Mr. Bemis will consume most, if not all, of the time that Mr. Levin has available on October 21 and October 22, 2004 and CPH will need to schedule additional time with Mr. Levin at a later date so that CPH may conduct its examination.

Mr. Bemis unilaterally scheduled Mr. Levin's deposition without providing any prior notice to CPH. In so doing, Mr. Bemis violated the third-party deposition protocol established by his partner, Mr. Clare, which is memorialized in Mr. Clare's October 10, 2003 letter (a copy of which is attached). As you will see from Mr. Clare's October 10, 2003 letter (at page 2), the parties agreed "to schedule third-party depositions in a manner that will allow both sides to question each third-party witness." His letter confirms that " it is not acceptable for either party to subpoena a [third-party] witness for deposition, use all of the allotted time to question the witness, and thereby prevent the other party from having a meaningful opportunity to question the witness." Thus, Mr. Clare requested, and we agreed, "to work together to discuss (in advance) the amount of time that each party believes it will need to question each witnesses [sic] - and then take appropriate steps [] to ensure that all parties will have a full and fair opportunity to question each witness."

We are disappointed by Mr. Bemis' threat to issue a subpoena for Mr. Levin's attendance if you decline to present him on October 21 and 22. Please be advised, however, that Mr. Bemis' account of the Court's recent rejection of Morgan Stanley's request to impose time limits on certain depositions is incomplete. Morgan Stanley sought to impose a two-hour limit on CPH's examination of witnesses who approved MSSF's loan to Sunbeam. Because that loan forms the basis of MSSF's case against CPH, it is hardly surprising that the Court declined to limit those depositions to two hours.

Because Mr. Bemis refuses to allow CPH an equal opportunity to examine Mr. Levin during the time that Mr. Levin has available on October 21 and 22, 2004, we request that you propose new dates that will allow each party an equal opportunity to examine Mr. Levin.

Very truly yours,

Michael T. Brody

cc: Thomas A. Clare, Esq. (by telecopy)
Lawrence P. Bemis, Esq. (by telecopy)
Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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Dir. Fax (202) 879-5200

October 10, 2003

By Facsimile

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co.*

Dear Mike:

I write in response to your October 7 letter — and to confirm the understandings reached during our October 9 telephone conversation regarding the scheduling of depositions in the above-referenced matter.

As an initial matter, I informed you that the deposition schedule proposed in your October 2, 2003 notice of deposition — which calls for 13 depositions to be conducted in the course of 14 business days in five different cities — is inherently unworkable. You did not consult with us before selecting the dates for the depositions and, as a result, we are simply not available on many of the dates in the notice. Moreover, while Morgan Stanley does not seek to avoid discovery in this matter, the rapid-fire succession of depositions in your notice, compressed in such a short time frame, is unnecessary and improper. On a more practical level, scheduling back-to-back depositions creates a substantial risk that, if depositions need to be carried over into successive days, the schedule becomes unworkable.

We agreed to work together to schedule the depositions on dates that are convenient for all parties and their counsel. I asked whether you have successfully served subpoenas on any of the third-parties identified in the deposition notice -- or otherwise attempted to confirm any of the dates identified in the notice. You stated that you had not. You agreed to inform me when you have established contact with the witnesses or their counsel to confirm or discuss deposition dates, and to coordinate our availability before finalizing any deposition dates. We intend to follow the same procedure for depositions noticed by Morgan Stanley.

Your October 7 letter asked us to identify which of the dates identified in your deposition notice are acceptable. At this point, we are able to proceed with the following depositions identified in the notice: Scott Yales (10/27); Deborah MacDonald (11/3); and Deidra Den Dauto (11/6). I will let you know if and when we are able to confirm additional dates.

KIRKLAND & ELLIS LLP

I also informed you that the depositions of all current and former Morgan Stanley employees — including Mr. Savarie, Mr. Smith, Mr. Strong, and Mr. Chang — will need to be scheduled through Kirkland & Ellis. These individuals are not available on the dates identified in your notice. I agreed to provide you with proposed dates for these individuals. In addition, I confirmed (consistent with the assurances in my earlier letter) that I will provide you with proposed dates for the continuation of Mr. Tyree's deposition.

We also discussed the need to schedule third-party depositions in a manner that will allow both sides to question each third-party witness. We agreed that it is not acceptable for either party to subpoena a witness for a deposition, use all or substantially all of the allotted time to question the witness, and thereby prevent the other party from having a meaningful opportunity to question the witness. We agreed to work together to discuss (in advance) the amount of time that each party believes it will need to question each witnesses — and then take appropriate steps (including securing the attendance of witnesses for additional days of deposition testimony if necessary) to ensure that all parties will have a full and fair opportunity to question each witness. Communicating the parties' anticipated deposition needs to third-party witnesses and their counsel in advance will also mitigate the inconvenience to third-party witnesses and minimize the risk that additional subpoenas will need to be issued to compel multiple appearances by the same witness.

Finally, we request that you provide us with copies of all subpoenas that have been served by CPH or MAFCO — and that you provide us with copies of any documents that have been (or will be) produced by third-parties pursuant to subpoenas. We are of course willing to follow the same procedures for subpoenas served by MS&Co. and MSSP.

Please inform me immediately if my understanding of our conversation is incorrect in any way.

Sincerely,

Thomas A. Clare

Thomas A. Clare

cc: Joseph Ianno, Jr., Esq. (by facsimile)
Jerold S. Solovy, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)

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October 11, 2004

VIA FACSIMILE

Lorie M. Gleim, Esq.
Greenberg Traurig, P.A.
P.O. Box 20629
West Palm Beach, FL 33416-0629

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*
MSSF v. MacAndrews & Forbes Holdings Inc. et al.

Dear Ms. Gleim:

I write in response to Mike Brody's October 8 letter regarding the deposition of Mr. Levin.

Because I am certain that you and Mr. Levin have no interest in serving as referees for the parties' discovery disputes, I do not see any need to provide a detailed rebuttal to each of the points in Mr. Brody's letters. Suffice it to say that Mr. Brody does not accurately describe the parties' agreement or past practice regarding the scheduling of third-party depositions, particularly where (as in this situation) counsel for CPH never informed us that CPH intended to conduct its own deposition of Mr. Levin. We informed you, CPH, and the Court several months ago that Morgan Stanley intended to take Mr. Levin's deposition. CPH stood silent until Morgan Stanley secured time for its own questioning of Mr. Levin. Only then did CPH come forward with its request for equal time.

We intend to proceed with Mr. Levin's deposition on October 21 and 22 as scheduled. We are hopeful that both parties will be able to complete their questioning in the time that has been allotted by Mr. Levin on those days. If CPH determines that it needs additional time with Mr. Levin, I trust that the issue can be addressed reasonably by the parties when and if the issue arises.

KIRKLAND & ELLIS LLP

Sincerely,

Lawrence P. Bemis /TAC

Lawrence P. Bemis

cc: Michael T. Brody, Esq.
Joseph Ianno, Esq.
Jack Scarola, Esq.
Mark Hansen, Esq.

Greenberg Traurig

LORIE M. GLEIM
WEST PALM BEACH OFFICE

DIRECT DIAL: (561) 650-7948
Email: gleiml@gtlaw.com2

October 6, 2004

Via Facsimile and Regular Mail

Thomas A. Clare, Esq
Lawrence Bemis, Esq.
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655 15th Street, NW, Suite 1200
Washington, DC 20005

Jerold S. Solovy, Esq.
Michael Brody, Esq.
Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611

Re: Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc. and Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings, Inc. and Coleman (Parent) Holdings, Inc.

Gentlemen:

I am in receipt of various correspondence between the parties regarding the deposition of Jerry Levin. I am amazed by the lack of cooperation between the parties to set Mr. Levin's deposition in this case. Be that as it may, I will not be producing Jerry Levin for deposition on October 21st and 22nd until such time as the parties have committed in writing that Mr. Levin will only be deposed on October 21st from 9:30 a.m. to 5:00 p.m. and on October 22nd from 9:30 a.m. to 12:00 noon. This is more than ample time for both parties to question Mr. Levin.

If I do not hear from the parties by Friday, October 8, 2004 that they have agreed to the October 21 and 22, 2004 dates and to the time frame previously agreed to, I will let Mr. Levin know that he can release the dates of October 21 and 22, 2004 as his deposition will not be going forward.

I look forward to hearing from you.

Sincerely yours,

Lorie M. Gleim

LMG/mek

cc: Mark Bideau, Esq.

EXHIBIT B

ALBANY
AMSTERDAM
ATLANTA
BOCA RATON
BOSTON
CHICAGO
DALLAS
DENVER
FORT LAUDERDALE
LOS ANGELES
MIAMI
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ZURICH

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER ON NON-PARTY JERRY W. LEVIN'S MOTION FOR PROTECTIVE ORDER

THIS CAUSE came before the Court, in Chambers, on Non-Party Jerry W. Levin's Motion for Protective Order. Based on a review of the Motion, it is

ORDERED AND ADJUDGED that Non-Party Jerry W. Levin's Motion for Protective Order is Granted. If the parties cannot agree as to the date, time, place, and length of the deposition, the parties shall set the appropriate motion upon the Court's regular calendar for a determination.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 18 day of October, 2004.

DAVID F. CROW
Circuit Court Judge, for
ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Lorie M. Gleim, Esq.
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West Palm Beach, FL 33401

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Jerold S. Solovy, Esq.
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GREENBERG
ATTORNEYS AT LAW
TRAURIG

Transmittal Cover Sheet

TO	**Lawrence Bemis** **Thomas A. Clare**	**FAX: 202/879-5200**
Company	Kirkland & Ellis LLP Tel: 202/879-5000	
TO	**Joseph Ianno**	**FAX: 659-7368**
Company	Carlton Fields, P.A. Tel: 659-7070	
FROM	**Lorie M. Gleim, Esquire**	
Direct Dial	561/650-7948	
E-Mail	*gleiml@gtlaw.com*	
File Number	**16560.071300**	
Date	**October 18, 2004**	
Comments	**Attached please find the order entered today granting Levin's motion for protective order.**	

3 pgs

Please notify us immediately if not received properly at 561/650-7900

The information contained in this transmission is attorney privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone collect and return the original message to us at the address below via the U.S. Postal Service. We will reimburse you for your postage. Thank you.

777 South Flagler Drive, Suite 300 East, West Palm Beach, Florida 33401 (561) 650-7900 Fax (561) 655-6222

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.
MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,
vs.
MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

CASE NO. CA 03-5165 AI

NOTICE OF TAKING VIDEOTAPED DEPOSITIONS

To: Thomas A. Clare, Esq.
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Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following parties and witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Ruth Porat	November 23-24, 2004
Michael Rankowitz	November 4, 2004
Morgan Stanley & Co., Inc. on the topics identified on Exhibit A.	October 25, 2004
Morgan Stanley & Co., Inc. on the topics identified on Exhibit B.	November 10, 2004
Morgan Stanley & Co., Inc. on the topics identified on Exhibit C.	October 27, 2004
Morgan Stanley & Co., Inc. on the topics identified on Exhibit D.	November 3, 2004

All of the depositions will be conducted at Esquire Deposition Services, 216 East 45th Street, New York, NY 10017 and will begin at 9:30 a.m. The depositions will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until completed.

With respect to the depositions of Morgan Stanley & Co., Inc. ("MS&Co.") identified above, please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List this 18th day of October 2004.

Dated: October 18, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409
(561) 686-6300

Document Number: 1167384

SERVICE LIST

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Washington, D.C. 20036-3209

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Exhibit A

CORPORATE DEPOSITION TOPICS

1. All misrepresentations and/or omissions which MS&Co. or any of its affilliates contends were committed by or on behalf of MacAndrews & Forbes Holdings Inc., Coleman (Parent) Holdings Inc. ("CPH"), or The Coleman Company, Inc. in connection with Sunbeam's acquisition of CPH's interest in The Coleman Company, Inc., including, but not limited to the following:

A. The identities of the individuals who allegedly made misrepresentations and/or omissions that were allegedly relied upon.

B. The individual(s) to whom the alleged misrepresentations and/or omissions were made;

C. The date and time that each alleged misrepresentation and/or omission was made;

D. The identities of the individuals who relied upon the alleged misrepresentations and/or omissions;

E. The reliance of each individual on the alleged misrepresentations and/or omissions.

Exhibit B

CORPORATE DEPOSITION TOPICS

1. The value of American Household, Inc. on the following dates: (a) February 6, 2001; and (b) September 20, 2004.

2. The value of MS&Co.'s or any of its affilliates' interest in American Household, Inc. on the following dates: (a) February 6, 2001; and (b) September 20, 2004.

Exhibit C

CORPORATE DEPOSITION TOPICS

1. All fees, expenses, other compensation, or assets billed by or otherwise due to Morgan Stanley & Co., Inc. ("MS&Co."), Morgan Stanley Senior Funding, Inc. ("MSSF"), or any of their affiliates concerning or on behalf of Sunbeam Corp. (including American Household, Inc.) and all fees, expenses, other compensation, or assets paid or provided by or on behalf of Sunbeam Corp. (including American Household, Inc.) to MS&Co., MSSF, or any of their affiliates.

Exhibit D

CORPORATE DEPOSITION TOPICS

1. All of the procedures of, rules for, and activities of the Equity Commitment Committee in 1997 and 1998.

2. The role of the Equity Commitment Committee in 1997 and 1998.

3. All documents typically or ordinarily generated by and for the Equity Commitment Committee in the course of a transaction in 1997 and 1998.

4. All of the procedures of, rules for, and activities of the Leveraged Finance Commitment Committee and/or the Leveraged Finance Committee from 1997 to the present.

5. The role of the Leveraged Finance Commitment Committee and/or the Leveraged Finance Committee in 1997 and 1998.

6. All documents typically or ordinarily generated by and for the Leveraged Finance Commitment Committee and/or the Leveraged Finance Committee in the course of a transaction in 1997 and 1998.

7. The process, procedures, and requirements for preparing, approving, or issuing "highly confident" letters in 1997 and 1998.

8. All non-transaction specific documents generated in connection with preparing, approving, or issuing "highly confident" letters in 1997 and 1998.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,

Defendant(s).

_____/

CASE NO: CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant(s).

_____/

AMENDED NOTICE OF VIDEOTAPED DEPOSITION

PLEASE TAKE NOTICE that Morgan Stanley & Company Incorporated and Morgan Stanley Senior Funding, Inc. will take the videotaped deposition of James Maher, pursuant to Florida Rules of Civil Procedure 1.280 and 1.310. The oral examination will take place on November 3, 2004 at 9:00 a.m. and continue until completed at the offices of Kirkland & Ellis, LLP, 153 East 53rd Street, New York, New York, 10022. Morgan Stanley & Company Incorporated and Morgan Stanley Senior Funding reserve the right to seek additional deposition testimony form Mr. Maher in the event that such examination is not completed on November 3, 2004. The deposition will be taken before a person authorized to administer oaths and recorded by stenographic and videographic means. The video operator will be Esquire Deposition Services of 216 E. 45th Street in New York, New York. The witness is instructed to bring all

16div-007433

books, papers, and other things in his possession or under his control relevant to this lawsuit (and not previously produced in discovery) to the examination.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 18th day of October, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
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Rebecca A. Beynon
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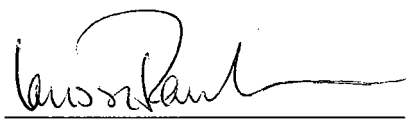
Telephone: (202) 326-7900
Facsimile: (202) 326-7999

Counsel for Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc.

Joseph Ianno, Jr. (FL Bar No. 655351)
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368
E-mail: jianno@carltonfields.com

BY: 

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,

Defendant(s).

_____/

CASE NO: CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant(s).

_____/

AMENDED NOTICE OF VIDEOTAPED DEPOSITION

PLEASE TAKE NOTICE that Morgan Stanley & Company Incorporated and Morgan Stanley Senior Funding, Inc. will take the videotaped deposition of James Maher, pursuant to Florida Rules of Civil Procedure 1.280 and 1.310. The oral examination will take place on November 3, 2004 at 9:00 a.m. and continue until completed at the offices of Kirkland & Ellis, LLP, 153 East 53rd Street, New York, New York, 10022. Morgan Stanley & Company Incorporated and Morgan Stanley Senior Funding reserve the right to seek additional deposition testimony form Mr. Maher in the event that such examination is not completed on November 3, 2004. The deposition will be taken before a person authorized to administer oaths and recorded by stenographic and videographic means. The video operator will be Esquire Deposition Services of 216 E. 45th Street in New York, New York. The witness is instructed to bring all

16div-007436

books, papers, and other things in his possession or under his control relevant to this lawsuit (and not previously produced in discovery) to the examination.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 18th day of October, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
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Rebecca A. Beynon
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Counsel for Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc.

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222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368
E-mail: jianno@carltonfields.com

BY: _____

SERVICE LIST

Counsel for Coleman(Parent) Holdings & MacAndrews & Forbes

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SEARCY, DENNEY, SCAROLA,
BARNHARDT & SHIPLEY, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy
Michael Brody
JENNER & BLOCK, LLC
One IBM Plaza, Suite 400
Chicago, IL 60611

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,

Defendant(s).

_____/

CASE NO: CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant(s).

_____/

AMENDED NOTICE OF VIDEOTAPED DEPOSITION

PLEASE TAKE NOTICE that Morgan Stanley & Company Incorporated and Morgan Stanley Senior Funding, Inc. will take the videotaped deposition of Ronald Perelman, pursuant to Florida Rules of Civil Procedure 1.280 and 1.310. The oral examination will take place on October 26, 2004 at 9:30 a.m. and October 27, 2004 at 9:30 a.m. and continue from day to day until completed at the offices of Carlton Fields, P.A., 222 Lakeview Ave., Suite 1400, West Palm Beach, Florida 33401. The deposition will be taken before a person authorized to administer oaths and recorded by stenographic and videographic means. The video operator will be Esquire Deposition Services Courthouse Tower, 44 West Flagler Street, 14th Floor, Miami, Florida. The witness is instructed to bring all books, papers, and other things in his possession or under his control relevant to this lawsuit (and not previously produced in discovery) to the examination.

16div-007440

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 18th day of October, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
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Facsimile: (202) 326-7999

Counsel for Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc.

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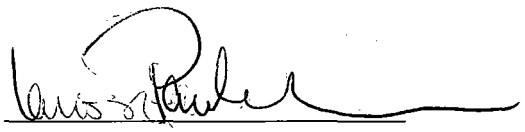
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368
E-mail: jianno@carltonfields.com

BY: 

SERVICE LIST

Counsel for Coleman(Parent) Holdings & MacAndrews & Forbes

Jack Scarola
SEARCY, DENNEY, SCAROLA,
BARNHARDT & SHIPLEY, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy
Michael Brody
JENNER & BLOCK, LLC
One IBM Plaza, Suite 400
Chicago, IL 60611

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,
vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,
vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITIONS

To: Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that MacAndrews & Forbes Holdings Inc. will take the deposition upon oral examination of the following parties and witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Mitch Petrick	November 1-2, 2004
Simon Rankin	October 25, 2004
Morgan Stanley Senior Funding, Inc. on topics identified on Exhibit A.	October 25, 2004
Morgan Stanley Senior Funding, Inc. on topics identified on Exhibit B.	October 29, 2004
Morgan Stanley Senior Funding, Inc. on topics identified on Exhibit C.	November 10, 2004
Morgan Stanley Senior Funding, Inc. on topics identified on Exhibit D.	October 27, 2004

All of the depositions will be conducted at Searcy Denney Scarola Barnhart & Shipley, P.A. 02139 Palm Beach Lakes Boulevard, West Palm Beach, Florida 33402 and will begin at 9:30 a.m. The depositions will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until completed.

With respect to the depositions of Morgan Stanley Senior Funding, Inc. ("MSSF") identified above, please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List this 18th day of October 2004.

Dated: October 18, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART
& SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409
(561) 686-6300

Document Number: 1167311

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KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Exhibit A

CORPORATE DEPOSITION TOPICS

1. All misrepresentations and/or omissions which MSSF contends were committed by or on behalf of MacAndrews & Forbes Holdings Inc., Coleman (Parent) Holdings Inc. ("CPH"), or The Coleman Company, Inc. in connection with Sunbeam's acquisition of CPH's interest in The Coleman Company, Inc., including, but not limited to the following:

A. The identities of the individuals who allegedly made misrepresentations and/or omissions that MSSF allegedly relied upon.

B. The individual(s) to whom the alleged misrepresentations and/or omissions were made;

C. The date and time that each alleged misrepresentation and/or omission was made;

D. The identities of the individuals who relied upon the alleged misrepresentations and/or omissions;

E. The reliance of each individual on the alleged misrepresentations and/or omissions.

Exhibit B

CORPORATE DEPOSITION TOPICS

1. The authenticity, creation, use, maintenance, and business purpose of documents produced by Morgan Stanley & Co., Inc. and Morgan Stanley Senior Funding, Inc. at Bates Nos. Morgan Stanley Confidential 0084771-0085783 and Morgan Stanley Confidential 0094003-0094032.

Exhibit C

CORPORATE DEPOSITION TOPICS

1. The value of American Household, Inc. on the following dates: (a) February 6, 2001; and (b) September 20, 2004.

2. The value of Morgan Stanley Senior Funding, Inc.'s interest in American Household, Inc. on the following dates: (a) February 6, 2001; and (b) September 20, 2004.

Exhibit D

CORPORATE DEPOSITION TOPICS

1. All fees, expenses, other compensation, or assets billed by or otherwise due to Morgan Stanley & Co., Inc. ("MS&Co."), Morgan Stanley Senior Funding, Inc. ("MSSF"), or any of their affiliates concerning or on behalf of Sunbeam Corp. (including American Household, Inc.) and all fees, expenses, other compensation, or assets paid or provided by or on behalf of Sunbeam Corp. (including American Household, Inc.) to MS&Co., MSSF, or any of their affiliates.

CARLTON FIELDS, P.A.

ATTORNEYS AT LAW

ESPERANTÉ
222 LAKEVIEW AVENUE, SUITE 1400
WEST PALM BEACH, FLORIDA 33401-6149

MAILING ADDRESS
P.O. BOX 150, WEST PALM BEACH, FL 33402-0150
TEL (561) 659-7070 FAX (561) 659-7368

FAX COVER SHEET

		Phone Number	Fax Number
Date:	October 19, 2004		
To:	Jack Scarola	(561) 686-6300	(561) 684-5816
	Jerold Solovy/Michael Brody	(312) 222-9350	(312) 840-7711
	Thomas Clare	(202) 879-5993	(202) 879-5200
	Rebecca Beynon/Mark Hansen	(202) 326-7900	(202) 326-7999
From:	Joyce Dillard, CLA	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 9

Message:

Coleman v. Morgan Stanley & Co., Inc.

Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings, Inc.

To follow please find a copy of Joe Ianno's letter to Jack Scarola of today's date with enclosed motion.

☐ ***Original to follow Via Regular Mail*** ☐ ***Original will Not be Sent*** ☐ ***Original will follow via Overnight Courier***

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (if long distance, please call collect) and return the original message to us at the above address via the U.S. Postal Service. Thank you.

IF THERE ARE ANY PROBLEMS OR COMPLICATIONS, PLEASE NOTIFY US IMMEDIATELY AT:
(561) 659-7070

TELECOPIER OPERATOR: _____

ATLANTA
MIAMI
ORLANDO
ST. PETERSBURG
TALLAHASSEE
TAMPA
WEST PALM BEACH

CARLTON FIELDS
ATTORNEYS AT LAW

Esperanté
222 Lakeview Avenue, Suite 1400
West Palm Beach, Florida 33401-6149
P.O. Box 150
West Palm Beach, Florida 33402-0150

561.659.7070
561.659.7368 fax
www.carltonfields.com

October 19, 2004

Jack Scarola, Esq.
Searcy, Denney, et al.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33401

VIA FACSIMILE

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co. Inc.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings, Inc.

Dear Jack:

Enclosed please find a copy of Morgan Stanley's Motion for Issuance of Commissions and its attached proposed Agreed Order. Due to upcoming discovery deadlines, please advise at your earliest opportunity if we can submit the Agreed Order in the form enclosed.

Thank you.

Sincerely,

Joseph Ianno, Jr.

/jed

Enclosure

cc: Jerry Solovy and Michael Brody (w/encl.)
Thomas Clare (w/encl.)
Rebecca Beynon (w/encl.)

WPB#566938.7

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs. CASE NO: CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.
_____/

MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY SENIOR FUNDING, INC.'S MOTION FOR ISSUANCE OF COMMISSIONS

Defendant, Morgan Stanley & Co. Incorporated, and Plaintiff, Morgan Stanley Senior Funding, Inc. (collectively "Morgan Stanley") file their Motion for Issuance of Commissions and states:

1. Morgan Stanley needs to depose and obtain documents concerning this case from the following witnesses residing in New York and Delaware:

Glenn Dickes
New York, NY

16div-007452

Allison L. Amorison
Skadden, Arps, Slate, Meager & Flom, LLP
One Rodney Square
Wilmington, DE 19899

Blaine (Fin) V. Fog
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036

The commissioners that Morgan Stanley seeks to have appointed are:

Esquire Deposition Services
216 E. 45th Street, 8th FL
New York, New York 10017-3304

Esquire Deposition Services
1 Commerce Center, Suite 760
Wilmington, DE 19801

or any person duly authorized by it and able to administer oaths pursuant to the laws of New York and Delaware.

2. MS & Co. requests that this Court issue a commission appointing commissioners in New York and Delaware to take the videotaped testimony of the above witness under oath and on oral examination in accordance with Fla. R Civ. P. 1.300 and 1.310 and Florida Statutes § 92.251.

3. Attached as Exhibit "A" is the proposed commission to the commissioners in New and Delaware authorizing them to take the depositions of the witnesses identified above.

WHEREFORE, Morgan Stanley respectfully requests that this Court issue the commission in the form attached as Exhibit "A."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 19th day of October, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
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Facsimile: (202) 326-7999

Counsel for Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc.

CARLTON FIELDS, P.A.
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West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368
E-mail: jianno@carltonfields.com

BY: Joseph Ianno
Joseph Ianno, Jr.
Florida Bar No. 655351

SERVICE LIST

Jack Scarola
SEARCY, DENNEY, SCAROLA, BARNHARDT & SHIPLEY, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy
Michael Brody
JENNER & BLOCK, LLC
One IBM Plaza, Suite 400
Chicago, IL 60611

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

PROPOSED

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs. CASE NO: CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.
_____/

AGREED ORDER APPOINTING COMMISSIONERS REGARDING THE DEPOSITIONS OF GLENN DICKES, BLAINE V. FOG, AND ALLISON AMORISON

THIS CAUSE, having come before the Court on Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc.'s ("Morgan Stanley") Motion for Issuance of Commissions of out-of-state depositions. After reviewing the pleadings and being advised of the agreement of the parties, it is ORDERED AND ADJUDGED that:

1. Morgan Stanley's desires to take the videotaped depositions of and obtain documents from the following out of state witnesses who reside in New York and Delaware is Granted:

Glenn Dickes

Allison L. Amorison
Skadden, Arps, Slate, Meager & Flom, LLP

EXHIBIT
A

One Rodney Square
Wilmington, DE 19899

Blaine (Fin) V. Fog
Skadden, Arps, Slate, Meager & Flom, LLP
Four Time Square
New York, NY 10036

2. The following commissioners, or any person duly authorized by him, is appointed as commissioners to take the videotaped testimony (and obtain the requested documentation) of the above witnesses and other witnesses whose discovery is sought in the commissions' jurisdiction under oath and on oral examination in accordance with the applicable Florida Statutes and Rules of Civil Procedure:

Esquire Deposition Services
216 E. 45th Street, 8th FL
New York, New York 10017-3304

Esquire Deposition Services
1 Commerce Center, Suite 760
Wilmington, DE 19801

or any person able to administer oaths pursuant to the laws of New York and Delaware and duly authorized by him.

3. This order does not purport to grant the power of the commissioners appointed to subpoena witnesses or documents, but simply the power to administer oaths and transcribe deposition testimony.

DONE AND ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida this ____ day of October, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

Copies furnished to:

Joseph Ianno, Jr.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas Clare
655 15th Street, NW, Suite 1200
Washington, DC 20005

John Scarola
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy
One IBM Plaza, Suite 4400
Chicago, IL 60611

CARLTON FIELDS, P.A.

ATTORNEYS AT LAW

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FAX COVER SHEET

Date:	October 19, 2004	Phone Number	Fax Number
To:	Jack Scarola	(561) 686-6300	(561) 684-5816
	Jerold Solovy/Michael Brody	(312) 222-9350	(312) 840-7711
	Thomas Clare	(202) 879-5993	(202) 879-5200
	Rebecca Beynon/Mark Hansen	(202) 326-7900	(202) 326-7999
From:	Joyce Dillard, CLA	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 13

Message:

Coleman v. Morgan Stanley & Co., Inc.

Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings, Inc.

To follow please find a copy of Morgan Stanley's Motion for Protective Order.

☐ ***Original to follow Via Regular Mail*** ☐ ***Original will Not be Sent*** ☐ ***Original will follow via Overnight Courier***

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (if long distance, please call collect) and return the original message to us at the above address via the U.S. Postal Service. Thank you.

IF THERE ARE ANY PROBLEMS OR COMPLICATIONS, PLEASE NOTIFY US IMMEDIATELY AT:
(561) 659-7070

TELECOPIER OPERATOR: _____

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs. CASE NO: CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.
_____/

MOTION FOR PROTECTIVE ORDER

Defendant, Morgan Stanley & Co. Inc. and Plaintiff, Morgan Stanley Senior Funding, Inc. (collectively "Morgan Stanley"), request that this Court enter a Protective Order pursuant to Fla. R. Civ. P. 1.280(c) that relieves Morgan Stanley of the obligation to appear for videotaped depositions on October 29, 2004, pursuant to the Notice of Taking Videotaped Deposition served on September 30, 2004, by Coleman (Parent) Holdings Inc. ("CPH"). In support, Morgan Stanley states as follows:

1. On July 6, 2004, CPH served its Second Set of Requests for Admission, consisting of two separately-numbered requests. Requests for Admission Numbers 1 and 2

concern documents bearing Bates-numbers Morgan Stanley Confidential 0084771 - 0085783 and Morgan Stanley Confidential 0094003 - 0094032. Requests for Admission Number 1 asked Morgan Stanley to "[a]dmit that documents bates-numbered Morgan Stanley Confidential 0084771 through 0085783 and Morgan Stanley Confidential 0094003 through 0094032 are true and authentic copies of original documents within the meaning of Florida Evidence Code § 90.901." In its Responses and Objections to Coleman (Parent) Holdings Inc.'s Second Set of Requests for Admission served on August 6, 2004 ("Responses"), Morgan Stanley admitted that the referenced documents are true and authentic copies of the original documents.

2. Request for Admission Number 2 asked Morgan Stanley to "[a]dmit that documents bates-numbered Morgan Stanley Confidential 0084771 through 0085783 and Morgan Stanley Confidential 0094003 through 0094032 are records of regularly conducted business activity within the meaning of Florida Evidence Code § 90.803(6)." In its Responses, Morgan Stanley admitted that "the referenced documents are generated in the course of regularly conducted business activity, but denie[d] that the documents, which largely reflect the opinions of out-of-court declarants, qualify for the hearsay exception of Florida Evidence Code § 90.803(6)." Additionally, Morgan Stanley reserved all evidentiary objections to the admissibility of the referenced documents.

3. On August 18, 2004, CPH filed a Motion to Compel seeking an order from the Court directing Morgan Stanley to supplement its responses to Request for Admission Number 2. On September 23, 2004, this Court heard argument on the Motion to Compel and denied the motion.

4. On September 30, 2004, CPH served its Notice of Taking Videotaped Deposition of the "officers, directors, managing agents, or other persons to testify" to the "authenticity, creation, use, maintenance, and business purpose of documents produced by Morgan Stanley and Morgan Stanley Senior Funding, Inc. at Bates-Nos. Morgan Stanley Confidential 0084771-085783 and Morgan Stanley Confidential 0094003-0094032." A copy of CPH's Notice of Taking Videotaped Depositions is attached as Exhibit "A."

5. The documents referenced in both the Notice of Taking Videotaped Deposition and the Requests for Admission Nos. 1 and 2 are personnel evaluation materials for 28 current and former Morgan Stanley employees, consisting of 1044 pages.

6. CPH's attempt to take the October 29, 2004 depositions is not reasonably calculated to lead to the discovery of admissible evidence, is unduly burdensome and harassing.

7. First, Morgan has already produced the documents, and the documents have already been the subject of a large amount of the Court's and counsel's time. Morgan Stanley admitted that the documents are generated in the course of regularly conducted business activity in its Responses of August 6, 2004.

8. In its Responses, Morgan Stanley and MSSF reserved their right to object to the contents of the documents because they contain hearsay opinions of out-of-court declarants and, therefore, their trustworthiness and admissibility as evidence are in question. The admissibility and trustworthiness of the subject documents is a legal determination to be made by this Court at trial pursuant to Fla. Stat. § 90.403 and §90.801 *et seq.* The taking of any videotaped depositions of any officer, director, managing agent, or other person regarding these documents will most certainly not alter their legal status as hearsay opinions of out-of-court declarants. Further, the

deposition testimony will not change the objections that Morgan Stanley has with respect to the trustworthiness and admissibility of the documents. Therefore, pretrial testimony such as that sought in the Notice of Taking Videotaped Deposition is unnecessary, harassing, and not reasonably calculated to the discovery of admissible evidence.

9. Even if the videotaped depositions are allowed to go forward, the evidence that is the subject of the depositions must meet the criteria contained in Fla. Stat. § 90.803. Once again, any determination that the evidence meets the criteria in § 90.803 is a legal determination for this Court to make. Taking videotaped depositions will not aid or assist the Court's determination because the documents have already been produced, and Morgan Stanley has already admitted that the documents were generated and kept in the ordinary course of a regularly conducted business activity.

10. Further, under the extremely compressed schedule for discovery and depositions in this matter, it is unduly burdensome and harassing to require counsel to attend unnecessary depositions and incur unnecessary time and expense in doing so. With regard to "authenticity" and "business purpose," it is unduly burdensome and harassing to require to require Morgan Stanley to testify ***again*** as to the authenticity and business purpose of the referenced documents because Morgan Stanley has already done so in its Responses. Further, it is unduly burdensome and harassing to require Morgan Stanley to testify as to the "maintenance" and "business purpose" of the referenced documents because they already testified to the fact that the documents were "generated in the course of regularly conducted business activity."

11. It is unduly burdensome and harassing for Morgan Stanley to testify as to the "creation" of the referenced documents. CPH has not defined "creation" and it is unclear

whether, for instance, if the "creation" refers to the form of the documents, the content of the documents, the creation date of the documents, the creation of the file which contains the document, or some other form of "creation"; therefore, this term is vague and ambiguous Under these circumstances, it is impossible for Morgan Stanley to designate the officer, director, managing agent, or other person who can testify as to the "creation" of the documents.

12. With respect to Morgan Stanley testifying as to the "use" of the documents, Morgan Stanley admitted in its Responses that the documents are records generated in the course of regularly conducted business activity. The documents are personnel evaluations. Any testimony as to use will not aid the court's determination of the documents' admissibility. Additionally, any testimony as to the use of the documents is not reasonably related to the issues as framed by the pleadings of the instant case. Therefore, such testimony is irrelevant, unduly burdensome, harassing, and not calculated to lead to the discovery of admissible evidence.

WHEREFORE, Morgan Stanley respectfully requests that this Court enter an Order:

(a) Prohibiting CPH from taking the October 29, 2004, deposition; and

(b) Fashioning such other and further relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 19th day of October, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
Zhonette M. Brown
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Counsel for Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc.

CARLTON FIELDS, P.A.
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West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368
E-mail: jianno@carltonfields.com

BY: _____
Joseph Ianno, Jr. 718947
Florida Bar No. 655351

SERVICE LIST

Jack Scarola
SEARCY, DENNEY, SCAROLA, BARNHARDT & SHIPLEY, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy
Michael Brody
JENNER & BLOCK, LLC
One IBM Plaza, Suite 400
Chicago, IL 60611

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITIONS

To: Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

PLEASE TAKE NOTICE that Plaintiff/Defendant Coleman (Parent) Holdings Inc. ("CPH") requests the deposition upon oral examination of Plaintiff Morgan Stanley Senior Funding, Inc. and Defendant Morgan Stanley & Co., Inc. pursuant to Florida Rule of Civil Procedure 1.310 on the date and times set forth below:

Morgan Stanley Senior Funding, Inc.	October 29, 2004 at 9:30 a.m.
Morgan Stanley & Co., Inc.	October 29, 2004 at 1:30 p.m.

The depositions will be recorded by stenographic and videographic means at the offices of Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017-3004. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until complete.

The depositions are being taken with respect to the topics described on the attached Exhibits A (topics for Morgan Stanley Senior Funding, Inc.) and B (topics for Morgan Stanley & Co., Inc.). Please designate one or more officers, directors, managing agents, or other

EXHIBIT
A

persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 30th day of September, 2004.

Dated: September 30, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Michael T. Brody
Deirdre E. Connell
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409
(561) 686-6300

Exhibit A

CORPORATE DEPOSITION TOPICS FOR MSSF

1. The authenticity, creation, use, maintenance, and business purpose of documents produced by Morgan Stanley and Morgan Stanley Senior Funding, Inc. at Bates Nos. Morgan Stanley Confidential 0084771-0085783 and Morgan Stanley Confidential 0094003-0094032.

Exhibit B

CORPORATE DEPOSITION TOPICS FOR MS&Co.

1. The authenticity, creation, use, maintenance, and business purpose of documents produced by Morgan Stanley and Morgan Stanley Senior Funding, Inc. at Bates Nos. Morgan Stanley Confidential 0084771-0085783 and Morgan Stanley Confidential 0094003-0094032.

SERVICE LIST

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FAX TRANSMITTAL

JENNER & BLOCK

Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611
Tel 312 222-9350
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Chicago
Dallas
Washington, DC

Date:	October 20, 2004		
To:	Thomas A. Clare, Esq.	Fax: Voice:	(202) 879-5200 (202) 879-5993
	Joseph Ianno, Jr., Esq.	Fax: Voice:	(561) 659-7368 (561) 659-7070
	John Scarola, Esq.	Fax: Voice:	(561) 684-5816 (before 5 PM) (561) 686-6350, Ext. 140
	Mark C. Hansen, Esq.	Fax: Voice:	(202) 326-7999 (202) 326-7900
From:	Elizabeth A. Coleman 312 923-2608		
Employee Number:	013459	Client Number:	41198-10003

Important: This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is attorney work product, privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via postal service. Thank you.

Message:

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Secretary: Melissa Voss	Extension: 6189

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff, Case No. CA 03-5045 AI

vs.
MORGAN STANLEY & CO., INC.,
Defendant,
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff, Case No. CA 03-5165 AI

vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant,
_____/

NOTICE OF PRODUCTION FROM NON-PARTY

TO:

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
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Suite 1400
West Palm Beach, FL 33401

Mark C. Hansen
KELLOGG, HUBER, HANSEN,
TODD & EVANS, P.L.L.C.
Sumner Square
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036-3206

YOU ARE NOTIFIED that after ten days from the date of service of this Notice, if service is by delivery, or 15 days from the date of service, if service is by mail, and if no objection is received from any party, the undersigned will issue or apply to the Clerk of this

Coleman (Parent) Holdings, Inc. vs Morgan Stanley & Co., Inc.
2003 CA 005045 AI
Notice of Production from Non-Party

Court for issuance of the attached Subpoena directed to the following individual(s) to produce the items listed at the time and place specified in the attached Subpoena Duces Tecum.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax to all Counsel on the attached list, this 20th day of October, 2004.

Jack Scarola, Esq.
Florida Bar No.: 169440
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 478-0754

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Chicago, IL 60611
Phone: (312) 222-9350
Fax: (312) 527-0484

Attorneys for CPH and MAFCO

COUNSEL LIST

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Thomas D. Yannucci, P.C.
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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH, COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

SUBPOENA DUCES TECUM

THE STATE OF FLORIDA

TO: Custodian of Records
Sunbeam Corporation
(n/k/a American Household, Inc.)
2381 Executive Center Drive
Boca Raton, Florida 33431

YOU ARE COMMANDED to appear at Searcy Denney Scarola Barnhart & Shipley, P.A., 2139 Palm Beach Lakes Boulevard, West Palm Beach, FL, 33409 pursuant to the subpoena issued by the Circuit Court of the Fifteenth Judicial District of Florida and Florida Rule of Civil Procedure 1.310 on November 2, 2004 at 9:30 a.m., and to have with you at that time and place the documents specified on the attached Exhibit A.

If you fail to:

1) Appear as specified; or

2) Furnish the records instead of appearing as provided above; or

3) Object to this subpoena,

You may be in contempt of court. You are subpoenaed to appear by the following attorney, and unless excused from this subpoena by this attorney or the court, you shall respond to this subpoena as directed.

DATED this 20th day of October, 2004.

Jack Scarola, Esq.
Florida Bar No.: 169440
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
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JENNER & BLOCK LLP
One IBM Plaza
Chicago, IL 60611
Phone: (312) 222-9350
Fax: (312) 527-0484

Attorneys for CPH and MAFCO

CERTIFICATION OF RESPONSE TO SUBPOENA DUCES TECUM WITHOUT DEPOSITION

STATE OF FLORIDA
COUNTY OF _____

The undersigned, as custodian of records for Bank of America National Trust and Savings Corporation, certifies that the attached documents consisting of _____ pages represents a true copy of all items within my possession, custody or control which are described in the Subpoena Duces Tecum Without Deposition served on me in the above styled action and each page is numbered by me for identification. Production is complete and has been numbered by the custodian of records.

It is further certified that originals of the items produced are maintained under the direction, custody and control of the undersigned.

_____

The foregoing Certification was acknowledged before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, this _____ day of _____, 20___, who:

[ ] is personally known to me; or

[ ] has produced _____ as identification; and who:

[ ] did or

[ ] did not, take an oath,

and who executed the foregoing certification, and who acknowledged the foregoing certification to be freely and voluntarily executed for the purposes therein recited.

_____
Notary Public, State of Florida at Large

My Commission Expires:

EXHIBIT A

SUBPOENA DUCES TECUM TO CUSTODIAN OF RECORDS OF NON-PARTY SUNBEAM CORPORATION (N/K/A AMERICAN HOUSEHOLD, INC.)

You are hereby requested to produce the following documents pursuant to the definitions and instructions contained herein:

DOCUMENTS REQUESTED

1. Documents sufficient to show the actual and projected sales, profitability, and gross margins of all Coleman-related operating companies from January 1, 1996 to the present.

2. Documents from January 1, 2003 to the present concerning the sale or possible sale of all or part of Sunbeam or American Household, Inc. ("AHI").

3. Documents from January 1, 2003 to the present concerning the value of American Household, Inc., or any portion of AHI.

4. Financial statements of AHI from January 1, 2003 to the present.

5. Financial projections of AHI from January 1, 2003 to the present.

6. Documents concerning Jarden Corporation's acquisition of AHI, which acquisition was publicly announced on September 20, 2004.

DEFINITIONS

1. "Coleman" means The Coleman Company, Inc. and any of its predecessors, successors, subsidiaries, and present and former officers, directors, employees, representatives, and agents.

2. "Sunbeam" means Sunbeam Corporation and any of its predecessors, successors, subsidiaries, and present and former officers, directors, employees, representatives, and agents.

3. "American Household" or "AHI" means American Household, Inc. and any of its predecessors, successors, subsidiaries, and present and former officers, directors, employees, representatives, and agents.

4. "Jarden Corporation" mean Jarden Corporation and any of its predecessors, successors, subsidiaries, and present and former officers, directors, employees, representatives, and agents.

5. "Documents" shall be given the broad meaning provided in Rule 1.350 in the Florida Rules of Civil Procedure and refers to any form or means, whether physical, visual, or electronic, in or by which words, numbers, or ideas are recorded or preserved, whether fixed in tangible medium or electronically stored, including any and all drafts of any final document. The word "documents" shall include, by way of example and not by way of limitation, all of the following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, notes, messages, reports, studies, press releases, comparisons, books, accounts, checks, audio and video recordings and transcriptions thereof, pleadings, testimony, articles, bulletins, pamphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk calendars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, minutes for meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements, memoranda of understanding, letters of intent, computer tapes, computer drives or memories, computer diskettes or disks, e-mail, CD-ROMs, or any other tangible thing on which any handwriting, typing, printing, photostatic, electronic, or other form of communication or information is recorded or reproduced, together with all notations on any of the foregoing, all originals, file copies, or other unique copies of the foregoing, and all versions or drafts thereof, whether used or not.

INSTRUCTIONS

1. Documents shall be produced as they are kept in the usual course of business, or organized and labeled to correspond to the categories in this Request. Documents attached to each other should not be separated. Documents consisting of items previously produced in Litigations, Arbitrations, and/or SEC Administrative Proceedings with Bates numbering shall be produced in Bates number order

2. All documents shall be produced in the file folder, envelope or other container in which the documents are kept or maintained by you. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks.

3. The relevant periods are set forth in the requests for documents, and shall include all documents and information which relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received prior or subsequent to that period. Please supplement or correct your responses to these requests if, at any time, you become aware that your responses are incomplete or incorrect in any respect.

4. If you claim the attorney-client privilege, or any other privilege or work-product protection for all or any portion of a document, you shall provide a privilege log that describes the withheld material sufficiently to allow Coleman to test the privilege or protection asserted.

6. The following rules of construction apply:

a. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be outside of their scope;

b. The term "including" shall be construed to mean "without limitation"; and

c. The use of the singular form of any word includes the plural and vice versa.

COUNSEL LIST

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655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Mark C. Hansen
KELLOGG, HUBER, HANSEN,
TODD & EVANS, P.L.L.C.
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Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
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CHICAGO_1168148_1

FAX TRANSMITTAL

JENNER&BLOCK

Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611
Tel 312 222-9350
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Chicago
Dallas
Washington, DC

Date: October 20, 2004

To:	Joseph Ianno, Jr. Carlton Fields	Fax: Voice:	561 659-7368 561 659-7070
	Thomas A. Clare Kirkland & Ellis	Fax: Voice:	202 879-5200 202 879-5000
	Mark C. Hansen Kellogg, Huber, Hansen, Todd & Evans	Fax: Voice:	202 326-7999 202 326-7900
From:	Deirdre E. Connell dconnell@jenner.com	Fax: Voice:	312 840-7661 312 923-2661
		Client Number:	41198-10003

Important: This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is attorney work product, privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via postal service. Thank you.

Message: Please see attached.

Total number of pages including this cover sheet: 9

Time Sent: 6:10 p.m.

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Sent By:

Secretary: Ms. Eddington

Extension: 6490

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

CASE NO. CA 03-5165 AI

NOTICE OF TAKING VIDEOTAPED DEPOSITION

To: Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following party pursuant to Florida Rule of Civil Procedure 1.310 on the dates, times, and locations set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co., Inc. on the topics identified on Exhibit A.	November 9, 2004

The deposition will be conducted at Esquire Deposition Services, 216 East 45th Street, New York, NY 10017. The deposition will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The deposition will be taken before a person authorized to administer oaths and will continue day to day until completed.

With respect to the party deposition identified above, please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List this 20th day of October 2004.

Dated: October 20, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART
& SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409
(561) 686-6300

Exhibit A

CORPORATE DEPOSITION TOPICS

1. All amounts lent in connection with, advanced on, charged to, assessed against, paid on, received from or on behalf of, credited to or on behalf of, or applied to any loans to, Sunbeam or AHI, or any debts payable by Sunbeam or AHI, to MSSF or any affiliate of MSSF, or in which MSSF or any affiliate of MSSF has participated or held any interest.

2. The balance(s) due after each advance, charge, payment, credit, or other transaction referred to in topic number 1, above.

SERVICE LIST

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W.
Suite 400
Washington, D.C. 20036-3209

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,
vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,
vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITION

To: Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD
& EVANS, P.L.L.C.
Sumner Square, 1615 M Street
N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that MacAndrews & Forbes Holdings Inc. will take the deposition upon oral examination of the following party pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley Senior Funding, Inc. on topics identified on Exhibit A.	November 9, 2004

The depositions will be conducted at Searcy Denney Scarola Barnhart & Shipley, P.A. 02139 Palm Beach Lakes Boulevard, West Palm Beach, Florida 33402 and will begin at 9:30 a.m. The deposition will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The deposition will be taken before a person authorized to administer oaths and will continue day to day until completed.

With respect to the deposition of Morgan Stanley Senior Funding, Inc. ("MSSF") identified above, please designate one or more officers, directors, managing agents, or other

persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List this 20th day of October 2004.

Dated: October 20, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409
(561) 686-6300

Document Number: 1167311

Exhibit A

CORPORATE DEPOSITION TOPICS

1. All amounts lent in connection with, advanced on, charged to, assessed against, paid on, received from or on behalf of, credited to or on behalf of, or applied to any loans to, Sunbeam or AHI, or any debts payable by Sunbeam or AHI, to MSSF or any affiliate of MSSF, or in which MSSF or any affiliate of MSSF has participated or held any interest.

2. The balance(s) due after each advance, charge, payment, credit, or other transaction referred to in topic number 1, above.

SERVICE LIST

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W.
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Washington, D.C. 20036-3209

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Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,

Defendant(s).

_____/

CASE NO: CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant(s).

_____/

NOTICE OF VIDEOTAPED DEPOSITION

PLEASE TAKE NOTICE that Morgan Stanley & Company Incorporated and Morgan Stanley Senior Funding, Inc. will take the videotaped deposition of Anne Jordan, pursuant to Florida Rules of Civil Procedure 1.280 and 1.310. The oral examination will take place on October 27, 2004 at 1:00 pm and continue from day to day until completed at the offices of Kirkland & Ellis LLP, 200 East Randolph Drive, Chicago, Illinois 60601-6636. The deposition will be taken before a person authorized to administer oaths and recorded by stenographic and videographic means. The video operator will be Esquire Deposition Services, 155 N. Wacher Drive, Suite 1000, Chicago, IL 60606. The witness is instructed to bring all books, papers, and other things in his possession or under his control relevant to this lawsuit (and not previously produced in discovery) to the examination.

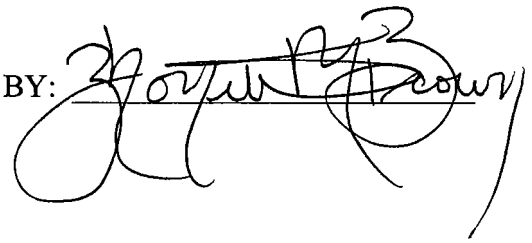
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and federal express on this 20th day of October, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar # 618349)
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

Counsel for Morgan Stanley & Co. Incorporated & Morgan Stanley Senior Funding, Inc.

Joseph Ianno, Jr. (FL Bar # 655351)
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368
e-mail: jianno@carltonfields.com

BY: 

SERVICE LIST

Counsel for Coleman(Parent) Holdings Inc. & MacAndrews & Forbes Holdings Inc.

John Scarola
SEARCY, DENNEY, SCAROLA,
BARNHARDT & SHIPLEY, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409

Jerold S. Solovy
JENNER & BLOCK, LLC
One IBM Plaza, Suite 4400
Chicago, Illinois 60611

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

CASE NO. CA 03-5165 AI

vs.

MACANDREWS & FORBES HOLDINGS INC. and
COLEMAN (PARENT) HOLDINGS INC.,
Defendants.
_____/

**COLEMAN (PARENT) HOLDINGS INC.'S
EIGHTH REQUEST FOR PRODUCTION OF DOCUMENTS
TO MORGAN STANLEY & CO., INC.**

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys Searcy Denney Scarola Barnhart & Shipley P.A. and Jenner & Block LLP, hereby serves its Eighth Request for Production of Documents upon Morgan Stanley & Co., Inc. ("MS&Co."), and requests responses and the production of documents at the office of Searcy Denney Scarola Barnhart & Shipley P.A., 2139 Palm Beach Lakes Blvd., West Palm Beach, Florida, within fourteen (14) days from the date of service pursuant to the Court's October 14, 2004 Order.

DEFINITIONS AND INSTRUCTIONS

CPH incorporates by reference its Definitions and Instructions set forth in CPH's First Request for Production of Documents, served on MS&Co. on May 9, 2003. In addition, the following definitions apply:

1. "MS&Co." means Morgan Stanley & Co., Inc. or any of its affiliates, subsidiaries, divisions, predecessors, and successors.

2. "Coleman Escrow Notes" means the Coleman Escrow Corp. Senior Secured First and Second Priority Discount Notes due 2001 that are described in CPH 0473148-CPH 0473165 and Morgan Stanley Confidential 0001575-0001579.

3. "Security" has the same meaning as provided in 15 U.S.C. 77b(a)(1).

DOCUMENTS REQUESTED

1. For the time period January 1, 1996 to the present, all documents referring or relating to MS&Co.'s purchase or sale of Coleman Escrow Notes and any other Security, or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc.

2. For the time period January 1, 1996 to the present, documents sufficient to show MS&Co.'s purchase price, other costs in connection with the purchase, sales price, other costs in connection with the sale, gains, losses, and amount or rate of return on each purchase or sale of Coleman Escrow Notes and any other Security, or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc.

3. All documents referring or relating to the October 9, 1997 "Global High Yield Investment Research" report on The Coleman Company, Inc. and the Coleman Escrow Notes, including all documents used in creating that report.

4. All documents referring or relating to the January 26, 1998 "High Yield Industry Review" report on The Coleman Company, Inc. and the Coleman Escrow Notes, including all documents used in creating that report.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to all counsel on the attached Service List, this 21st day of October, 2004.

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
JENNER & BLOCK LLP
One IBM Plaza
Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409
(561) 686-6300

SERVICE LIST

Thomas A. Clare, Esq.
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222 Lake View Avenue
Suite 1400
West Palm Beach, Florida 33401

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, PLLC
1615 M. Street, N.W.
Washington, D.C. 20036

FAX TRANSMITTAL

JENNER&BLOCK

Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611
Tel 312 222-9350
www.jenner.com

Chicago
Dallas
Washington, DC

Date:	October 21, 2004		
To:	Thomas A. Clare, Esq.	Fax: Voice:	(202) 879-5200 (202) 879-5993
	Joseph Ianno, Jr., Esq.	Fax: Voice:	(561) 659-7368 (561) 659-7070
	John Scarola, Esq.	Fax: Voice:	(561) 684-5816 (before 5 p.m.) (561) 686-6350, Ext. 140
	Mark C. Hansen, Esq.	Fax: Voice:	(202) 326-7999 (202) 326-7900
From:	Elizabeth A. Coleman 312 923-2659		
Employee Number:	013459	Client Number:	41198-10003

Important: This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is attorney work product, privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via postal service. Thank you.

Message:

Total number of pages including this cover sheet: 12

Time Sent:

If you do not receive all pages, please call: 312 222-9350

Sent By:

Secretary: Melissa Voss

Extension: 6189

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff, Case No. CA 03-5045 AI

vs.
MORGAN STANLEY & CO., INC.,
Defendant,
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff, Case No. CA 03-5165 AI

vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant,
_____/

NOTICE OF PRODUCTION FROM NON-PARTY

TO:

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Mark C. Hansen
KELLOGG, HUBER, HANSEN,
TODD & EVANS, P.L.L.C.
Sumner Square
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036-3206

YOU ARE NOTIFIED that after ten days from the date of service of this Notice, if service is by delivery, or 15 days from the date of service, if service is by mail, and if no objection is received from any party, the undersigned will issue or apply to the Clerk of this

Coleman (Parent) Holdings, Inc. vs Morgan Stanley & Co., Inc.
2003 CA 005045 AI
Notice of Production from Non-Party

Court for issuance of the attached Subpoena directed to the Custodian of Records, Sunbeam Corporation (n/k/a American Household, Inc.) to produce the items listed at the time and place specified in the attached Subpoena Duces Tecum.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all Counsel on the attached list, this 21st day of October, 2004.

Jack Scarola, Esq.
Florida Bar No.: 169440
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 478-0754

Jerold S. Solovy, Esq.
JENNER & BLOCK LLP
One IBM Plaza
Suite 4400
Chicago, IL 60611
Phone: (312) 222-9350
Fax: (312) 527-0484

Attorneys for CPH and MAFCO

COUNSEL LIST

Joseph Ianno, Jr., Esquire
CARLTON FIELDS, ET AL.
222 Lakeview Avenue
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West Palm Beach, FL 33401

Thomas D. Yannucci, P.C.
Thomas A. Clare
Brett McGurk
KIRKLAND AND ELLIS
655 15th Street, N.W., Suite 1200
Washington, DC 20005

Mark C. Hansen
KELLOGG, HUBER, HANSEN,
TODD & EVANS, P.L.L.C.
Sumner Square
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036-3206

CHICAGO_1168590_1

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

SUBPOENA DUCES TECUM

THE STATE OF FLORIDA

TO: Custodian of Records
Sunbeam Corporation
(n/k/a American Household, Inc.)
2381 Executive Center Drive
Boca Raton, Florida 33431

YOU ARE COMMANDED to appear at Searcy Denney Scarola Barnhart & Shipley, P.A., 2139 Palm Beach Lakes Boulevard, West Palm Beach, FL, 33409 pursuant to the subpoena issued by the Circuit Court of the Fifteenth Judicial District of Florida and Florida Rule of Civil Procedure 1.310 on November 2, 2004 at 9:30 a.m., and to have with you at that time and place the documents specified on the attached Exhibit A.

If you fail to:

1) Appear as specified; or

2) Furnish the records instead of appearing as provided above; or

3) Object to this subpoena,

You may be in contempt of court. You are subpoenaed to appear by the following attorney, and unless excused from this subpoena by this attorney or the court, you shall respond to this subpoena as directed.

DATED this 21st day of October, 2004.

Jack Scarola, Esq.
Florida Bar No.: 169440
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 478-0754

Jerold S. Solovy, Esq.
JENNER & BLOCK LLP
One IBM Plaza
Chicago, IL 60611
Phone: (312) 222-9350
Fax: (312) 527-0484

Attorneys for CPH and MAFCO

CERTIFICATION OF RESPONSE TO SUBPOENA DUCES TECUM

STATE OF FLORIDA
COUNTY OF _____

The undersigned, as custodian of records for Sunbeam Corporation, (n/k/a American Household, Inc.), certifies that the attached documents consisting of _____ pages represents a true copy of all items within my possession, custody or control which are described in the Subpoena Duces Tecum Without Deposition served on me in the above styled action and each page is numbered by me for identification. Production is complete and has been numbered by the custodian of records.

It is further certified that originals of the items produced are maintained under the direction, custody and control of the undersigned.

_____

The foregoing Certification was acknowledged before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, this _____ day of _____, 20___, who:

[ ] is personally known to me; or

[ ] has produced _____ as identification; and who:

[ ] did or

[ ] did not, take an oath,

and who executed the foregoing certification, and who acknowledged the foregoing certification to be freely and voluntarily executed for the purposes therein recited.

_____
Notary Public, State of Florida at Large

My Commission Expires:

EXHIBIT A

SUBPOENA DUCES TECUM TO CUSTODIAN OF RECORDS OF NON-PARTY SUNBEAM CORPORATION (N/K/A AMERICAN HOUSEHOLD, INC.)

You are hereby requested to produce the following documents pursuant to the definitions and instructions contained herein:

DOCUMENTS REQUESTED

1. Documents sufficient to show the actual and projected sales, profitability, and gross margins of all Coleman-related operating companies from January 1, 1996 to the present.

2. Documents from January 1, 2003 to the present concerning the sale or possible sale of all or part of Sunbeam or American Household, Inc. ("AHI").

3. Documents from January 1, 2003 to the present concerning the value of American Household, Inc., or any portion of AHI.

4. Financial statements of AHI from January 1, 2003 to the present.

5. Financial projections of AHI from January 1, 2003 to the present.

6. Documents concerning Jarden Corporation's acquisition of AHI, which acquisition was publicly announced on September 20, 2004.

DEFINITIONS

1. "Coleman" means The Coleman Company, Inc. and any of its predecessors, successors, subsidiaries, and present and former officers, directors, employees, representatives, and agents.

2. "Sunbeam" means Sunbeam Corporation and any of its predecessors, successors, subsidiaries, and present and former officers, directors, employees, representatives, and agents.

3. "American Household" or "AHI" means American Household, Inc. and any of its predecessors, successors, subsidiaries, and present and former officers, directors, employees, representatives, and agents.

4. "Jarden Corporation" mean Jarden Corporation and any of its predecessors, successors, subsidiaries, and present and former officers, directors, employees, representatives, and agents.

5. "Documents" shall be given the broad meaning provided in Rule 1.350 in the Florida Rules of Civil Procedure and refers to any form or means, whether physical, visual, or electronic, in or by which words, numbers, or ideas are recorded or preserved, whether fixed in tangible medium or electronically stored, including any and all drafts of any final document. The word "documents" shall include, by way of example and not by way of limitation, all of the following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, notes, messages, reports, studies, press releases, comparisons, books, accounts, checks, audio and video recordings and transcriptions thereof, pleadings, testimony, articles, bulletins, pamphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk calendars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, minutes for meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements, memoranda of understanding, letters of intent, computer tapes, computer drives or memories, computer diskettes or disks, e-mail, CD-ROMs, or any other tangible thing on which any handwriting, typing, printing, photostatic, electronic, or other form of communication or information is recorded or reproduced, together with all notations on any of the foregoing, all originals, file copies, or other unique copies of the foregoing, and all versions or drafts thereof, whether used or not.

INSTRUCTIONS

1. Documents shall be produced as they are kept in the usual course of business, or organized and labeled to correspond to the categories in this Request. Documents attached to each other should not be separated. Documents consisting of items previously produced in Litigations, Arbitrations, and/or SEC Administrative Proceedings with Bates numbering shall be produced in Bates number order

2. All documents shall be produced in the file folder, envelope or other container in which the documents are kept or maintained by you. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks.

3. The relevant periods are set forth in the requests for documents, and shall include all documents and information which relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received prior or subsequent to that period. Please supplement or correct your responses to these requests if, at any time, you become aware that your responses are incomplete or incorrect in any respect.

4. If you claim the attorney-client privilege, or any other privilege or work-product protection for all or any portion of a document, you shall provide a privilege log that describes the withheld material sufficiently to allow Coleman to test the privilege or protection asserted.

6. The following rules of construction apply:

a. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be outside of their scope;

b. The term "including" shall be construed to mean "without limitation"; and

c. The use of the singular form of any word includes the plural and vice versa.

COUNSEL LIST

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

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TODD & EVANS, P.L.L.C.
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Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

CHICAGO_1168148_2

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.
MORGAN STANLEY & CO., INC.,
Defendant.

CASE NO. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,
vs.
MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

CASE NO. CA 03-5165 AI

NOTICE OF TAKING VIDEOTAPED DEPOSITION

To:
Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
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West Palm Beach, FL 33401

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings, Inc. will take the deposition upon oral examination of the following parties and witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co., Inc. on topics identified on Exhibit A.	November 5, 2004, at 9:30 a.m.

The deposition will be conducted at Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017. The deposition will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until completed.

Please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to all counsel on the attached Service List this 21st day of October 2004.

Dated: October 21, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
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SERVICE LIST

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Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Exhibit A

CORPORATE DEPOSITION TOPICS

1. For the time period January 1, 1996 to the present, any purchase or sale by MS&Co. (or any of its affiliates, subsidiaries, divisions, predecessors, and successors) of Coleman Escrow Corp. Senior Secured First and Second Priority Discount Notes due 2001, which are described in CPH 0473148-CPH 0473165 and Morgan Stanley Confidential 0001575-0001579, and any other Security (as defined in 15 U.S.C. 77b(a)(1)), or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc.

2. For the time period January 1, 1996 to the present, all reasons why MS&Co. (or any of its affiliates, subsidiaries, divisions, predecessors, and successors) purchased or sold the Coleman Escrow Notes described in Topic No. 1, and any other Security (as defined in 15 U.S.C. 77b(a)(1)), or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc., and the identity of the person(s) and/or committee(s) that made the decision to purchase or sell the Coleman Escrow Notes and the Securities.

3. For the time period January 1, 1996 to the present, MS&Co.'s (or any of its affiliates', subsidiaries', divisions', predecessors', and successors') purchase price, other costs in connection with the purchase, sales price, other costs in connection with the sale, gains, losses, and amount or rate of return on any purchase or sale of Coleman Escrow Corp. Notes described in Topic No. 1, and any other Security (as defined in 15 U.S.C. 77b(a)(1)), or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

v. CASE NO: CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.
_____/

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a hearing has been set in the above-styled case as follows:

DATE:	November 2, 2004
TIME:	8:45 a.m.
PLACE:	Palm Beach County Courthouse, Courtroom 11A 205 North Dixie Highway West Palm Beach, Florida 33401
BEFORE:	Judge Elizabeth T. Maass
CONCERNING:	Morgan Stanley's Motion for Issuance of Commission, served October 19, 2004

WPB#571076.16

KINDLY GOVERN YOURSELVES ACCORDINGLY.

The undersigned counsel hereby certifies that a good faith attempt to resolve the issues contained in the foregoing motions or matters will be made with opposing counsel prior to hearing on these matters on the Court's Motion Calendar.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no costs to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-2431 within two (2) working days of your receipt of this notice; if you are hearing or voice impaired, call 1-800-955-8771.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 21st day of October, 2004.

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BY: Joseph Ianno, Jr.
Joseph Ianno, Jr.
Florida Bar No. 655351

Counsel for Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc.

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Jerold S. Solovy
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One IBM Plaza, Suite 400
Chicago, IL 60611

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

v. CASE NO: CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.
_____/

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a hearing has been set in the above-styled case as follows:

DATE:	November 3, 2004
TIME:	8:45 a.m.
PLACE:	Palm Beach County Courthouse, Courtroom 11A 205 North Dixie Highway West Palm Beach, Florida 33401
BEFORE:	Judge Elizabeth T. Maass
CONCERNING:	Morgan Stanley's Motion for Leave to Amend Pleadings, served September 21, 2004

and

Morgan Stanley's Motion for Leave to Amend,
served October 19, 2004

KINDLY GOVERN YOURSELVES ACCORDINGLY.

The undersigned counsel hereby certifies that a good faith attempt to resolve the issues contained in the foregoing motions or matters will be made with opposing counsel prior to hearing on these matters on the Court's Motion Calendar.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no costs to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-2431 within two (2) working days of your receipt of this notice; if you are hearing or voice impaired, call 1-800-955-8771.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 21st day of October, 2004.

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BY: Joseph Ianno Jr.
Joseph Ianno, Jr.
Florida Bar No. 655351

Counsel for Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc.

WPB#571076.16

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Chicago, IL 60611

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC., et al.,
Defendants.

_____/

COLEMAN (PARENT) HOLDINGS INC.'S
SIXTH SET OF REQUESTS FOR ADMISSION

Plaintiff Coleman (Parent) Holdings Inc., by its attorneys and pursuant to Florida Rule of Civil Procedure 1.370, hereby requests that defendant Morgan Stanley & Co., Inc. answer, under oath and in writing, the following requests for admission within 14 days of the date of service of these requests.

DEFINITIONS AND INSTRUCTIONS

1. "Morgan Stanley" means Morgan Stanley & Co., Inc. or any of its parent, affiliates, subsidiaries, divisions, predecessors, successors, present and former employees, representatives, agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

2. When good faith requires Morgan Stanley to qualify an answer or deny only part of the matter of which an admission is requested, Morgan Stanley shall specify the part of the matter which is true, and qualify or deny the remainder.

REQUESTS FOR ADMISSION

1. Admit that the documents listed in the attached Exhibits A and B are what they purport to be or are otherwise true and authentic copies of original documents within the meaning of Florida Evidence Code § 90.901.

2. Admit that the documents listed in the attached Exhibits A and B were made by Morgan Stanley at or near the time of the event recorded within the meaning of Florida Evidence Code § 90.803(6)(a).

3. Admit that the documents listed in the attached Exhibits A and B were made by Morgan Stanley by or from information transmitted by a person with knowledge within the meaning of Florida Evidence Code § 90.803(6)(a).

4. Admit that the documents listed in the attached Exhibits A and B were kept by Morgan Stanley in the course of a regularly conducted business activity within the meaning of Florida Evidence Code § 90.803(6)(a).

5. Admit that it was Morgan Stanley's regular practice to make the documents listed in the attached Exhibits A and B within the meaning of Florida Evidence Code § 90.803(6)(a).

6. Admit that the documents being Bates numbers Morgan Stanley Confidential 0084771 through 0085783, and Morgan Stanley Confidential 0094003 through 0094032 were made by Morgan Stanley at or near the time of the event recorded within the meaning of Florida Evidence Code § 90.803(6)(a).

7. Admit that the documents bearing Bates numbers Morgan Stanley Confidential 0084771 through 0085783, and Morgan Stanley Confidential 0094003 through 0094032 were

r ıa le by Morgan Stanley by or from information transmitted by a person with knowledge within t ıe meaning of Florida Evidence Code § 90.803(6)(a).

8. Admit that Morgan Stanley authored the documents listed in the attached Exhibit B.

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

D a ed: October 22, 2004

. er ›ld S. Solovy
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(3 1 2) 222-9350

John Scarola
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West Palm Beach, Florida 33402-3626
(561) 686-6300

CERTIFICATE OF SERVICE

I HE EBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 22 day of Oct., 2004.

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and MacAndrews & Forbes Holdings, Inc.

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EXHIBIT A

DEP EXHIBIT #	BATES RANGE
CPH 003	MSC 0080435-0080437
CPH 004	MSC 0031171-0031176
CPH 005	MSC 0031177-0031220
CPH 006	MSC 0080438-0080439
CPH 009	CP 026286-026370
CPH 010	CP 033169-033240
CPH 011	SASMF 10699-10705
CPH 012	CPH 0012526-0012527
CPH 013	CPH 0635991-0635992
CPH 014	MSC 0016944-0016945
CPH 016	MSC 0028858
CPH 017	MS 00375-00381
CPH 024	DPW000001 - 000002
CPH 025	N/A
CPH 026	CPH1412961-1413007
CPH 027	MSC 0026219
CPH 028	MSC 0081555-0080760
CPH 029	MSC 0080440 - 0081556
CPH 031	CPH0635893
CPH 032	CPH0635894 - 0635895
CPH 033	MSC 0029176

DEP EXHIBIT #	BATES RANGE
CPH 034	CPH0520973 - 0520974
CPH 035	CPH1257351
CPH 036	CPH0639323 - 0639327
CPH 037	MSC 0045317 - 0045318
CPH 038	MSC 0041766 - 0041858
CPH 061	CPH0284977-0285008
CPH 064	MSC 0028423
CPH 065	CPH0088703
CPH 066	CPH0038717
CPH 067	CPH0063827-0063833
CPH 068	MSC 0003995-0004001
CPH 069	MSC 0003894-0003930
CPH 070	SB237825-237830
CPH 071	MSC 0005984-0005995
CPH 072	MSC 0064865-0064866
CPH 074	MSC 0080356-0080358
CPH 075	SB0018202-0018288
CPH 076	MSC 0025829-0025886
CPH 078	MSC 0039543
CPH 079	MSC 0031855 – 0031856
CPH 080	CPH0465134

DEP EXHIBIT #	BATES RANGE
CPH 081	MSC 0036393 – 0036395
CPH 081A	N/A
CPH 082	CPH0469477-0469561
CPH 083	N/A
CPH 084	MSC 0033255 – 033263
CPH 084A	N/A
CPH 085	MSC 0036347 – 0036349
CPH 086	MSC 0045112 - 0045113
CPH 087	MSC 0035967- 0035969
CPH 088	MSC 0031791 – 0031799
CPH 089	MSC 0083960 – 0084026
CPH 090	CPH1332631 – 1335633
CPH 091	N/A
CPH 092	MSC 0003389 - 0003415
CPH 093	N/A
CPH 094	N/A
CPH 095	MSC 0036112 – 0036113
CPH 096	CPH0472488 – 0472496
CPH 097	MSC 0033910 – 0033911
CPH 098	CPH0482089 – 0482098
CPH 099	N/A
CPH 100	MSC 0062860 – 0062896

DEP EXHIBIT #	BATES RANGE
CPH 110	CPH0038670 – 0038676
CPH 111	CPH0038700 – 0038706
CPH 112	CPH0129613 – 0129616
CPH 115	CPH0038700 – 0038706
CPH 117	CPH0038523 – 0038524
CPH 120	CPH0012522 – 0012524
CPH 121	CPH1145796
CPH 122	CPH0038327, CPH0038707
CPH 124	CPH0012464 – 0012466
CPH 125	MSC 0004673 - 0004702
CPH 126	MSC 0042248 - 0042275
CPH 128	MSC 0029199 - 0029201
CPH 129	MSC 000513 - 000541
CPH 130	CPH0251869 – 0251889
CPH 131	CPH0251890 – 0251985
CPH 132	CPH0636135 – 0636136
CPH 133	MSC 0059244 – 0059266
CPH 135	MSC 0063735 – 0063804
CPH 136	MSC 0083748 – 0083904
CPH 137	MSC 0039543
CPH 138	CPH1411216 – 1411300
CPH 139	MSC 0026540 – 0026544

DEP EXHIBIT #	BATES RANGE
CPH 140	CPH0483399 – 0483407
CPH 141	CPH 0483341 – 0483350
CPH 142	CPH 0253547 -- 0253555
CPH 143	CPH1026942-1026953
CPH 144	MSC 0016944
CPH 145	MSC 0028214 – 0028271
CPH 146	MSC 0080325 -- 0080333
CPH 148	MSC 0047892
CPH 149	MSC 0047893
CPH 150	CPH0470006-04700016
CPH 151	MSC 0065651 – 0065784
CPH 152	LAB 000043
CPH 153	MSC 0018885 – 0018942
CPH 154	CPH1258265 -- 1258266
CPH 155	CPH1346133 -- 1346250
CPH 156	CPH1346276 -- 1346342
CPH 157	MSC 0018702 -- 0018703
CPH 160	MSC 0003143
CPH 162	MSC 0026888 -- 0026891
CPH 163	MSC 0080427 -- 0080430
CPH 164	MSC 0045133-0045139
CPH 165	N/A

DEP EXHIBIT #	BATES RANGE
CPH 166	MSC 0045102-0045108
CPH 167	N/A
CPH 168	N/A
CPH 169	MSC 0044556-0044573
CPH 170	MSC 0042538-0042540
CPH 171	N/A
CPH 172	MSC 0044462
CPH 173	MSC 0043129
CPH 174	MSC 0042570
CPH 175	N/A
CPH 176	N/A
CPH 177	MSC 0035779
CPH 178	MSC 0034771-0084778
CPH 179	CPH0635892-0635895
CPH 180	MSC 0029194-0029196
CPH 181	MSC 0006284-0006335
CPH 182	CPH 1089795-1089815
CPH 183	MSC 0063286-0063330
CPH 184	N/A
CPH 186	MSC 0041901-0041912
CPH 187	MSC 0041870-0041888
CPH 187A	CP0254621-0254640

DEP EXHIBIT #	BATES RANGE
CPH 188	CPH1408952-1408956
CPH 189	CPH0642933-0642937
CPH 190	N/A
CPH 194	N/A
CPH 195	MSC 0040237-0040305
CPH 196	MSC 085612-0085613
CPH 200	CPH0472360-0472361
CPH 202	MSC 0003931
CPH 203	MSC 0042314-0042327
CPH 204	MSC 0042328-0042341
CPH 205	MSC 0004005- 004007
CPH 207	CPH0471614-0471629
CPH 208	CPH632817-0632905
CPH 209	CPH1348404-1348475
CPH 210	CPH0632981
CPH 211	CPH0633012-0633049
CPH 212	CPH1257349
CPH 213	MSC 0029159-0029162
CPH 214	CPH127359
CPH 215	N/A
CPH 217	MSC 0045665-0045758
CPH 217A	MSC 0080431- 0080434

DEP EXHIBIT #	BATES RANGE
CPH 218	MSC 0004724-0004728
CPH 218A	MSC 0045760- 0045761
CPH 219	MSC 0036347- 0036349
CPH 220	CPH0467090-0467126
CPH 221	MSC 0045474-0045475
CPH 222	MSC 0003431- 0003464
CPH 223	MSC 0042482- 0042483
CPH 224	N/A
CPH 225	CPH 0147626-0147627
CPH 226	CPH 0147607-0147616
CPH 227	CPH 0639174-0639182
CPH 228	MSC 0085750- 0085751
CPH 229	MSC 0085763-0085765
CPH 230	CPH 0635890-0635891
CPH 232	MSC 0085589-0085609
CPH 233	MSC 0085274-0085283
CPH 234	MSC 0084771-0084778
CPH 235	MSC 0085726-0085727
CPH 238	CPH 1412552-1412570
CPH 242	MSC 0045156
CPH 243	MSC 0026587-0026588
CPH 244	MSC 0031982-0031984

DEP EXHIBIT #	BATES RANGE
CPH 245	MSC 0043210
CPH 246	CPH 0473192-0473193
CPH 247	MSC 0004132-0004143
CPH 248	MSC 0085175- 0085181
CPH 249	MSC 0036633-0036634
CPH 250	CPH 0146467
CPH 251	MSC 0005547-0005599
CPH 252	MSC 0019638-0019725
CPH 255	MSC 0045317- 0045318
CPH 256	MSC 0019097- 0019116
CPH 257	FUNB 021139
CPH 258	FUNB 021243
CPH 260	CPH 0485371- 0485376
CPH 261	MSC 0024383- 0024451
CPH 262	MSC 0018660- 0018725 *(18687-88)**
CPH 263	MSC 0018730- 0018731
CPH 264	MSC 0024863
CPH 265	MSC 0024864- 0024866
CPH 266	CPH 1349253- 1349282
CPH 272	CPH0473148-0473165
CPH 273	MSC 0023225-0023229
CPH 274	MSC 0054921-0054925

DEP EXHIBIT #	BATES RANGE
CPH 275	MSC 0001575-0001579
CPH 277	MSC0004673-0004702
CPH 278	MSC 0036700-0036720
CPH 279	MSC 006375-006432
CPH 280	MSC 0018885-0018942
CPH 281	MSC 0059244-0059266
CPH 284	MSC 0025887
MS 13	MSC 0027828-0027829
MS 40	MSC 0000001-0000175
MS 48	CPH 0041655-0041661
MS 57	FUNB 016564-016567
MS 79	CPH 0467007
MS 80	CPH 1426289-1426296
MS 81	CPH 1421814-1421817
MS 82	CPH 1406962-1406964
MS 83	CPH 1427250-1427253
MS 85	CPH 1411216-1411300
MS 115	MSC 0063805-0063811
MS 166	CPH 1326487-1326662
MS 175	CPH 0432090-0482098
MS 182	CPH 1412533-1412551
MS 183	CPH 1109095- 1109115

DEP EXHIBIT #	BATES RANGE
MS 189	CPH 1399821-1399822
MS 194	CPH 1185762-1185784
MS 238	CPH 1418423- 1418499
	MSC 0015896-0015970
	MSC 0015626-0015703
	MSC 0020477- 0020552
	MSC 0061553- 0061621
	MSC 0061191- 0061251
	MSC 0067528- 0067602
	MSC 0072800- 0072863
	MSC 0073484- 0073562
	MSC 0067258- 0067341
	MSC 0087405- 0087490
	MSC 0070445- 0070542
	MSC 0086753- 0086799
	MSC 0092043- 0092076
	MSC 0092077- 0092111
	MSC 0092146-0092177
	MSC 0092032- 0092042
	MSC 0092178- 0092188
	MSC 0092112- 0092133
	MSC 0092134- 0092145

EXHIBIT B

DEP EXHIBIT #	BATES RANGE
CPH 003	MSC 0080435-0080437
CPH 004	MSC 0031171-0031176
CPH 005	MSC 0031177-0031220
CPH 006	MSC 0080438-0080439
CPH 009	CP 026286-026370
CPH 010	CP 033169-033240
CPH 011	SASMF 10699-10705
CPH 012	CPH 0012526-0012527
CPH 014	MSC 0016944-0016945
CPH 024	DPW000001 - 000002
CPH 026	CPH1412961-1413007
CPH 027	MSC 0026219
CPH 028	MSC 0081555-0080760
CPH 029	MSC 0080440 - 0081556
CPH 031	CPH0635893
CPH 033	MSC 0029176
CPH 034	CPH0520973 - 0520974
CPH 035	CPH1257351
CPH 037	MSC 0045317 - 0045318
CPH 038	MSC 0041766 - 0041858
CPH 061	CPH0284977-0285008

DEP EXHIBIT #	BATES RANGE
CPH 062	CPH0283484
CPH 067	CPH0063827-0063833
CPH 069	MSC 0003894-0003930
CPH 070	SB237825-237830
CPH 071	MSC 0005984-0005995
CPH 072	MSC 0064865-0064866
CPH 074	MSC 0080356-0080358
CPH 075	SB0018202-0018288
CPH 076	MSC 0025829-0025886
CPH 078	MSC 0039543
CPH 079	MSC 0031855 – 0031856
CPH 081	MSC 0036393 – 0036395
CPH 081A	N/A
CPH 082	CPH0469477-0469561
CPH 083	N/A
CPH 084	MSC 0033255 – 033263
CPH 084A	N/A
CPH 085	MSC 0036347 – 0036349
CPH 086	MSC 0045112 - 0045113
CPH 087	MSC 0035967- 0035969
CPH 088	MSC 0031791 – 0031799

DEP EXHIBIT #	BATES RANGE
CPH 089	MSC 0083960 – 0084026
CPH 090	CPH1332631 – 1335633
CPH 091	N/A
CPH 092	MSC 0003389 - 0003415
CPH 093	N/A
CPH 094	N/A
CPH 095	MSC 0036112 – 0036113
CPH 096	CPH0472488 – 0472496
CPH 097	MSC 0033910 – 0033911
CPH 098	CPH0482089 – 0482098
CPH 099	N/A
CPH 100	MSC 0062860 – 0062896
CPH 122	CPH0039327, CPH0038707
CPH 125	MSC 0004673 - 0004702
CPH 126	MSC 0042248 - 0042275
CPH 128	MSC 0029199 - 0029201
CPH 129	MSC 000513 - 000541
CPH 130	CPH0251869 – 0251889
CPH 131	CPH0251890 – 0251985
CPH 133	MSC 0059244 – 0059266
CPH 135	MSC 0063735 – 0063804
CPH 136	MSC 0083748 – 0083904

DEP EXHIBIT #	BATES RANGE
CPH 137	MSC 0039543
CPH 138	CPH1411216 – 1411300
CPH 139	MSC 0026540 – 0026544
CPH 140	CPH0483399 – 0483407
CPH 141	CPH 0483341 – 0483350
CPH 142	CPH 0253547 -- 0253555
CPH 143	CPH1026942-1026953
CPH 144	MSC 0016944
CPH 145	MSC 0028214 – 0028271
CPH 146	MSC 0080325 -- 0080333
CPH 148	MSC 0047892
CPH 149	MSC 0047893
CPH 150	CPH0470006-04700016
CPH 151	MSC 0065651 – 0065784
CPH 153	MSC 0018885 – 0018942
CPH 155	CPH1346133 -- 1346250
CPH 156	CPH1346276 -- 1346342
CPH 160	MSC 0003143
CPH 163	MSC 0080427 -- 0080430
CPH 164	MSC 0045133-0045139
CPH 165	N/A
CPH 166	MSC 0045102-0045108

DEP EXHIBIT #	BATES RANGE
CPH 167	N/A
CPH 168	N/A
CPH 169	MSC 0044556-0044573
CPH 170	MSC 0042538-0042540
CPH 171	N/A
CPH 172	MSC 0044462
CPH 173	MSC 0043129
CPH 174	MSC 0042570
CPH 175	N/A
CPH 176	N/A
CPH 177	MSC 0085779
CPH 178	MSC 0084771-0084778
CPH 179	CPH0635892-0635895
CPH 180	MSC 0029194-0029196
CPH 181	MSC 0006284-0006335
CPH 182	CPH 1089795-1089815
CPH 183	MSC 0063286-0063330
CPH 184	N/A
CPH 186	MSC 0041901-0041912
CPH 187	MSC 0041870-0041888
CPH 187A	CP0254621-0254640
CPH 188	CPH1408952-1408956

DEP EXHIBIT #	BATES RANGE
CPH 189	CPH0642933-0642937
CPH 190	N/A
CPH 194	N/A
CPH 195	MSC 0040237-0040305
CPH 196	MSC 085612-0085613
CPH 202	MSC 0003931
CPH 203	MSC 0042314-0042327
CPH 204	MSC 0042328-0042341
CPH 205	MSC 0004005- 004007
CPH 207	CPH0471614-0471629
CPH 209	CPH1343404-1348475
CPH 210	CPH0632981
CPH 211	CPH0633012-0633049
CPH 212	CPH1257349
CPH 213	MSC 0029159-0029162
CPH 214	CPH127359
CPH 215	N/A
CPH 217	MSC 0045665-0045758
CPH 217A	MSC 0080431- 0080434
CPH 218	MSC 0004724-0004728
CPH 218A	MSC 0045760- 0045761
CPH 219	MSC 0036347- 0036349

DEP EXHIBIT #	BATES RANGE
CPH 220	CPH0467090-0467126
CPH 221	MSC 0045474-0045475
CPH 222	MSC 0003431- 0003464
CPH 223	MSC 0042482- 0042483
CPH 224	N/A
CPH 228	MSC 0085750- 0085751
CPH 229	MSC 0085763-0085765
CPH 230	CPH 0635890-0635891
CPH 232	MSC 0085589-0085609
CPH 233	MSC 0085274-0085283
CPH 234	MSC 0084771-0084778
CPH 235	MSC 0085726-0085727
CPH 238	CPH 1412552-1412570
CPH 242	MSC 0045156
CPH 243	MSC 0026587-0026588
CPH 244	MSC 0031982-0031984
CPH 245	MSC 0043210
CPH 246	CPH 0473192-0473193
CPH 247	MSC 0004132-0004143
CPH 248	MSC 0085175- 0085181
CPH 249	MSC 0036633-0036634
CPH 250	CPH 0146467

DEP EXHIBIT #	BATES RANGE
CPH 251	MSC 0005547-0005599
CPH 252	MSC 0019638-0019725
CPH 255	MSC 0045317- 0045318
CPH 256	MSC 0019097- 0019116
CPH 257	FUNB 021139
CPH 258	FUNB 021243
CPH 260	CPH 0485371- 0485376
CPH 261	MSC 0024383- 0024451
CPH 262	MSC 0018660- 0018725 *(18687-88)**
CPH 263	MSC 0018730- 0018731
CPH 264	MSC 0024863
CPH 265	MSC 0024864- 0024866
CPH 266	CPH 1349253- 1349282
CPH 272	CPH0473148-0473165
CPH 275	MSC 0001575-0001579
CPH 277	MSC0004673-0004702
CPH 278	MSC 0036700-0036720
CPH 279	MSC 006375-006432
CPH 280	MSC 0018885-0018942
CPH 281	MSC 0059244-0059266
MS 166	CPH 1326487-1326662
MS 175	CPH 0482090-0482098

DEP EXHIBIT #	BATES RANGE
MS 182	CPH 1412533- 1412551
MS 183	CPH 1109095- 1109115
MS 189	CPH 1399821-1399822
MS 194	CPH 1185762-1185784
MS 238	CPH 1418423- 1418499
MS 40	MSC 0000001-0000175
MS 57	FUNB 016564-016567

DEP EXHIBIT #	BATES RANGE
MS 79	CPH 0467007
MS 80	CPH 1426289-1426296
MS 81	CPH 1421814-1421817
MS 82	CPH 1406962-1406964
MS 83	CPH 1427250-1427253
MS 85	CPH 1411216-1411300

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Client Number: 41198-10003

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Secretary: Caryn Jo Geisler

Extension: 6490

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

CASE NO. CA 03-5165 AI

vs.

MACANDREWS & FORBES HOLDINGS INC. and
COLEMAN (PARENT) HOLDINGS INC.,
Defendants.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S
NINTH REQUEST FOR PRODUCTION OF DOCUMENTS
TO MORGAN STANLEY & CO., INC.

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys Searcy Denney Scarola Barnhart & Shipley P.A. and Jenner & Block LLP, hereby serves its Ninth Request for Production of Documents upon Morgan Stanley & Co., Inc. ("MS&Co."), and requests responses and the production of documents at the office of Searcy Denney Scarola Barnhart & Shipley P.A., 2139 Palm Beach Lakes Blvd., West Palm Beach, Florida, within fourteen (14) days from the date of service pursuant to the Court's October 14, 2004 Order.

DEFINITIONS AND INSTRUCTIONS

CPH incorporates by reference its Definitions and Instructions set forth in CPH's First Request for Production of Documents, served on MS&Co. on May 9, 2003. In addition, the following definitions apply:

1. "MSSF" means Morgan Stanley Senior Funding, Inc. or any of its affiliates, subsidiaries, divisions, predecessors, successors, present and former employees, representatives, agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

2. "Document Requests" means all requests for production of documents that have been served upon MSSF and not yet responded to in this case.

DOCUMENTS REQUESTED

1. Produce any and all documents within your possession, custody, or control responsive to the Document Requests served upon MSSF in this case.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to all counsel on the attached Service List, this 22nd day of October, 2004.

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiffs,
vs.
MORGAN STANLEY & CO., INC.
Defendant.
_____/

CASE NO: 2003 CA 005045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,
vs.
MACANDREWS & FORBES HOLDINGS, INC.
Defendant,
_____/

CASE NO. CA 03-5165 AI

NOTICE OF FILING PLEADING UNDER SEAL

COLEMAN (PARENT) HOLDINGS INC. hereby gives notice of the filing of COLEMAN (PARENT) HOLDINGS INC.'S Motion for a Determination of the Admissibility of Morgan Stanley Performance Evaluations, Filed under Seal on this date.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 22 day of Oct., 2004.

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Attorneys for Coleman (Parent) Holdings, Inc.
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Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Notice Of Filing Pleading Under Seal
Case No.: 2003 CA 005045 AI

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC., *et al.*,
Defendants.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S MOTION FOR A DETERMINATION OF THE ADMISSIBILITY OF MORGAN STANLEY PERFORMANCE EVALUATIONS

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, respectfully requests that this Court enter an order holding that performance evaluations produced by Morgan Stanley & Co., Inc. ("Morgan Stanley") in this litigation, including those of William H. Strong – one of the Morgan Stanley executives primarily responsible for the Sunbeam transaction at issue in this case – are admissible evidence, because (1) they are relevant to the central issues in this case; (2) they qualify for the party admissions exception to the hearsay rule; and (3) they also fall under the business records exception to the hearsay rule.

In addition to the sound legal reasons for finding that these documents are admissible, set forth below, resolution of this issue will promote efficient case management as this matter proceeds to trial. The Morgan Stanley performance evaluations, *see,* e.g., Ex. A, William Strong Evaluations, at Morgan Stanley 85403-85493, currently are the subject of a discovery dispute between the parties.

In its Responses to CPH's Second Set of Requests for Admission, Morgan Stanley admitted that the evaluations are "generated in the course of a regularly conducted business activity," but "denie[d] that the documents . . . qualify for the hearsay exception of Florida Evidence Code § 90.803(6)." *See* Ex. B, at 2.

Because Morgan Stanley may contest the admissibility of these documents, on September 30, 2004 CPH served a notice of deposition, seeking Morgan Stanley testimony regarding the "authenticity, creation, use, maintenance, and business purpose" of the performance evaluations. *See* Ex. C.

On October 19, 2004, Morgan Stanley filed a Motion for Protective Order, arguing that the deposition is unnecessary because the admissibility of the performance evaluations "is a legal determination for this Court to make." *See* Ex. D, ¶ 9; *see also id.* ¶ 8.

CPH agrees that the Court can determine now that the Strong evaluations and the other personnel evaluations produced by Morgan Stanley are admissible without further discovery, based on the well-settled legal standards discussed below. If, however, the Court for some reason were to determine the admissibility of the performance evaluations could not be resolved absent additional facts, CPH should be permitted to obtain those facts before discovery concludes.

Although this motion focuses on the Strong evaluations, a ruling here will resolve the question of the admissibility of other Morgan Stanley employee evaluations, which also are encompassed within CPH's September 30, 2004 deposition notice, and Morgan Stanley's Motion for Protective Order. As demonstrated below, the Court can obviate the need for further discovery on this issue by resolving the admissibility question now. The performance evaluations are highly relevant to fundamental issues in this case and clearly admissible under two separate exceptions to the hearsay rule.

I. The Performance Evaluations Produced to CPH Are Relevant to This Case.

Morgan Stanley's production of the performance evaluations concedes the relevance of these documents to this case. In its March 15, 2004 Order Granting in Part and Denying in Part CPH's Motion to Compel Production of Documents Relating to Employee Performance, this Court ordered Morgan Stanley to produce the performance evaluations of employees who worked on the Sunbeam deal, but only if the documents fell within four carefully defined categories:

(a) All references (positive or negative) to work performed by the employee on Sunbeam-related engagements.

(b) All references (positive or negative) to the employee's performance in fee generation.

(c) All references (positive or negative) to the employee's performance of due diligence activities, regardless of whether designated specifically as such.

(d) All references (positive or negative) to the employee's truthfulness, veracity, or moral turpitude.

See Ex. E. In response to that order, Morgan Stanley produced the performance evaluations at issue here, thereby acknowledging that the documents fall within one or more of the relevant categories identified in the Court's order. Consequently, the personnel evaluations produced by Morgan Stanley pursuant to the Court's March 15 order are indisputably relevant in this case.

The Strong evaluations, for example, are plainly are relevant to the central issues in this case, both with respect to CPH's primary claims for relief and to CPH's request for punitive damages. The documents demonstrate that, prior to assigning Strong to the Sunbeam deal, Morgan Stanley senior management was well aware of Strong's propensity to engage in questionable business practices and unethical behavior to achieve the fee objectives demanded of him. *See* Ex. A, at Morgan Stanley 85418, 85424, 85438, 85440, 85455, 85461-62, 85474, 85477, 85480-81, 85486, 85492. In fact, Strong's performance evaluations make clear that

Morgan Stanley tolerated such behavior, knowingly benefited from the greater revenue generation at all costs, and rewarding ethically dubious, tactics. *See id.* As the documents show, Morgan Stanley placed Strong on the Sunbeam deal, even as its senior management openly discussed deep reservations about his candor and integrity and the methods by which he pursued fee revenue. *See id.*

II. The Strong Evaluations Are Powerful Evidence of Morgan Stanley's Wrongful Conduct.

Strong joined Morgan Stanley in 1993 as a senior executive, and was assigned responsibility for the firm's corporate finance activities in Chicago, Houston, Los Angeles, San Francisco, and Toronto. Ex. F, Strong Dep. 12/4/2003 at 6. The marching orders that Morgan Stanley management gave Strong in his very first evaluation were clear: "He should personally generate more revenue in 1994." Ex. A, at Morgan Stanley 85418. In Strong's 1995 evaluations, Robert Scott, who served as head of the firm's corporate finance and investment banking business, made it clear that he had been unsatisfied with the fees Strong brought in:

> "Revenue input: Bill covers a lot of territory; I wonder how productive he really is. 1996: What should Bill's focus be in 1996? More on productivity and client business."

Ex. A, at Morgan Stanley 85424.

Strong got the message. In his personal assessment of 1996, Strong boasted that he had had his "most productive year since joining the Firm in 1993" and that his "personal revenue production by the end of the fiscal year will have increased for the fourth straight year to a total exceeding $70 million . . . ." *Id.* at Morgan Stanley 85438.

At the same time, senior Morgan Stanley executives became increasingly aware that Strong's methods were too aggressive. Robert Scott, who in 1995 was pushing Strong to generate more fees, himself noted in Strong's 1996 evaluation:

> "While Bill is bright, his judgment is sometimes flawed. He is so focused on his own agenda that he can lose perspective. He has the ability to steamroll colleagues while accomplishing his goals."

Id., at Morgan Stanley 85440. Kirsten Feldman, one of Strong's Managing Director colleagues, similarly observed of Strong:

> "Judgment is usually very good (unless he is trying [to] promote a specific outcome)."

Id. Richard Kaufmann, another senior Morgan Stanley executive, cautioned that those reporting to Strong were "afraid of Bill's reaction" because of his competitiveness. *Id.*, at Morgan Stanley 85424.

By 1997, the facts concerning Strong's methods had become quite obvious to the most senior people at Morgan Stanley. Tarek Abdel-Meguid, head of Morgan Stanley's investment banking business, concluded that Strong's desire to capture fees clouded his judgment:

> "Bill can be overly aggressive in terms of trying to capture transactional opportunities. Makes some judgments which are sometimes very close to, if not over, the line."

Id., at Morgan Stanley 85461. Abdel-Meguid continued:

> "Bill continues to suffer the consequences of less than a straightforward approach. Gives people, including me, the impression that he is not completely upfront. This needs to improve; there are numerous approaches to me from very credible people on this issue."

Id., at Morgan Stanley 85462.

Another of Morgan Stanley's most senior executives, Joseph Perella, had come to a similar assessment of Strong's credibility:

> "The one problem I continue to have with Bill is that you never seem to get the whole story unless you probe very hard."

Id., at Morgan Stanley 85461.

Although Strong continued to deliver the greater and greater fees demanded of him – over $100 million in 1998 alone – his colleagues were apparently forced to look the other way concerning his methods. *Id.*, at Morgan Stanley 85474. In 1998, Abdel-Meguid acknowledged Strong's success in generating the fees, but continued to express his discomfort with the means of Strong's ends:

> "[Strong] is highly focused on money making opportunities, sometimes to a fault."

Id., at Morgan Stanley 85477. Reiterating the same views he had expressed in 1997, Abdel-Meguid carefully repeated his warnings about Strong:

> "Bill can be overly aggressive in terms of trying to capture transactional opportunities. Makes some judgments which are very close to, if not over, the line. I continue to hear comments about his greater general concern for his own people/business unit, relative to the Firm's best interest.
> . . . .
> Bill continues to suffer the consequences of less than a straight-forward approach. Gives people, including me, the impression that he is not completely up front."

Id., at Morgan Stanley 85480-85481.

Echoing the comments of Strong's superiors and colleagues, an investment banker who worked for Strong stated:

> "Uses information selectively – often times does not disclose information which I may view important or will disclose some information on a subject, but not all."

Id., at Morgan Stanley 85485.

These concerns, voiced by multiple persons consistently over time, led Morgan Stanley management in 1998 to expressly identify the following "Development Needs" for Strong:

> "Overly commercial. Can be overly aggressive in terms of trying to capture transactional opportunities. Makes some judgments which are sometimes very close to if not over the line.
> . . . .

> Communication: Although he has made progress (and is acutely aware of the concerns), he continues to suffer the consequences of less than a straightforward approach. Some colleagues feel he gives people the impression that he is not completely upfront and uses information selectively. Often times does not disclose information which others may view as important or will disclose some information on a subject, but not all. Also there is the perception that he does not properly balance the issues of his people/his region with the best overall interests of the Firm."

Id., at Morgan Stanley 85492.

Strong's 1997 self-assessment touted his success in bringing in significant fees and his expectation that he would do even better in 1998 – aided in no small part by his expectation of a lucrative Sunbeam fee:

> "My personal Firm revenue has been $70 million, $73 million and will exceed $90 million for 1995, 1996 and 1997 respectively. Further, my personal backlog going into fiscal 1998 has never been higher. Highlights from that backlog include the sale of Sunbeam (market capitalization $3.7 billion, signed engagement letter with success fees above fee scale) . . . ."

Id., at Morgan Stanley 85455.

Senior Morgan Stanley executives were on clear notice that Strong's ambition and desire for fees had become a serious problem. But year after year Morgan Stanley put its own desire to bring in those fees above its concern about Strong's judgment, and entrusted Strong to handle the Sunbeam transaction.

III. The Evaluations, Including Those Of William Strong, Are Admissible Under Several Exceptions to the Hearsay Rule.

A. The evaluations are admissible under the party admissions exception to the hearsay rule.

The Strong performance evaluations, for example, easily qualify for the party admissions exception to the hearsay rule. Under Florida Evidence Code § 90.803(18)(d), a statement is admissible if the statement is "offered against a party and is . . . [a] statement by the party's agent

or servant concerning a matter within the scope of the agency or employment thereof, made during the existence of the relationship."

Thus, the requirements for the admissibility of an agent's or employee's admission are: "(1) the declarant is the employee of the employer [against whom the statement is being offered]; (2) the matter is within the scope of the employment; and (3) the employee made the statement while employed by that employer." *Chaney v. Winn Dixie Stores, Inc.*, 605 So. 2d 527, 529 (Fla. Dist. Ct. App. 1992).

Employee statements are admissible against the employer even where the employee's statement is not based on personal knowledge. *See, e.g., Scholz v. RDV Sports, Inc.*, 710 So. 2d 626, 628 (Fla. Dist. Ct. App. 1998). The party admission, moreover, need not be "against the interest" of the employer to be admissible under Section 90.803(18). *See, e.g., Cost v. School Bd. of Broward County*, 701 So. 2d 414, 415 n.1 (Fla. Dist. Ct. App. 1997).

Florida courts repeatedly have held that internal reports made by employees in the course of their employment are admissible under the party admission exception to the hearsay rule. *See, e.g., Lee v. Dept. of Health and Rehabilitative Servs.*, 698 So. 2d 1194, 1200 (Fla. 1997); *Costa v. School Bd. of Broward County*, 701 So. 2d 414, 415 (Fla. Dist. Ct. App. 1997). In *Lee*, for example, the Florida Supreme Court found internal investigation reports admissible under the party admissions exception where the investigator was an employee of the defendant and the report was made during the course of his employment. *See Lee*, 698 So. 2d at 1200.

In this case, the employee evaluations are clearly admissible under § 90.903(18)(d).[1] The evaluators indisputably were (1) employees of Morgan Stanley, (2) acting within the scope of

[1] The evaluations are also admissible as direct admissions of a party opponent under § 90.903(18)(a). However, because the Florida Evidence Code provides for admissions by a party's employees, paragraph (d) of 90.903(18) is the more applicable provision.

their employment when writing evaluations of other Morgan Stanley employees, and (3) working for Morgan Stanley at the time they made the evaluations.

B. The evaluations are admissible under the business records exception to the hearsay rule.

The evaluations also are admissible under the business records exception to the hearsay rule. To qualify as a business record under Florida Evidence Code § 90.803(6), the document must satisfy the requirements of paragraphs (a) and (b) of the rule. The performance evaluations meet both requirements.

Paragraph (a) provides that a document is admissible as a business record if it is "[a] memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinion, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity and if it was the regular practice of that business activity to make such memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness . . . ."

It is clear that Morgan Stanley's routine employee evaluations are business records under paragraph (a). Morgan Stanley already has admitted, in its Responses to the Second Set of Requests for Admission, that the evaluations are "generated in the course of a regularly conducted business activity," and are "kept in the ordinary course of its business." *See* Ex. B.

In Florida, employee reviews qualify for the business records exception to the hearsay rule. *See, e.g., CF Chemicals, Inc. v. Florida Dept. of Labor and Employment Security*, 400 So. 2d 846, 848 (Fla. Dist. Ct. App. 1981) (allowing an "Employee Relations Analysis" prepared by an employee's supervisor into evidence under the business record exception). Likewise, other jurisdictions have also held that employee evaluations qualify for the business records exception under Rule 803(6) of the Federal Rules of Evidence, a rule essentially identical to paragraph (a)

of the business records rule in Florida. *See, e.g., Pritchard v. MacNeal Hosp.*, 960 F. Supp. 1321 (N.D. Ill. 1997) (holding that evaluations used regularly to document employee performance constituted business records); *Paul v. Farmland Industrial, Inc.*, No. 90-0594-CV-W-1, 1993 WL 760161 (W.D. Mo. Sept. 27, 1993) (rejecting argument that employee evaluations lacked trustworthiness because they were based on opinion).

The employee evaluations also satisfy the second requirement of the Florida business records exception. Paragraph (b) of Section 90.803(6) provides that: "Evidence in the form of an opinion or diagnosis is inadmissible under paragraph (a) unless such opinion or diagnosis, would be admissible under ss. 90.701-90.705 if the person whose opinion is recorded were to testify to the opinion directly."

To the extent that the Morgan Stanley employee evaluations contain lay opinion, the evaluations are admissible because the opinions included in those evaluations are admissible under Section 90.701 of the Florida Evidence Code.

Section 90.701 provides that a witness's testimony about what he or she perceived may be in the form of inference and opinion when:

> (1) The witness cannot readily, and with equal accuracy and adequacy, communicate what he or she has perceived to the trier of fact without testifying in terms of inferences or opinions and the witness's use of inferences or opinions will not mislead the trier of fact to the prejudice of the objecting party; and
>
> (2) The opinions and inferences do not require a special knowledge, skill, experience, or training.

First, it is clear that evaluating an employee does not require the type of special knowledge, skill, experience, or training contemplated by Section 90.701. In fact, all that is necessary to evaluate an employee is exposure to that employee's work conduct and work product.

Second, an evaluator can neither accurately nor adequately communicate the basis of his review of the employee without testifying in terms of his opinions.

Here, the opinions contained in the Strong evaluations are admissible both for the truth of the opinions expressed by his superiors and colleagues and also admissible to show Morgan Stanley's willfulness in failing to take action to prevent the harm Strong and others at Morgan Stanley caused CPH.

WHEREFORE, CPH respectfully requests that this Court order that the performance evaluations produced by Morgan Stanley in response to the Court's March 15 order, including those of William H. Strong, are admissible at trial.

Dated: October 22, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

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CERTIFICATE OF SERVICE

I HE EBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax ar d Federal Express to all counsel on the attached list on this 22 day of Oct., 2004.

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

CC LEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

**COLEMAN (PARENT) HOLDINGS INC.'S
MOTION FOR PROTECTIVE ORDER
REGARDING THE DEPOSITION NOTICED FOR MR. GITTIS**

Pursuant to Fla. R. Civ. P. 1.280(c), Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, respectfully requests that this Court enter a Protective Order that excuses Howard Gittis from the obligation to appear for a deposition on November 1-2, 2004, pursuant to a Notice of Videotaped Deposition served September 30, 2004 (Ex. A) by Morgan Stanley & Co., Inc. and Morgan Stanley Senior Funding, Inc. (collectively "Morgan Stanley). In support of this motion, CPH states as follows:

1. This motion arises because of Morgan Stanley's gamesmanship in scheduling depositions. Morgan Stanley wants to take Mr. Gittis's deposition on November 1 and 2. Mr. Gittis is not available that day, but has instead offered November 10 and 11, dates on which no other depositions are scheduled. Rather than coordinating the scheduling of depositions with CPH, Morgan Stanley appears intent on conducting a deposition when Mr. Gittis is unavailable, thereby unnecessarily burdening CPH and Mr. Gittis.

Efforts to Schedule the Deposition of Mr. Gittis

2. Mr. Gittis is a senior officer of CPH.

3. On September 30, 2004, Morgan Stanley served a Notice of Videotaped De position for Mr. Gittis, which requires him to appear for deposition on November 1-2, 2004 in W st Palm Beach, Florida. *See* Ex. A. CPH responded that Mr. Gittis was unavailable to appear on November 1-2, 2004, as proposed by Morgan Stanley, but CPH offered Mr. Gittis for No vember 10-11, 2004 in New York. *See* Ex. B. No other depositions are currently confirmed on November 10 or 11, 2004.

A Protective Order Should Issue

4. CPH has made clear to Morgan Stanley that Mr. Gittis is unavailable on Morgan Sta nley's proposed dates, and has offered alternate available dates for this deposition. Yet, de spite CPH's desire and effort to agree to a date for this deposition, Morgan Stanley demands tha t the deposition go forward when Mr. Gittis cannot be present.

5. Under Rule 1.280(c), a Protective Order may issue to bar certain discovery from tak ing place at a particular time and place, where, as here, "good cause" exists. Specifically, Mo rgan Stanley's insistence on its deposition dates will impose an undue burden and inc onvenience on Mr. Gittis. He is prepared to sit for a deposition, and CPH has been working co ntinuously (and will continue working) to enable the scheduling of the deposition, subject to the witness's availability. In contrast, Morgan Stanley now insists on proceeding with a de position for which it knows Mr. Gittis is unavailable.

6. This dispute, and the separate dispute concerning Mr. Perelman's deposition, re flects Morgan Stanley's use of deposition scheduling as a tactic to hinder and complicate di scovery. Morgan Stanley's insistence that witnesses appear on dates and at locations on which the y are unavailable is designed to harass the witnesses for no reason, other than perhaps to

(oı venience Morgan Stanley's counsel. Morgan Stanley has many lawyers in this case, and has j ıs added another law firm to assist it. Morgan Stanley's counsel should accept dates that are ; v: ilable for the witnesses, rather than inconvenience the witnesses for some tactical reason. In the se circumstances, "justice requires" that the Court issue a Protective Order barring the (lej ositions from taking place as presently noticed. Fla. R. Civ. P. 1.280(c).

WHEREFORE, CPH requests a Protective Order barring Morgan Stanley from taking the (lej osition of Mr. Gittis on November 1-2, 2004 in West Palm Beach, Florida.

Da ed: October 22, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
v.
MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO: CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
v.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

NOTICE OF VIDEOTAPED DEPOSITION

PLEASE TAKE NOTICE that Morgan Stanley & Company Incorporated and Morgan Stanley Senior Funding, Inc. will take the videotaped deposition of Howard Gittis, pursuant to Florida Rules of Civil Procedure 1.280 and 1.310. The oral examination will take place on November 1, 2004 at 9:30 a.m. and November 2, 2004 at 9:30 a.m. and continue from day to day until completed at the offices of Carlton Fields, P.A., 222 Lakeview Ave., Suite 1400, West Palm Beach, Florida 33401. The deposition will be taken before a person authorized to administer oaths and recorded by stenographic and videographic means. The video operator will be Esquire Deposition Services Courthouse Tower, 44 West Flagler Street, 14th Floor, Miami, Florida. The witness is instructed to bring all books, papers, and other things in his possession or under his control relevant to this lawsuit (and not previously produced in discovery) to the examination.

-SI 866LOOC

EXHIBIT
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A

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October 18, 2004

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Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Tom:

I write concerning your October 18, 2004 letter regarding Mr. Gittis's deposition.

Mr. Gittis is not available on November 1 and 2, 2004. Instead, he is available on November 10, 2004 (morning only), and November 11, 2004 in New York.

Please let us know by Friday, October 22, 2004 if you accept these dates.

Very truly yours,

Michael T. Brody

MTB:cjg
cc: Joseph Ianno, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
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EXHIBIT
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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC., Plaintiff,

vs.

MORGAN STANLEY & CO., INC., Defendant.
_____/

CASE NO. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC., Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC., *et al.*, Defendants.
_____/

CASE NO. CA 03-5165 AI

COLEMAN (PARENT) HOLDINGS INC.'S MOTION FOR PROTECTIVE ORDER REGARDING THE DEPOSITION NOTICED FOR MR. PERELMAN

Pursuant to Fla. R. Civ. P. 1.280(c), Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, respectfully requests that this Court enter a Protective Order that excuses Ronald Perelman from any obligation to appear for a deposition in West Palm Beach, Florida on October 26 27, 2004, pursuant to a Notice of Videotaped Deposition served on October 18, 2004 (Ex. A), by Morgan Stanley & Co., Inc. and Morgan Stanley Senior Funding, Inc. (collectively "Morgan Stanley). In support of this motion, CPH states as follows:

1. This motion arises because of Morgan Stanley's gamesmanship in scheduling depositions. Morgan Stanley wants to take Mr. Perelman's deposition on October 26 and 27. Mr. Perelman is available, but family obligations require Mr. Perelman to be in New York on those days. Morgan Stanley insists that Mr. Perelman travel to Florida for the deposition, so nothing his schedule does not permit. Despite having taken no depositions of CPH representatives in Florida, Morgan Stanley is unwilling to modify its notice. Because Morgan

Stanley remains intent on conducting a deposition when Mr. Perelman is unavailable, CPH requests a protective order.

Efforts to Schedule the Deposition of Mr. Perelman

2. Mr. Perelman is the most senior officer of CPH.

3. On October 12, 2004, CPH offered Mr. Perelman for deposition on October 26-27 2004. *See* Ex. B.

4. Morgan Stanley accepted the October 26-27 dates for the deposition of Mr. Perelman, but has served a notice requiring the deposition take place in Florida on October 26-27 2004. *See* Ex. A.

5. In letters and in telephone conferences, counsel for CPH has explained that Mr. Perelman is not able to travel to Florida on October 26 and 27 because Mr. Perelman has family obligations that require him to be in New York that week. Counsel for CPH have repeatedly requested Morgan Stanley to go forward with the deposition on the dates Morgan Stanley requested – but in New York. *See* Ex. C. Counsel for Morgan Stanley rejected these requests and have refused to modify or withdraw Morgan Stanley's Notice of Deposition.

A Protective Order Should Issue

6. Mr. Perelman is willing to appear for a deposition on dates that are acceptable to Morgan Stanley, but Morgan Stanley insists that the deposition take place in Florida, on dates on which Mr. Perelman must be in New York.

7. Under Rule 1.280(c), a Protective Order may issue to bar certain discovery from taking place at a particular time and place, where, as here, "good cause" exists. Specifically, Morgan Stanley's insistence on the pending deposition dates and location will impose an undue burden and inconvenience on Mr. Perelman. He is prepared to sit for a deposition on dates that are acceptable to Morgan Stanley, and CPH has been working (and will continue working) to

cl edule the deposition, subject to the witness's availability. In contrast, Morgan Stanley now ns sts on proceeding with the deposition for which it knows Mr. Perelman is unavailable.

8. Morgan Stanley's insistence that Mr. Perelman appear in Florida on a date on vhich his familial obligations require him to be in New York is designed to harass the witness or no reason, other than perhaps to convenience Morgan Stanley's counsel. Morgan Stanley has na ay lawyers in this case, and has just added another law firm to assist it. To date, Morgan Sta nley has not taken the depositions of any CPH representative in Flor da, nor has Morgan Sta nley's Florida counsel taken any depositions. Morgan Stanley's out-of-state counsel have ai ed to explain why they are required to be in Florida on October 26 and 27 or why travel to Flo rida would be more convenient for them than travel from their Los Angeles or Washington, D.C. offices to New York. In these circumstances, "justice requires" that the Court issue a Pro tective Order barring the depositions from taking place as presently noticed. Fla. R. Civ. P. .280(c).

WHEREFOR , CPH requests a Protective Order barring Morgan Stanley from taking the dep osition of Mr. Perelman on October 26-27, 2004 in West Palm Beach, Florida.

Da ed: October 22, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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

CASE NO: CA 03-5045 AI

MORGAN STANLEY (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.
MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO: CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

AMENDED NOTICE OF VIDEOTAPED DEPOSITION

PLEASE TAKE NOTICE that Morgan Stanley & Company Incorporated and Morgan Stanley Senior Funding, Inc. will take the videotaped deposition of Ronald Perelman, pursuant to Florida Rules of Civil Procedure 1.280 and 1.310. The oral examination will take place on October 26, 2004 at 9:30 a.m. and October 27, 2004 at 9:30 a.m. and continue from day to day until completed at the offices of Carlton Fields, P.A., 222 Lakeview Ave., Suite 1400, West Palm Beach, Florida 33401. The deposition will be taken before a person authorized to administer oaths and recorded by stenographic and videographic means. The video operator will be Esquire Deposition Services Courthouse Tower, 44 West Flagler Street, 14th Floor, Miami, Florida. The witness is instructed to bring all books, papers, and other things in his possession or under his control relevant to this lawsuit (and not previously produced in discovery) to the examination.

EXHIBIT
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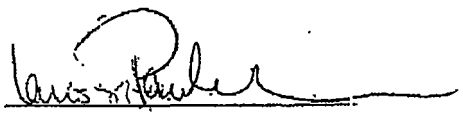
BY: 

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October 12, 2004

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By Telecopy

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Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Tom:

Mr. Perelman is available for his deposition on Tuesday, October 26, 2004 and, if necessary, Wednesday, October 27, 2004, until 12:00 p.m. Please advise me by Thursday, October 14, 2004, if Morgan Stanley wishes to accept those dates.

Very truly yours,

Michael T. Brody

MTB:cjg
cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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I .e: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

I)ear Tom:

I write concerning your October 18, 2004 letter regarding Mr. Perelman's deposition.

' Ve did not offer Mr. Perelman for deposition in Florida on October 26 and 27, 2004. I 4r. Perelman has other commitments in New York and is not available in Florida on those dates.

I 'lease note that when we offered Mr. Perelman for his deposition in New York on October 26 ; nd 27, we advised you that you would need to respond to our offer prior to the close of business (n Thursday, October 14, 2004. Nonetheless, in the spirit of cooperation, we have asked Mr. ; 'erelman to continue to keep those dates available.

' Ve also do not agree that Mr. Perelman's deposition can continue beyond noon on October 27.

: 'lease let us know by noon on Tuesday, October 19, 2004 if you will go forward with : 4r. Perelman's deposition in New York on October 26 and 27, 2004.

/ery truly yours,

Michael T. Brody

MTB:cjg
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Mark C. Hansen, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
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Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Tom:

I write concerning the deposition of Ronald Perelman. As you know, we offered Mr. Perelman for his deposition in New York on October 26, 2004 and October 27, 2004 (morning only). When we offered you those dates, we made it clear that you would need to accept our offer by Thursday, October 14, 2004. Morgan Stanley did not respond by October 14, 2004.

Yesterday, we advised you that we had asked Mr. Perelman to keep those dates open until noon today, and we asked you to advise us by that time whether Morgan Stanley would accept our offer. It is now 2:30 EST (1:30 p.m. CST) and we have not heard from you.

Given the press of Mr. Perelman's calendar, he will not be able to keep October 26 and October 27 open any longer.

Very truly yours,

Michael T. Brody

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,

v:.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,

v:.

MACANDREWS & FORBES HOLDINGS INC.,
e. a .,
Defendants.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO ALLOW CPH IN EXCESS OF 30 INTERROGATORIES

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, hereby requests this Court to allow CPH in excess of 30 interrogatories. In support of this motion, CPH states as follows:

1. CPH to date has propounded seven sets of interrogatories. Set 1 contained 10 interrogatories (Ex. A), Set 2 contained 2 interrogatories (Ex. B), Set 3 contained 1 interrogatory (Ex C), Set 4 contained 1 interrogatory (Ex. D), Set 5 contained 1 interrogatory (Ex. E), Set 6 contained 1 interrogatory (Ex. F), and Set 7 contained 2 interrogatories (Ex. G). Morgan Stanley has taken the position that CPH is already beyond its permitted interrogatories.

2. On October 11, 2004, this court allowed CPH's second, third, fourth, and fifth sets of interrogatories, and ordered Morgan Stanley to serve its responses to those interrogatories. *See* Ex. I, 10/11/04 Order on Coleman (Parent) Holdings Inc.'s Motion to Allow CPH In Excess of 30 Interrogatories. The time for Morgan Stanley to respond to those interrogatories has not yet expired.

3. The sixth and seventh set of interrogatories plainly are relevant and proper. The sole interrogatory in the sixth set requests the factual basis for Morgan Stanley's partial or complete denials of the requests for admission in CPH's fifth set of requests for admission. *See* Ex. F. The two interrogatories in the seventh set request identification of, and basic information related to, investments made by Morgan Stanley in securities issued by the Coleman Company, Inc. and related entities. *See* Ex. G.

4. Because interrogatories are a desirable way to facilitate discovery in a cost-effective manner, and because the number of interrogatories CPH has served to date plainly is reasonable in light of the magnitude and complexity of this litigation, CPH respectfully requests that this Court allow the sixth and seventh sets of interrogatories, and CPH further requests that this Court direct Morgan Stanley to respond to the unanswered interrogatories in Sets 6 & 7 within the greater of: (a) 14 days from the date of the Court's Order on this motion or (b) 30 days from the date of service of the interrogatories in question.

Dated: October 22, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

**COLEMAN (PARENT) HOLDINGS INC.'S
MOTION TO COMPEL PRODUCTION OF DOCUMENTS
FROM AMERICAN HOUSEHOLD, INC.**

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, hereby requests that this Court direct American Household, Inc. ("AHI"), a non-party, to produce the documents described below. In support of this motion, CPH states as follows:

1. This motion arises because AHI, which formerly was known as Sunbeam Corporation ("Sunbeam"), has refused to produce documents relevant to this dispute that CPH first requested by letter, and later by Subpoena Duces Tecum. Initially, AHI expressly agreed that it would treat CPH's letter request for documents "as an operative request for documents and [would] respond accordingly." *See* Ex. A, 6/22/04 Letter from M. Brody to L. Gleim.

2. After efforts to reach agreement regarding the requested documents, AHI advised CPH that it would not produce certain categories of documents set forth in CPH's letter, and requested that CPH serve AHI with a Subpoena Duces Tecum. *See* Ex. B, 10/20/04 Subpoena

Duces Tecum to AHI. The Subpoena sets forth the same categories of documents about which the parties were unable to reach agreement with respect to the letter request.

AHI's Failure To Produce Relevant Documents Concerning The Value Of Coleman

2. Paragraph 1 of the Exhibit A to the Subpoena Duces Tecum seeks the following documents (Ex. B):

> Documents sufficient to show the actual and projected sales, profitability, and gross margins of all Coleman-related operating companies from January 1, 1996 to the present.

These documents are relevant to MSSF's claims against CPH. Specifically, documents concerning sales, profitability, and gross margins of Coleman-related operating companies are relevant to test MSSF's assertion that Coleman was and is overvalued. In addition, the documents are relevant to test MSSF's assertion that it suffered hundreds of millions of dollars in damages because, as a result of the Sunbeam bankruptcy, MSSF's loan was discharged in exchange for 40% of Sunbeam's stock — a company, whose operating companies include Coleman, MSSF claims is of little value.

3. In response to the above request, AHI provided responsive documents, but only up to the date of Sunbeam's bankruptcy filing in February 2001. That is insufficient. CPH cannot test MSSF's damage claim without having current valuation information about Sunbeam and related companies such as Coleman. AHI tacitly has conceded that the requested documents are relevant, and not burdensome to gather, by providing responsive documents from January 1, 1996 through February 2001. AHI therefore should be required to provide all responsive documents to the present.

Documents Relating To The Value Of AHI

4. The Subpoena Duces Tecum to AHI also seeks the following information concerning the value of AHI, Sunbeam's successor, from January 1, 2003 to the present (Ex. B at ¶¶ 3-5):

- Documents from January 1, 2003 to the present concerning the sale or possible sale of all or part of Sunbeam or American Household, Inc. ("AHI").
- Documents from January 1, 2003 to the present concerning the value of American Household, Inc., or any portion of AHI.
- Financial statements of AHI from January 1, 2003 to the present.
- Financial projections of AHI from January 1, 2003 to the present.

These documents, which pertain to the current value of AHI, are directly relevant to MSSF's damage claims against CPH. MSSF, as indicated above, alleges that it has suffered hundreds of millions of dollars in damages because it was required to forgive its loan in exchange for a 40% stake in the shares of Sunbeam (now known as AHI). To test that claim, CPH needs information concerning the value of AHI, and it needs current information concerning that value.

5. In response to the letter request, and subsequent Subpoena Duces Tecum , AHI again took the position that it would not produce documents following Sunbeam's bankruptcy filing in February 2001 — which is tantamount to refusing to produce any documents responsive to the foregoing requests, which all seek documents generated after January 1, 2003. AHI's position cannot be sustained. The documents CPH requests clearly are relevant and no showing of undue burden has been made by AHI. AHI therefore should be required to produce documents concerning the value of AHI.

AHI's Sale To Jarden Corporation

6. The last category of documents that AHI has refused to produce, Paragraph 6 of the Subpoena, relates to the proposed acquisition of AHI by Jarden Corporation ("Jarden") that was announced on September 20, 2004 — and, in particular, documents concerning the value of AHI. *See* Ex. C, 10/11/04 Letter from E. Coleman to L. Gleim. Those documents are relevant for the reasons just discussed: MSSF has been a 40% shareholder stake in Sunbeam/AHI, and the value of MSSF's stake is relevant to MSSF's damage claim in this case.

7. Despite the undisputed relevance of documents relating to the proposed acquisition of AHI by Jarden, AHI has refused to produce any responsive documents, contending that the terms of the proposed acquisition are a matter of public record. That response is insufficient. Regardless of whether the acquisition terms are in the public domain, clearly, AHI has additional value-related and other documents in its possession that are relevant to MSSF's claims against CPH. AHI therefore should be required to produce all documents relating to Jarden's proposed acquisition of AHI.

Conclusion

For the foregoing reasons, CPH respectfully requests that this Court order AHI to produce, within 14 days, the following: (1) documents sufficient to show the actual and projected sales, profitability, and gross margins of all Coleman-related operating companies from January 1, 1996 to the present; (2) documents from January 1, 2003 to the present concerning the sale or possible sale of all or part of Sunbeam or AHI; (3) documents from January 1, 2003 to the present concerning the value of AHI or any portion of AHI; (4) financial statements of AHI from January 1, 2003 to the present; (5) financial projections of AHI from January 1, 2003 to the present; and (6) documents relating to the proposed acquisition of AHI by Jarden.

Dated: October 22, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

CHICAGO_1164581_3

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 22 day of October, 2004.

JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 684-5816
Attorneys for Coleman(Parent)Holdings Inc.
and MacAndrews & Forbes Holdings, Inc.

COUNSEL LIST

Jose ph Ianno, Jr., Esquire
Carl to n Fields, et al.
222 La keview Avenue
Suit e 1400
Wes t Palm Beach, FL 33401

Tho ma s D. Yannucci, P.C.
Tho ma s A. Clare
Bret t McGurk
Kirk la nd and Ellis
655 15 h Street, N.W., Suite 1200
Was hi gton, DC 20005

Jero d S. Solovy, Esq.
Jenn er & Block LLP
One IB M Plaza
Suit e 4400
Chic ag o, IL 60611

Mar i: C. Hansen, Esq.
Kell og g, Huber, Hansen,
Tod d & Evans, P.L.L.C.
Sum ne r Square
1615 M Street, N.W., Suite 400
Was hi gton, DC 20036-3206

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.

MORGAN STANLEY & CO., INC.,
Defendant.

CASE NO. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,
vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

CASE NO. CA 03-5165 AI

NOTICE OF TAKING VIDEOTAPED DEPOSITIONS

To:

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following parties and witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Mitch Petrick	November 1-2, 2004
Simon Rankin	October 25, 2004

The depositions will be conducted at Esquire Deposition Services, 216 E. 45th Street, 8th Floor, New York, New York 10017, and will begin at 9:30 a.m. The depositions will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until completed.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List this 22nd day of October 2004.

Dated: October 22, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solov
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART
& SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409
(561) 686-6300

SERVICE LIST

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W.
Suite 400
Washington, D.C. 20036-3209

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

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

CO LEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

vs.

MAFCANDREWS & FORBES HOLDINGS INC.,
et al ,
Defendants.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITION

To: Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD
& EVANS, P.L.L.C.
Sumner Square, 1615 M Street
N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings, Inc., hereby notices the deposition upon oral examination of the Custodian of Records, Arthur Andersen LLP pursuant to Florida Rule of Civil Procedure 1.410 on the date and at the time set forth below:

Custodian of Records Arthur Andersen LLP	November 5, 2004 at 9:30 a.m.

The deposition will be conducted on the topics set forth in the attached Subpoena. The deposition will be recorded by stenographic means at the offices of Jenner & Block LLP, One IBM Plaza, Chicago, Illinois 60611. The deposition will be taken before a person authorized to

admin ster oaths and will continue until completed.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facs mile and by Federal Express to all counsel on the attached Service List, this 22 day of Oct, 2004.

COLEMAN (PARENT) HOLDINGS, INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
Robert T. Markowski
Deirdre E. Connell
JENNER & BLOCK, LLC
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409
(561) 686-6300

CHICAGO_1169875_1

2181 - Served
2281 - Not Served
2381 - Served By Mail
Subpoena - for Deposition

(Rev.12/11/01) CCG 0014

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COLEMAN (PARENT) HOLDINGS INC. - Petitioner
v.
ARTHUR ANDERSEN LLP

No. _____

SUBPOENA FOR DEPOSITION

04L 011933
CALENDAR C
SUBPOENA

To: Custodian of Records, ARTHUR ANDERSON LLP
33 W. Monroe Ave.
Chicago, IL 60603

YOU ARE COMMANDED to appear to give your deposition before a Notary Public at:

Jenner & Block LLP, One IBM Plaza (address), **Room** 4000, Chicago (city), **Illinois** 60611 (zip)

on November 5, 2004, **at** 9:30 a.m. a.m. p.m.

YOU ARE COMMANDED ALSO to bring the following:

See Exhibit A attached.

in your possession or control.

YOUR FAILURE TO APPEAR IN RESPONSE TO THIS SUBPOENA WILL SUBJECT YOU TO PUNISHMENT FOR CONTEMPT OF THIS COURT.

WITNESS _____ OCT 22 2004

_____
Clerk of Court

Atty. No. 05003
Name Jerold S. Solovy
Attorney for: Coleman (Parent) Holdings
Address: Jenner & Block LLP, One IBM Plaza #4000
City/State/Zip: Chicago, Illinois 60611
Telephone: (312) 222-9350

DOROTHY BROWN
CLERK OF CIRCUIT COURT
SEAL

I served this subpoena by handing a copy to _____

_____ on _____, _____.

I paid the witness $ _____ for witness and mileage fees.

_____

Signed and sworn to before me on this See Exhibit day of _____, _____

_____ **Notary Public**

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

EXHIBIT A

TO SUBPOENA TO
CUSTODIAN OF RECORDS OF NON-PARTY
ARTHUR ANDERSEN LLP

You are hereby requested to respond to the following topics pursuant to the definitions contained herein:

DEPOSITION TOPICS

1. The authenticity, source, creation, use, maintenance, and business purpose of documents produced by Andersen to Coleman (Parent) Holdings, Inc. in the course of litigation, bearing the Bates numbers identified in Exhibit B, and information contained therein.

2. The authenticity, source, creation, use, maintenance, and business purpose of the documents identified in Exhibit C, and information contained therein. (Copies of the documents identified in Exhibit C are being provided under separate cover).

DEFINITIONS

1. "Andersen" means Arthur Andersen LLP and any of its predecessors, successors, subsidiaries, and present and former officers, directors, employees, representatives, and agents.

2. "Documents" shall be given the broad meaning provided in Rule 1.350 in the Florida Rules of Civil Procedure and refers to any form or means, whether physical, visual, or electronic, in or by which words, numbers, or ideas are recorded or preserved, whether fixed in tangible medium or electronically stored, including any and all drafts of any final document. The word "documents" shall include, by way of example and not by way of limitation, all of the following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, notes, messages, reports, studies, press releases, comparisons, books, accounts, checks, audio

and video recordings and transcriptions thereof, pleadings, testimony, articles, bulletins, pamphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk calendars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, minutes for meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements, memoranda of understanding, letters of intent, computer tapes, computer drives or memories, computer diskettes or disks, e-mail, CD-ROMs, or any other tangible thing on which any handwriting, typing, printing, photostatic, electronic, or other form of communication or information is recorded or reproduced, together with all notations on any of the foregoing, all originals, file copies, or other unique copies of the foregoing, and all versions or drafts thereof, whether used or not.

EXHIBIT B
SUBPOENA DUCES TECUM TO
CUSTODIAN OF RECORDS OF NON-PARTY
ARTHUR ANDERSEN LLP

The following documents were produced by Andersen to Coleman (Parent) Holdings, Inc in the course of litigation, bearing the Bates Numbers identified below.

EXHIBIT #	OLD BATES RANGE	NEW BATES RANGE
CPH 012	AA 031057-031058	CPH 0012526-0012527
CPH 018	AA 036293-036295	CPH0015111-0015113
CPH 019	AAR 010766-010771	CPH0125693-0125698
CPH 020	AAR 014169-014173	CPH0129292-0129296
CPH 021	AA 166173-166417	CPH0062489-0062733
CPH 022	AA 188506-188576	CPH0084462-0084532
CPH 023	AA 026498-026518	CPH1184885-1184905
CPH 057	AAR 016023-016028	CPH0131143-0131148
CPH 065	AA 193873	CPH0088703
CPH 066	AA 105258	CPH0038717
CPH 101	AA 166377-166381	CPH0062693 – 0062697
CPH 102	AA 166372-166375	CPH0062688 – 0062691
CPH 103	AA 166356-166361	CPH0062672 – 0062677
CPH 104	AA 166369-166370	CPH0062685 - 0062686
CPH 105	AA 166290-166294	CPH0062606 – 0062610
CPH 106	AAR 013074-013075	CPH1192163 – 1192164
CPH 107	AA 031553-031557	CPH0013023 – 0013027
CPH 108	AA 031494-031498	CPH1056006 – 1056010

EXHIBIT #	OLD BATES RANGE	NEW BATES RANGE
CPH 109	AAR 014803-014813	CPH0129926 – 0129936
CPH 110	AA 105211-105217	CPH0038670 – 0038676
CPH 111	AA 105241-105247	CPH0038700 – 0038706
CPH 112	AAR 014490-014493	CPH0129613 – 0129616
CPH 113	AAR 014148-014152	CPH0129271 – 129275
CPH 114	AAR 015038-015040	MSC 0027048 - 0027050
CPH 115	AA 105241-105247	CPH0038700 – 0038706
CPH 117	AA 105064-105065	CPH0038523 – 0038524
CPH 118	AA 120304	CPH0041649
CPH 119	AA 005758, AA 036291-036295	CPH0021362, CPH 0015109 – 0015113
CPH 120	AA 031053-031055	CPH0012522 – 0012524
CPH 122	AA 105868, AA 105248	CPH0039327, CPH0038707
CPH 123	AA 055761-055764	CPH0021365 – 0021368
CPH 124	AA 030995-030997	CPH0012464 – 0012466
CPH 127, MS 13	AA 055761-055762	CPH0021365 – 0021366
CPH 185	AA 090040	CPH0035322
MS 013	AA 055761-055762	MSC 0027828-0027829
MS 031	AA 120296-120303	CPH0041641-0041648
MS 032	AA 120305-120316	CPH0041650-0041661
MS 043	AAR014804-014813	CPH0129927-0129936
MS 048	AA 120310-120316	CPH0041655-0041661
MS 060	AAR 016015-016029	CPH1071418-1071432

EXHIBIT C
SUBPOENA DUCES TECUM TO
CUSTODIAN OF RECORDS OF NON-PARTY
ARTHUR ANDERSEN LLP

Copies of the following documents are being provided to you under separate cover:

DEPOSITION EXHIBIT #	OLD BATES RANGE	NEW BATES RANGE
CPH 017	MS 00375-00381	MS 00375-00381
CPH 024	DPW000001 - 000002	DPW000001 - 000002
CPH 121	LAB 000043	CPH1145796
CPH 132	SASMF 10951-10952	CPH0636135 – 0636136
CPH 152	LAB 000043	LAB 000043
CPH 208	SASMF 07633-07721	CPH632817-0632905
CPH 213	MSC 0029159-0029162	MSC 0029159-0029162

CHICAGO_1169502_1
CHICAGO_1169502_1CHICAGO_1169502_1

COUNSEL LIST

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Mark C. Hansen
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1615 M Street, N.W.
Suite 400
Washington, D.C. 20036-3206

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Civil Action Cover Sheet (Rev. 6/19/03) CCL 0520

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

COLEMAN (PAREN) HOLDINGS INC

v.

ARTHUR ANDERSEN LLP

No. 04L 011933
CALENDAR C
SUBPOENA

CIVIL ACTION COVER SHEET

A Civil Action Cover Sheet shall be filed with the complaint in all civil actions. The information contained herein is for administrative purposes only and cannot be introduced into evidence. Please check the box in front of the appropriate general category and then check the subcategory thereunder, if applicable, which best characterizes your action

(FILE STAMP)

Jury Demand ☐ Yes ☑ No

☐ **PERSONAL INJURY/WRONGFUL DEATH**

- ☐ 027 Motor Vehicle
- ☐ 040 Medical Malpractice
- ☐ 047 Asbestos
- ☐ 048 Dram Shop
- ☐ 049 Product Liability
- ☐ 051 Construction Injuries (including Structural Work Act, Road Construction Injuries Act and negligence)
- ☐ 052 Railroad/FELA
- ☐ 053 Pediatric Lead Exposure
- ☐ 061 Other Personal Injury/Wrongful Death
- ☐ 063 Intentional Tort
- ☐ 064 Miscellaneous Statutory Action *(Please Specify Below**)*
- ☐ 065 Premises Liability
- ☐ 078 Fen-phen/Redux Litigation
- ☐ 99 Silicone Implant

☐ **002 PROPERTY DAMAGE**

☐ **006 LEGAL MALPRACTICE**

☐ **TAX & MISCELLANEOUS REMEDIES**

- ☐ 007 Confession of Judgment
- ☐ 008 Replevin
- ☐ 009 Tax
- ☐ 015 Condemnation
- ☐ 017 Detinue
- ☐ 029 Unemployment Compensation
- ☐ 036 Administrative Review Action
- ☐ 085 Petition to Register Foreign Judgment
- ☐ 099 All Other Extraordinary Remedies

☐ **COMMERCIAL LITIGATION**

- ☐ 002 Breach of Contract
- ☐ 070 Professional Malpractice (other than legal or medical)
- ☐ 071 Fraud
- ☐ 072 Consumer Fraud
- ☐ 073 Breach of Warranty
- ☐ 074 Statutory Action *(Please Specify Below**)*
- ☐ 075 Other Commercial Litigation *(Please Specify Below**)*
- ☐ 076 Retaliatory Discharge

☐ **077 LIBEL/SLANDER**

☐ **OTHER ACTIONS**

- ☐ 079 Petition for Qualified Orders
- ☑ 084 Petition to Issue Subpoena
- ☐ 100 Petition for Discovery

** _____

_____

By: Jerold S. Solovy/Jenner & Block LLP 05003
(Attorney) (Pro Se)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

COLEMAN (PARENT) HOLDINGS INC.,	:	Index No._____
Petitioner,	:	
for an order for the taking of the deposition of ARTHUR ANDERSEN LLP,	:	
Respondent,	:	
pursuant to a commission issued in an action pending in the Circuit Court of the Fifteenth Judicial District of the State of Florida, Palm Beach County, entitled Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co. Inc., Case No. 2003 CA 005045 AI.	:	04L 011933 CALENDAR C SUBPOENA

ORDER

This matter coming to be heard on a petition pursuant to Illinois Supreme Court Rule 204(b) in which Petitioner seeks the entry of an order directing that subpoena for deposition be issued to Arthur Andersen LLP, the Court having reviewed the petition and its attached exhibits, and having been duly informed thereon, hereby orders:

1. That the petition pursuant to Illinois Supreme Court Rule 204(b) to issue Illinois subpoena for deposition for use in an action pending in the Circuit Court of Palm Beach County, Florida is hereby GRANTED;

2. That the subpoena for deposition in the form attached to the petition as Exhibit 1 shall issue;

3. That pursuant to this subpoena, the Custodian of Records of Arthur Andersen LLP, shall appear at the offices of Jenner & Block LLP, One IBM Plaza, 330 North Wabash Avenue, Suite 4000, Chicago, Illinois 60611 on November 5, 2004, at 9:30 a.m., and shall be available to answer questions propounded by counsel responsive to the topics

pro pounded in Exhibit A to the Subpoena, and such deposition shall continue from day to day until completed.

4. Copies of this Order and the subpoenas for deposition shall be served by Petitioner on all the parties.

ENTERED this _____ day of October, 2004.

Circuit Judge

JUDGE ARTHUR L. JANURA, JR.

OCT 22 2004

Circuit Court-0291

Jerold S. Solovy
Michael T. Brody
Deirdre Connell
JENNER & BLOCK LLP (#05003)
One IBM Plaza
Chicago, IL 60611
(312) 222-9350

COUNSEL LIST

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

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KELLOGG, HUBER, HANSEN,
TODD & EVANS, P.L.L.C.
Sumner Square
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036-3206

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

CC LEMAN (PARENT) HOLDINGS INC.,	:	Index No._____
Petitioner,	:	
or an order for the taking of the deposition of AI THUR ANDERSEN LLP,	:	
Respondent,	:	
pu suant to a commission issued in an action pending in hc Circuit Court of the Fifteenth Judicial District of he State of Florida, Palm Beach County, entitled Cc leman (Parent) Holdings, Inc. v. Morgan Stanley & Co. Inc., Case No. 2003 CA 005045 AI.	:	04L 011933 CALENDAR C SUBPOENA

PETITION PURSUANT TO ILLINOIS SUPREME COURT RULE 204(b) TO ISSUE AN ILLINOIS SUBPOENA FOR USE IN ACTION PENDING IN PALM BEACH COUNTY, FLORIDA

Pursuant to Rule 204(b) of the Supreme Court of Illinois, petitioner Coleman (Parent) Hc ldings Inc. ("CPH"), by its attorneys, hereby petitions this Court for the entry of an order di ecting that a Subpoena for deposition be issued to the following deponent in the form at: ached hereto as Exhibit 1:

Arthur Andersen LLP
Custodian of Records
33 W. Monroe
Chicago, IL 60603

In support of this petition, petitioner states as follows:

1. Petitioner is plaintiff in Case No. 2003 CA 005045 AI, *Coleman (I arent) Holdings Inc. v. Morgan Stanley & Co., Inc.*, a lawsuit now proceeding in the F: fteenth Judicial Circuit of the State of Florida, in and for Palm Beach County. Discovery is pi oceeding in that action and the close of fact discovery shall occur on November 24, 2004. T ie Commission issued by the Florida Court for the purpose of obtaining deposition te stimony is attached hereto as Exhibit 2.

2. To aid the action, petitioner desires to take the deposition of the above designated deponent. The deponent is found for a subpoena in Cook County, Illinois.

3. Petitioner has requested that the deponent appear for deposition on November 5, 2004, 9:30 a.m., at the offices of Jenner & Block LLP, One IBM Plaza, 330 N. Wabash Ave., Suite 4000, Chicago, Illinois 60611.

WHEREFORE, petitioner prays for the entry of an order, in the form attached hereto as Exhibit 3, directing a Subpoena for Deposition to issue to the above named deponent.

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

One of Its Attorneys

Jerold S. Solovy
Michael T. Brody
Deirdre Connell
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, IL 60611
(312) 222-9350

Dated: October 22, 2004

2181 - Served
2281 - Not Served
2381 - Served By Mail
Subpoena for Deposition (Rev.12/11/01) CCG 0014

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COLEMAN (PARENT) HOLDINGS INC. - Petitioner
v.
ARTHUR ANDERSEN LLP

No. _____

SUBPOENA FOR DEPOSITION

To: Custodian of Records, ARTHUR ANDERSON LLP
33 W. Monroe Ave.
Chicago, IL 60603

YOU ARE COMMANDED to appear to give your deposition before a Notary Public at:

Jenner & Block LLP, One IBM Plaza (address), **Room** 4000, Chicago (city), **Illinois** 60611 (zip)

on November 5, 2004, **at** 9:30 a.m. a.m. p.m.

YOU ARE COMMANDED ALSO to bring the following:

See Exhibit A attached.

in your possession or control.

YOUR FAILURE TO APPEAR IN RESPONSE TO THIS SUBPOENA WILL SUBJECT YOU TO PUNISHMENT FOR CONTEMPT OF THIS COURT.

WITNESS _____, _____

_____
Clerk of Court

Atty. No.: 15003
Name: Jerold S. Solovy
Attorney for: Coleman (Parent) Holdings
Address: Jenner & Block LLP, One IBM Plaza #4000
City/State Zip: Chicago, Illinois 60611
Telephone: (312) 222-9350

EXHIBIT
tabbies

I served this subpoena by handing a copy to _____

_____ _____ **on** _____, _____.

I paid the witness $ _____ **for witness and mileage fees.**

_____

Signed and sworn to before me on this See Exhibit **day of** _____, _____

_____ **Notary Public**

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

EXHIBIT A

TO SUBPOENA TO
CUSTODIAN OF RECORDS OF NON-PARTY
ARTHUR ANDERSEN LLP

You are hereby requested to respond to the following topics pursuant to the definitions contained herein:

DEPOSITION TOPICS

1. The authenticity, source, creation, use, maintenance, and business purpose of documents produced by Andersen to Coleman (Parent) Holdings, Inc. in the course of litigation, bearing the Bates numbers identified in Exhibit B, and information contained therein.

2. The authenticity, source, creation, use, maintenance, and business purpose of the documents identified in Exhibit C, and information contained therein. (Copies of the documents identified in Exhibit C are being provided under separate cover).

DEFINITIONS

1. "Andersen" means Arthur Andersen LLP and any of its predecessors, successors, subsidiaries, and present and former officers, directors, employees, representatives, and agents.

2. "Documents" shall be given the broad meaning provided in Rule 1.350 in the Florida Rules of Civil Procedure and refers to any form or means, whether physical, visual, or electronic, in or by which words, numbers, or ideas are recorded or preserved, whether fixed in tangible medium or electronically stored, including any and all drafts of any final document. The word "documents" shall include, by way of example and not by way of limitation, all of the following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, notes, messages, reports, studies, press releases, comparisons, books, accounts, checks, audio

and video recordings and transcriptions thereof, pleadings, testimony, articles, bulletins, pamphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk calendars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, minutes for meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements, memoranda of understanding, letters of intent, computer tapes, computer drives or memories, computer diskettes or disks, e-mail, CD-ROMs, or any other tangible thing on which any handwriting, typing, printing, photostatic, electronic, or other form of communication or information is recorded or reproduced, together with all notations on any of the foregoing, all originals, file copies, or other unique copies of the foregoing, and all versions or drafts thereof, whether used or not.

EXHIBIT B
SUBPOENA DUCES TECUM TO
CUSTODIAN OF RECORDS OF NON-PARTY
ARTHUR ANDERSEN LLP

The following documents were produced by Andersen to Coleman (Parent) Holdings, Inc. in the course of litigation, bearing the Bates Numbers identified below.

EXHIBIT #	OLD BATES RANGE	NEW BATES RANGE
CPH 012	AA 031057-031058	CPH 0012526-0012527
CPH 018	AA 036293-036295	CPH0015111-0015113
CPH 019	AAR 010766-010771	CPH0125693-0125698
CPH 020	AAR 014169-014173	CPH0129292-0129296
CPH 021	AA 166173-166417	CPH0062489-0062733
CPH 022	AA 188506-188576	CPH0084462-0084532
CPH 023	AA 026498-026518	CPH1184885-1184905
CPH 057	AAR 016023-016028	CPH0131143-0131148
CPH 065	AA 193873	CPH0088703
CPH 066	AA 105258	CPH0038717
CPH 101	AA 166377-166381	CPH0062693 – 0062697
CPH 102	AA 166372-166375	CPH0062688 – 0062691
CPH 103	AA 166356-166361	CPH0062672 – 0062677
CPH 104	AA 166369-166370	CPH0062685 - 0062686
CPH 105	AA 166290-166294	CPH0062606 – 0062610
CPH 106	AAR 013074-013075	CPH1192163 – 1192164
CPH 107	AA 031553-031557	CPH0013023 – 0013027
CPH 108	AA 031494-031498	CPH1056006 – 1056010

EXHIBIT #	OLD BATES RANGE	NEW BATES RANGE
CPH 109	AAR 014803-014813	CPH0129926 – 0129936
CPH 110	AA 105211-105217	CPH0038670 – 0038676
CPH 111	AA 105241-105247	CPH0038700 – 0038706
CPH 112	AAR 014490-014493	CPH0129613 – 0129616
CPH 113	AAR 014148-014152	CPH0129271 – 129275
CPH 114	AAR 015038-015040	MSC 0027048 - 0027050
CPH 115	AA 105241-105247	CPH0038700 – 0038706
CPH 117	AA 105064-105065	CPH0038523 – 0038524
CPH 118	AA 120304	CPH0041649
CPH 119	AA 005758, AA 036291-036295	CPH0021362, CPH 0015109 – 0015113
CPH 120	AA 031053-031055	CPH0012522 – 0012524
CPH 122	AA 105868, AA 105248	CPH0039327, CPH0038707
CPH 123	AA 055761-055764	CPH0021365 – 0021368
CPH 124	AA 030995-030997	CPH0012464 – 0012466
CPH 127, MS 13	AA 055761-055762	CPH0021365 – 0021366
CPH 185	AA 090040	CPH0035322
MS 013	AA 055761-055762	MSC 0027828-0027829
MS 031	AA 120296-120303	CPH0041641-0041648
MS 032	AA 120305-120316	CPH0041650-0041661
MS 043	AAR014804-014813	CPH0129927-0129936
MS 048	AA 120310-120316	CPH0041655-0041661
MS 060	AAR 016015-016029	CPH1071418-1071432

EXHIBIT C
SUBPOENA DUCES TECUM TO
CUSTODIAN OF RECORDS OF NON-PARTY
ARTHUR ANDERSEN LLP

Copies of the following documents are being provided to you under separate cover:

DEPOSITION EXHIBIT #	OLD BATES RANGE	NEW BATES RANGE
CPH 017	MS 00375-00381	MS 00375-00381
CPH 024	DPW000001 - 000002	DPW000001 - 000002
CPH 121	LAB 000043	CPH1145796
CPH 132	SASMF 10951-10952	CPH0636135 – 0636136
CPH 152	LAB 000043	LAB 000043
CPH 208	SASMF 07633-07721	CPH632817-0632905
CPH 213	MSC 0029159-0029162	MSC 0029159-0029162

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

COLEMAN (PARENT) HOLDINGS, INC., Plaintiff, v. MORGAN STANLEY & CO., INC., Defendant.	Case No.: 2003 CA 005045 AI Judge Elizabeth T. Maass

ORDER ON APPOINTMENT OF COMMISSIONS

This cause came before the Court on Plaintiff's Motion to Appoint Commissions so that it can subpoena for depositions and documents witnesses in other jurisdictions. After reviewing the pleadings, and otherwise being advised in the premises it is ORDERED AND ADJUDGED that commissions are appointed so that plaintiff may subpoena depositions and documents from the following witnesses:

- Andrew B. Savarie
  1136 Ash St.
  Winnetka, IL 60093-2104
- R. Bram Smith
  Bear, Stearns & Co. Inc.
  245 Park Avenue
  New York, NY 10167
- Alexandre J. Fuchs
  2 Fifth Avenue, #11K
  New York, NY 10011

1/12

EXHIBIT
tabbies
2

- Robert W. Kitts
  Thomas Weisel Partners
  Lever House
  390 Park Avenue, 17th Floor
  New York, NY 10022

- T. Chang
  10990 Rochester Ave., Apt. 307
  Los Angeles, CA 90024-6281

The following commissions are appointed for the purposes of obtaining depositions and documents from the above listed witnesses, and other witnesses whose discovery is sought in the commissions' jurisdictions:

Jerold S. Solovy
Jenner & Block, LLC
One IBM Plaza, Suite 4400
Chicago, Il 60611
(312) 222-9350

or any person duly authorized by him and able to administer oaths pursuant to the laws of Illinois.

Michael I. Allen
SHAPIRO MITCHELL FORMAN ALLEN & MILLER LLP
380 Madison Avenue
New York, New York 10017

or any person duly authorized by him and able to administer oaths pursuant to the laws of New York.

Marc M. Seltzer
Susman Godfrey L.L.P.
1880 Century Park East
Suite 950
Los Angeles, California 90067
(310) 789-3102

or any person duly authorized by him and able to administer oaths pursuant to the laws of California .*

Done and Ordered in Palm Beach County, Florida this 14 day of Nov., 2003.

Circuit Court Judge Elizabeth T. Maass

* This order does not purport to grant the power of the commissioners appointed to subpoena witnesses or documents, but simply the power to administer oaths and transcribe deposition testimony. JL

Coleman v. Morgan Stanley
2003 CA 005045 AI
Order on Appointment of Commissions

Copies furnished to:

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lakeview Avenue
Suite 1400
West Palm Beach, Florida 33401
(561) 659-7070
(561) 659-7368 (fax)

John Scarola, Esq.
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409
(561) 686-6300
(561) 478-0754 (fax)

Jerold S. Solovy, Esq.
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One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350
(312) 527-0484 (fax)

Thomas D. Yannucci, P.C.
Thomas A. Clare
Brett H. McGurk
KIRKLAND & ELLIS LLP
555 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005
(202) 879-5000
(202) 879-5200 (fax)

)99134

STATE OF FLORIDA • PALM BEACH COUNTY
I hereby certify that the foregoing is a true copy of the Original on file in my office.
WITNESS my hand and Official Seal.
This 04 day of August, 2004
DOROTHY H. WILKEN
CLERK OF CIRCUIT COURT
BY _____ Deputy Clerk

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

ICC LEMAN (PARENT) HOLDINGS INC.,	Index No._____
Petitioner,	
for an order for the taking of the deposition of ARTHUR ANDERSEN LLP,	
Respondent,	
pursuant to a commission issued in an action pending in the Circuit Court of the Fifteenth Judicial District of the State of Florida, Palm Beach County, entitled Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co. Inc., Case No. 2003 CA 005045 AI.	

EXHIBIT
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ORDER

This matter coming to be heard on a petition pursuant to Illinois Supreme Court Rule 204(b) in which Petitioner seeks the entry of an order directing that subpoena for deposition be issued to Arthur Andersen LLP, the Court having reviewed the petition and its attached exhibits, and having been duly informed thereon, hereby orders:

1. That the petition pursuant to Illinois Supreme Court Rule 204(b) to issue Illinois subpoena for deposition for use in an action pending in the Circuit Court of Palm Beach County, Florida is hereby GRANTED;

2. That the subpoena for deposition in the form attached to the petition as Exhibit 1 shall issue;

3. That pursuant to this subpoena, the Custodian of Records of Arthur Andersen LLP, shall appear at the offices of Jenner & Block LLP, One IBM Plaza, 330 North Wabash Avenue, Suite 4000, Chicago, Illinois 60611 on November 5, 2004, at 9:30 a.m., and shall be available to answer questions propounded by counsel responsive to the topics

or pounded in Exhibit A to the Subpoena, and such deposition shall continue from day to day in il completed.

4. Copies of this Order and the subpoenas for deposition shall be served by Petitioner on all the parties.

ENTERED this _____ day of October, 2004.

_____
Circuit Judge

. er old S. Solovy
Mi chael T. Brody
De rdre Connell
. E JNER & BLOCK LLP (#05003)
On e IBM Plaza
Ch cago, IL 60611
(312) 222-9350

COUNSEL LIST

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Mark C. Hansen
KELLOGG, HUBER, HANSEN,
TODD & EVANS, P.L.L.C.
Sumner Square
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036-3206

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

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

CO[illegible]MAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MOR[illegible]AN STANLEY & CO., INC.,
Defendant.
_____/

MO[illegible]AN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

vs.

MA[illegible]NDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITION

To: Tho[illegible]s A. Clare, Esq.
KIRKLA[illegible] & ELLIS, LLP
655 Fift[illegible]th Street, N.W.
Suite 120[illegible]
Washing[illegible]n, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD
& EVANS, P.L.L.C.
Sumner Square, 1615 M Street
N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings, Inc., hereby notices the deposition upon oral examination of the Custodian of Records, Sunbeam Corporation (k/n/a American Household, Inc.) pursuant to Florida Rule of Civil Procedure 1.410 on the date and at the time set forth below:

Custodian of Records Sunbeam Corporation (n/k/a American Household, Inc.)	November 2, 2004 at 9:30 a.m.

The deposition will be conducted on the topics set forth in the attached Subpoena. The

deposition will be recorded by stenographic means at the offices of Searcy Denney Scarola Barnhart & Shipley, P.C., 2139 Palm Beach Lakes Blvd., West Palm Beach, Florida. The deposition will be taken before a person authorized to administer oaths and will continue until completed.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and by Federal Express to all counsel on the attached Service List, this 22 day of Oct, 2004.

COLEMAN (PARENT) HOLDINGS, INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
Robert T. Markowski
Deirdre E. Connell
JENNER & BLOCK, LLC
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409
(561) 686-6300

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 22 day of October, 2004.

JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 684-5816
Attorneys for Coleman(Parent)Holdings Inc.
and MacAndrews & Forbes Holdings, Inc.

COUNSEL LIST

Joseph Ianno, Jr., Esquire
Carlton Fields, et al.
222 Lakeview Avenue
Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci, P.C.
Thomas A. Clare
Brett McGurk
Kirkland and Ellis
655 15th Street, N.W., Suite 1200
Washington, DC 20005

Jerold S. Solovy, Esq.
Jenner & Block LLP
One IBM Plaza
Suite 4400
Chicago, IL 60611

Marc D. Hansen, Esq.
Kellogg, Huber, Hansen,
Todd & Evans, P.L.L.C.
Summer Square
1615 M Street, N.W., Suite 400
Washington, DC 20036-3206

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC., et al.,
Defendants.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITION

To

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings, Inc. will take the deposition upon oral examination of the following parties and witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co. on topics identified on Exhibit A.	November 9, 2004 at 9:30 a.m.
Morgan Stanley Senior Funding, Inc. on topics identified on Exhibit A.	November 9, 2004 at 1:30 a.m.

The depositions will be recorded by stenographic and videographic means at the offices of Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017-3004. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until complete.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to all counsel on the attached Service List, this 24th day of October, 2004.

Dated: October 22, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Michael T. Brody
Deirdre E. Connell
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409
(561) 686-6300

EXHIBIT A

You are hereby requested to respond to the following topics pursuant to the definitions set forth below.

RULE 1.310 TOPICS

1. The authenticity, source, creation, use, maintenance, and business purpose of documents produced and/or authored by Morgan Stanley and/or MSSF, bearing the following deposition exhibit number and/or Bates numbers, and information contained therein:

DEP EXHIBIT #	BATES RANGE
	MSC 0015896-0015970
	MSC 0015626-0015703
	MSC 0020477-0020552
	MSC 0061553-0061621
	MSC 0061191-0061251
	MSC 0067528-0067602
	MSC 0072800-0072863
	MSC 0073484-0073562
	MSC 0067258-0067341
	MSC 0087405-0087490
	MSC 0070445-0070542
	MSC 0086753-0086799
	MSC 0092043-0092076
	MSC 0092077-0092111

DEP EXHIBIT #	BATES RANGE
	MSC 0092146-0092177
	MSC 0092032-0092042
	MSC 0092178-0092188
	MSC 0092112-0092133
	MSC 0092134-0092145
CPH 003	MSC 0080435-0080437
CPH 004	MSC 0031171-0031176
CPH 005	MSC 0031177-0031220
CPH 006	MSC 0080438-0080439
CPH 009	CP 026286-026370
CPH 010	CP 033169-033240
CPH 011	SASMF 10699-10705
CPH 012	CPH 0012526-0012527
CPH 013	CPH 0635991-0635992
CPH 014	MSC 0016944-0016945

DEP EXHIBIT #	BATES RANGE
CPH 016	MSC 0028858
CPH 017	MS 00375-00381
CPH 024	DPW000001 - 000002
CPH 025	N/A
CPH 026	CPH1412961-1413007
CPH 027	MSC 0026219
CPH 028	MSC 0081555-0080760
CPH 029	MSC 0080440 - 0081556
CPH 031	CPH0635893
CPH 032	CPH0635894 - 0635895
CPH 033	MSC 0029176
CPH 034	CPH0520973 - 0520974
CPH 035	CPH1257351
CPH 036	CPH0639323 - 0639327
CPH 037	MSC 0045317 - 0045318

DEP EXHIBIT #	BATES RANGE
CPH 38	MSC 0041766 - 0041858
CPH 61	CPH0284977-0285008
CPH 62	CPH0283484
CPH 64	MSC 0028423
CPH 65	CPH0088703
CPH 66	CPH0038717
CPH 67	CPH0063827-0063833
CPH 68	MSC 0003995-0004001
CPH 69	MSC 0003894-0003930
CPH 70	SB237825-237830
CPH 71	MSC 0005984-0005995
CPH 72	MSC 0064865-0064866
CPH 74	MSC 0080356-0080358
CPH 75	SB0018202-0018288
CPH 76	MSC 0025829-0025886
CPH 78	MSC 0039543
CPH 79	MSC 0031855 – 0031856
CPH 80	CPH0465134
CPH 81	MSC 0036393 – 0036395
CPH 81A	N/A
CPH 82	CPH0469477-0469561
CPH 83	N/A

DEP EXHIBIT #	BATES RANGE
CPH 084	MSC 0033255 – 033263
CPH 084A	N/A
CPH 085	MSC 0036347 – 0036349
CPH 086	MSC 0045112 - 0045113
CPH 087	MSC 0035967-0035969
CPH 088	MSC 0031791 – 0031799
CPH 089	MSC 0083960 – 0084026
CPH 090	CPH1332631 – 1335633
CPH 091	N/A
CPH 092	MSC 0003389 - 0003415
CPH 093	N/A
CPH 094	N/A
CPH 095	MSC 0036112 – 0036113
CPH 096	CPH0472488 – 0472496
CPH 097	MSC 0033910 – 0033911
CPH 098	CPH0482089 – 0482098
CPH 099	N/A
CPH 100	MSC 0062860 – 0062896
CPH 110	CPH0038670 – 0038676
CPH 111	CPH0038700 – 0038706
CPH 112	CPH0129613 – 0129616
CPH 115	CPH0038700 – 0038706

DEP EXHIBIT #	BATES RANGE
CPH 117	CPH0038523 – 0038524
CPH 120	CPH0012522 – 0012524
CPH 121	CPH1145796
CPH 122	CPH0039327, CPH0038707
CPH 122	CPH0039327, CPH0038707
CPH 124	CPH0012464 – 0012466
CPH 125	MSC 0004673 - 0004702
CPH 126	MSC 0042248 - 0042275
CPH 128	MSC 0029199 - 0029201
CPH 129	MSC 000513 - 000541
CPH 130	CPH0251869 – 0251889
CPH 131	CPH0251890 – 0251985
CPH 132	CPH0636135 – 0636136
CPH 133	MSC 0059244 – 0059266
CPH 135	MSC 0063735 – 0063804
CPH 136	MSC 0083748 – 0083904
CPH 137	MSC 0039543
CPH 138	CPH1411216 – 1411300
CPH 139	MSC 0026540 – 0026544
CPH 140	CPH0483399 – 0483407
CPH 141	CPH 0483341 – 0483350
CPH 142	CPH 0253547 -- 0253555

DEP EXHIBIT #	BATES RANGE
CPH 143	CPH1026942-1026953
CPH 144	MSC 0016944
CPH 145	MSC 0028214 -- 0028271
CPH 146	MSC 0080325 -- 0080333
CPH 148	MSC 0047892
CPH 149	MSC 0047893
CPH 150	CPH0470006-04700016
CPH 151	MSC 0065651 -- 0065784
CPH 152	LAB 000043
CPH 153	MSC 0018885 -- 0018942
CPH 154	CPH1258265 -- 1258266
CPH 155	CPH1346133 -- 1346250
CPH 156	CPH1346276 -- 1346342
CPH 157	MSC 0018702 -- 0018703
CPH 160	MSC 0003143
CPH 162	MSC 0026888 -- 0026891
CPH 163	MSC 0080427 -- 0080430
CPH 164	MSC 0045133-0045139
CPH 165	N/A
CPH 166	MSC 0045102-0045108
CPH 167	N/A
CPH 168	N/A

DEP EXHIBIT #	BATES RANGE
CPH 169	MSC 0044556-0044573
CPH 170	MSC 0042538-0042540
CPH 171	N/A
CPH 172	MSC 0044462
CPH 173	MSC 0043129
CPH 174	MSC 0042570
CPH 175	N/A
CPH 176	N/A
CPH 177	MSC 0085779
CPH 178	MSC 0084771-0084778
CPH 179	CPH0635892-0635895
CPH 180	MSC 0029194-0029196
CPH 181	MSC 0006284-0006335
CPH 182	CPH 1089795-1089815
CPH 183	MSC 0063286-0063330
CPH 184	N/A
CPH 186	MSC 0041901-0041912
CPH 187	MSC 0041870-0041888
CPH 187A	CP0254621-0254640
CPH 188	CPH1408952-1408956
CPH 189	CPH0642933-0642937
CPH 190	N/A

DEP EXHIBIT #	BATES RANGE
CPH 194	N/A
CPH 195	MSC 0040237-0040305
CPH 196	MSC 085612-0085613
CPH 200	CPH0472360-0472361
CPH 202	MSC 0003931
CPH 203	MSC 0042314-0042327
CPH 204	MSC 0042328-0042341
CPH 205	MSC 0004005-004007
CPH 207	CPH0471614-0471629
CPH 208	CPH632817-0632905
CPH 209	CPH1348404-1348475
CPH 210	CPH0632981
CPH 211	CPH0633012-0633049
CPH 212	CPH1257349
CPH 213	MSC 0029159-0029162
CPH 214	CPH127359
CPH 215	N/A
CPH 217	MSC 0045665-0045758
CPH 217A	MSC 0080431-0080434
CPH 218	MSC 0004724-0004728
CPH 218A	MSC 0045760-0045761
CPH 219	MSC 0036347-0036349

DEP EXHIBIT #	BATES RANGE
CPH 220	CPH0467090-0467126
CPH 221	MSC 0045474-0045475
CPH 222	MSC 0003431-0003464
CPH 223	MSC 0042482-0042483
CPH 224	N/A
CPH 225	CPH 0147626-0147627
CPH 226	CPH 0147607-0147616
CPH 227	CPH 0639174-0639182
CPH 228	MSC 0085750-0085751
CPH 229	MSC 0085763-0085765
CPH 230	CPH 0635890-0635891
CPH 232	MSC 0085589-0085609
CPH 233	MSC 0085274-0085283
CPH 234	MSC 0084771-0084778
CPH 235	MSC 0085726-0085727
CPH 238	CPH 1412552-1412570
CPH 242	MSC 0045156
CPH 243	MSC 0026587-0026588
CPH 244	MSC 0031982-0031984
CPH 245	MSC 0043210
CPH 246	CPH 0473192-0473193
CPH 247	MSC 0004132-0004143

DEP EXHIBIT #	BATES RANGE
CPH 248	MSC 0085175-0085181
CPH 249	MSC 0036633-0036634
CPH 250	CPH 0146467
CPH 251	MSC 0005547-0005599
CPH 252	MSC 0019638-0019725
CPH 255	MSC 0045317-0045318
CPH 256	MSC 0019097-0019116
CPH 257	FUNB 021139
CPH 258	FUNB 021243
CPH 260	CPH 0485371-0485376
CPH 261	MSC 0024383-0024451
CPH 262	MSC 0018660-0018725 *(18687-88)**
CPH 263	MSC 0018730-0018731
CPH 264	MSC 0024863
CPH 265	MSC 0024864-0024866
CPH 266	CPH 1349253-1349282
CPH 272	CPH0473148-0473165
CPH 273	MSC 0023225-0023229
CPH 274	MSC 0054921-0054925
CPH 275	MSC 0001575-0001579
CPH 277	MSC0004673-0004702
CPH 278	MSC 0036700-0036720

DEP EXHIBIT #	BATES RANGE
CPH 279	MSC 006375-006432
CPH 280	MSC 0018885-0018942
CPH 281	MSC 0059244-0059266
CPH 284	MSC 0025887
MS 013	MSC 0027828-0027829
MS 040	MSC 0000001-0000175
MS 048	CPH 0041655-0041661
MS 057	FUNB 016564-016567
MS 079	CPH 0467007
MS 080	CPH 1426289-1426296
MS 081	CPH 1421814-1421817
MS 082	CPH 1406962-1406964
MS 083	CPH 1427250-1427253
MS 085	CPH 1411216-1411300
MS 115	MSC 0063805-0063811
MS 166	CPH 1326487-1326662
MS 175	CPH 0482090-0482098
MS 182	CPH 1412533-1412551
MS 183	CPH 1109095-1109115
MS 189	CPH 1399821-1399822
MS 194	CPH 1185762-1185784
MS 238	CPH 1418423-1418499

DEFINITIONS

1. "CPH" means Coleman (Parent) Holdings, Inc., its predecessors, successors, subsidiaries, and present and former officers, directors, and employees.

2. "Morgan Stanley" means Morgan Stanley & Co., Inc. and any of its direct or indirect parents, affiliates, subsidiaries, and present and former officers, directors, partners, employees, representatives, and agents.

3. "MSSF" means Morgan Stanley Senior Funding, Inc. and any of its direct or indirect parents, affiliates, subsidiaries, and present and former officers, directors, partners, employees, representatives, and agents.

4. "Documents" shall be given the broad meaning provided in CPLR 3120 and refers to any form or means, whether physical, visual, or electronic, in or by which words, numbers, or ideas are recorded or preserved, whether fixed in tangible medium or electronically stored, including any and all drafts of any final document. The word "documents" shall include, by way of example and not by way of limitation, all of the following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, notes, messages, reports, studies, press releases, comparisons, books, accounts, checks, audio and video recordings and transcriptions thereof, pleadings, testimony, articles, bulletins, pamphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk calendars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, minutes for meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements,

memoranda of understanding, letters of intent, computer tapes, computer drives or memories, computer diskettes or disks, e-mail, CD-ROMs, or any other tangible thing on which any handwriting, typing, printing, photostatic, electronic, or other form of communication or information is recorded or reproduced, together with all notations on any of the foregoing, all originals, file copies, or other unique copies of the foregoing, and all versions or drafts thereof, whether used or not.

5. "You" or "Your" means Morgan Stanley and/or MSSF and any of its present and former partners, employees, representatives, and agents.

SERVICE LIST

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CHICAGO_1159521_1

CHICAGO_1159521_1

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

'C LEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,
's.
M()RGAN STANLEY & CO., INC.,
Defendant.
_____/
M()RGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,
's.
M. \CANDREWS & FORBES HOLDINGS INC.,
:t . l.,
Defendants.
_____/

SUBPOENA DUCES TECUM

TH E STATE OF FLORIDA

TO: Custodian of Records
Sunbeam Corporation
(n/k/a American Household, Inc.)
2381 Executive Center Drive
Boca Raton, Florida 33431

YOU ARE COMMANDED to appear at Searcy Denney Scarola Barnhart & Shipley, P.A., 2139 Palm Beach Lakes Boulevard, West Palm Beach, FL, 33409 pursuant to the :ul poena issued by the Circuit Court of the Fifteenth Judicial District of Flo:ida and Florida Ru le of Civil Procedure 1.310 on November 2, 2004 at 9:30 a.m., and to give testimony with es pect to the topics specified on the attached Rider.

If you fail to:

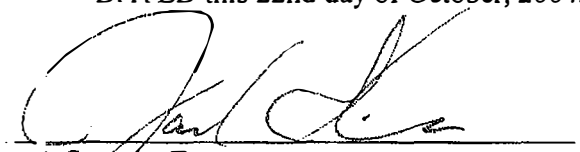
1) Appear as specified; or

2) Object to this subpoena,

Col man (Parent) Holdings, Inc. vs Morgan Stanley & Co., Inc.
 0C 3 CA 005045 AI
 ub poena Duces Tecum

You may be in contempt of court. You are subpoenaed to appear by the following attorney, and unless excused from this subpoena by this attorney or the court, you shall respond to this subpoena as directed.

DATED this 22nd day of October, 2004.



ack Scarola, Esq.
Florida Bar No.: 169440
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JENNER & BLOCK LLP
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Chicago, IL 60611
Phone: (312) 222-9350
Fax: (312) 527-0484

Attorneys for CPH and MAFCO

RIDER
to
SUBPOENA DUCES TECUM TO
CUSTODIAN OF RECORDS OF NON-PARTY
SUNBEAM CORPORATION (N/K/A AMERICAN HOUSEHOLD, INC.)

You are hereby requested to respond to the following topics pursuant to the definitions contained herein:

RULE 1.310 TOPICS

1. The authenticity, source, creation, use, maintenance, and business purpose of documents produced by Sunbeam to Coleman (Parent) Holdings, Inc. in the course of litigation, bearing the Bates numbers identified in Exhibit A, and information contained therein.

2. The authenticity, source, creation, use, maintenance, and business purpose of the documents identified in Exhibit B, and information contained therein. (Copies of the documents identified in Exhibit B are being provided under separate cover).

DEFINITIONS

1. "Sunbeam" means Sunbeam Corporation and any of its predecessors, successors, subsidiaries, and present and former officers, directors, employees, representatives, and agents.

2. "American Household" or "AHI" means American Household, Inc. and any of its predecessors, successors, subsidiaries, and present and former officers, directors, employees, representatives, and agents.

3. "Documents" shall be given the broad meaning provided in Rule 1.350 in the Florida Rules of Civil Procedure and refers to any form or means, whether physical, visual, or electronic, in or by which words, numbers, or ideas are recorded or preserved, whether fixed in tangible medium or electronically stored, including any and all drafts of any final document. The word "documents" shall include, by way of example and not by way of limitation, all of

:h· following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, nc :es, messages, reports, studies, press releases, comparisons, books, accounts, checks, audio an l video recordings and transcriptions thereof, pleadings, testimony, articles, bulletins, ɔa nphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk :a endars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, m nutes for meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of ɔr l communications, whether by telephone or face-to-face, contracts, agreements, drafts of or ɔr posed contracts or agreements, memoranda of understanding, letters of intent, computer :aj es, computer drives or memories, computer diskettes or disks, e-mail, CD-ROMs, or any ɔt er tangible thing on which any handwriting, typing, printing, photostatic, electronic, or ɔt er form of communication or information is recorded or reproduced, together with all nc ations on any of the foregoing, all originals, file copies, or other unique copies of the fo egoing, and all versions or drafts thereof, whether used or not.

EXHIBIT A
SUBPOENA DUCES TECUM TO CUSTODIAN OF RECORDS OF NON-PARTY SUNBEAM CORPORATION (N/K/A AMERICAN HOUSEHOLD, INC.)

The following documents were produced by Sunbeam to Coleman (Parent) Holdings, nc . in the course of litigation, bearing the Bates Numbers identified below.

EX. #	SUNBEAM BATES NUMBER
CPH 016	SB 0018286
CPH 034	SB 286348-286349
CPH 039	SB 085634-085635
CPH 040	SB 043025
CPH 041	SB 068782
CPH 042	SB 047885
CPH 043	SB 074537
CPH 044	SB 044796-044797
CPH 045	SB 081468-081470
CPH 046	SB 230568-230571
CPH 047	SB 230564-230567
CPH 048	SB 230560-230563
CPH 049	SB 045020-045027
CPH 050	SB 272842-272846
CPH 051	SB 049919-049922
CPH 052	SB 043614
CPH 053	SB 272908-272912
CPH 054	SB 044305-044306

EX. #	SUNBEAM BATES NUMBER
CPH 055	SB 044304
CPH 056	SB 054613-054658
CPH 058	SB 050134-050144
CPH 059	SB 050136
CPH 060	SB 050145-050146
CPH 061	SB 047906-047937
CPH 062	SB 0046413
CPH 063	SB 050206-050210
CPH 064	SB 0018286
CPH 070	SB 237825-237830
CPH 073	SB 352272-352273
CPH 075	SB 0018203-0018288
CPH 080	SB 230485
CPH 082	SB 234816-234900
CPH 096	SB 237789-237797
CPH 098	SB 247390-247399
CPH 130	SB 0013021-0013041
CPH 131	SB 0013042-0013137

EX. #	SUNBEAM BATES NUMBER
CPH 140	SB 248700-248708
CPH 141	SB 248642-248651
CPH 142	SB 0014697-0014705
CPH 147	SB 088157-088188
CPH 150	SB 235345-235355
CPH 187A	SB 0015771-0015790
CPH 191	SB 248716-248719
CPH 200	SB 237661-237662
CPH 207	SB 236953-236968
CPH 220	SB 232429-232465
CPH 243	SB 088523-088524
CPH 246	SB 238493-238494
CPH 259	SB 253322-253327
CPH 260	SB 250672-250677
CPH 272	SB 238449-238466
CPH 276	SB 0012251-0012274
MS 175	SB 247391-247399

EXHIBIT B
SUBPOENA DUCES TECUM TO
CUSTODIAN OF RECORDS OF NON-PARTY
SUNBEAM CORPORATION (N/K/A AMERICAN HOUSEHOLD, INC.)

Copies of the following documents are being provided to AHI under separate cover:

EX. #	BATES RANGE
CPH 009	CP 026286-026370
CPH 010	CP 033169-033240
CPH 011	SASMF 10699-10705
CPH 012	CPH 0012526-0012527
CPH 013	CPH 0635991-0635992
CPH 014	MSC 0016944-0016945
CPH 022	CPH0084462-0084532
CPH 025	N/A
CPH 026	CPH1412961-1413007
CPH 030	CPH1122102 - 1122103
CPH 031	CPH0635893
CPH 032	CPH0635894 - 0635895
CPH 036	CPH0639323 - 0639327
CPH 057	CPH0131143-0131148
CPH 065	CPH0088703
CPH 066	CPH0038717
CPH 069	MSC 0003894-0003930
CPH 074	MSC 0080356-0080358
CPH 085	MSC 0036347 – 0036349

EX. #	BATES RANGE
CPH 086	MSC 0045112 - 0045113
CPH 090	CPH1332631 – 1335633
CPH 092	MSC 0003339 - 0003415
CPH 100	MSC 0062850 – 0062896
CPH 110	CPH0038670 – 0038676
CPH 111	CPH0038700 – 0038706
CPH 112	CPH0129613 – 0129616
CPH 115	CPH0038700 – 0038706
CPH 117	CPH0038523 – 0038524
CPH 120	CPH0012522 – 0012524
CPH 121	CPH1145796
CPH 122	CPH0039327, CPH0038707
CPH 124	CPH0012464 – 0012466
CPH 132	CPH0636135 – 0636136
CPH 134	CPH0146910 – 00146913
CPH 135	MSC 0063735 – 0063804
CPH 138	CPH1411216 – 1411300
CPH 143	CPH1026942-1026953
CPH 144	MSC 0016944

EX. #	BATES RANGE
CPH 151	MSC 0065651 – 0065784
CPH 152	LAB 000043
CPH 155	CPH1346133 -- 1346250
CPH 156	CPH1346276 -- 1346342
CPH 160	MSC 0003143
CPH 161	CPH1010442 -- 1010444
CPH 164	MSC 0045133-0045139
CPH 166	MSC 0045102-0045108
CPH 169	MSC 0044556-0044573
CPH 170	MSC 0042538-0042540
CPH 174	MSC 0042570
CPH 179	CPH0635892-0635895
CPH 182	CPH 1089795-1089815
CPH 189	CPH0642933-0642937
CPH 193	CPH1418971-1418974
CPH 195	MSC 0040237-0040305
CPH 202	MSC 0003931
CPH 206	CPH0648779-0648791
CPH 208	CPH632817-0632905
CPH 209	CPH1348404-1348475
CPH 210	CPH0632981
CPH 211	CPH0633012-0633049

EX. #	BATES RANGE
CPH 215	None
CPH 216	CPH0632906-0632937
CPH 217	MSC 0045635-0045758
CPH 218A	MSC 0045760- 0045761
CPH 219	MSC 0036347- 0036349
CPH 222	MSC 0003431- 0003464
CPH 223	MSC 0042432- 0042483
CPH 225	CPH0147626-0147627
CPH 226	CPH0147607-0147616
CPH 227	CPH0639174-0639182
CPH 231	CPH1398266-1398501
CPH 237	CSFBC 0001623-0001648
CPH 238	CPH 1412552-1412570
CPH 250	CPH 0146467
CPH 251	MSC 0005547-0005599
CPH 252	MSC 0019638-0019725
CPH 253	CPH 1409707-1409980
CPH 256	MSC 0019097- 0019116
CPH 257	FUNB 021139
CPH 258	FUNB 021243
CPH 261	MSC 0024383- 0024451
CPH 267	CLN 11731- 11749

EX. #	BATES RANGE
CPH 268	CLN 11768- 11782
CPH 269	CLN 11783- 11790
CPH 270	CLN 11791- 11801
CPH 271	CLN 11802- 11814
CPH 278	MSC 006375-006432
CPH162	MSC 0026888 -- 0026891
MS 040	MSC 0000001-0000175
MS 080	CPH1426289-1426296
MS 081	CPH1421814-1421817
MS 082	CPH1406962-1406964
MS 083	CPH1427250-1427253
MS 085	CPH1411216-1411300
MS 109	CPH1042288-1042317
MS 115	MSC 0063805-0063811
MS 166	CPH1326487-1326662
MS 182	CPH1412533- 1412551
MS 183	CPH1109095- 1109115
MS 194	CPH1185762-1185784
MS 238	CPH1418423- 1418499
MS 279	CPH1398266- 1398537

EX. #	BATES RANGE
	MSC 0015896-0015970
	CLN 51657-51733
	MSC 0015626-0015703
	MSC 0020477- 0020552
	MSC 0061553- 0061621
	MSC 0061191- 0061251
	MSC 0067528- 0067602
	MSC 0072800- 0072863
	MSC 0073484- 0073562
	MSC 0067258- 0067341
	MSC 0087405- 0087490
	MSC 0070445- 0070542
	MSC 0086753- 0086799
	MSC 0092043- 0092076
	MSC 0092077- 0092111
	MSC 0092146-0092177
	MSC 0092032- 0092042
	MSC 0092178- 0092188
	MSC 0092112- 0092133
	MSC 0092134- 0092145

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CHICAGO_1168907_3

FAX TRANSMITTAL

JENNER & BLOCK

Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611
Tel 312 222-9350
www.jenner.com

Chicago
Dallas
Washington, DC

Date:	October 22, 2004		
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	Joseph Ianno, Jr., Esq.	Fax: Voice:	(561) 659-7368 (561) 659-7070
	John Scarola, Esq.	Fax: Voice:	(561) 684-5816 (before 5 PM) (561) 686-6350, Ext. 140
	Mark C. Hansen, Esq.	Fax: Voice:	(202) 326-7999 (202) 326-7900
From:	Michael T. Brody 312 923-2711		
Employee Number:		Client Number:	41198-10003

Important: This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is attorney work product, privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via postal service. Thank you.

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October 22, 2004

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By Telecopy

Thomas A. Clare, Esq.
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Washington, D.C. 20005

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Tom:

Attached please find a signed Certificate of Service for CPH's Seventh Set of Interrogatories to Morgan Stanley & Co., Inc. The interrogatories served last evening did not contain a signed Certificate of Service.

Very truly yours,

Michael T. Brody

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Coleman (Parent) Holdings Inc.'s Seventh Set of Interrogatories to Morgan Stanley & Co. Inc. was served by facsimile and Federal Express to counsel listed below on this 21st day of October, 2004:

Thomas A. Clare, Esq.
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
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Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, PLLC
1615 M. Street, N.W.
Washington, D.C. 20036

By: _____
Michael T. Brody

CARLTON FIELDS, P.A.

ATTORNEYS AT LAW

ESPERANTÉ
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WEST PALM BEACH, FLORIDA 33401-6149

MAILING ADDRESS
P.O. BOX 150, WEST PALM BEACH, FL 33402-0150
TEL (561) 659-7070 FAX (561) 659-7368

FAX COVER SHEET

		Phone Number	Fax Number
Date:	October 22, 2004		
To:	Jack Scarola	(561) 686-6300	(561) 684-5816
	Jerold Solovy/Michael Brody	(312) 222-9350	(312) 840-7711
	Thomas Clare	(202) 879-5993	(202) 879-5200
	Rebecca Beynon/Mark Hansen	(202) 326-7900	(202) 326-7999
From:	Joyce Dillard, CLA	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 7

Message:

Coleman v. Morgan Stanley & Co., Inc.

Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings, Inc.

To follow please find a copy of the following:

1. Morgan Stanley Senior Funding, Inc.'s Notice of Voluntary Dismissal without Prejudice.

☐ ***Original to follow Via Regular Mail*** ☐ ***Original will Not be Sent*** ☑ ***Original will follow via Overnight Courier***

****
The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (if long distance, please call collect) and return the original message to us at the above address via the U.S. Postal Service. Thank you.
****

IF THERE ARE ANY PROBLEMS OR COMPLICATIONS, PLEASE NOTIFY US IMMEDIATELY AT:
(561) 659-7070

TELECOPIER OPERATOR: _____

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

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs. CASE NO: CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.
_____/

NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE

Plaintiff Morgan Stanley Senior Funding, Inc., by and through its undersigned counsel, and pursuant to Fla.R.Civ.P. 1.420 hereby files this Notice of Voluntary Dismissal without Prejudice on behalf of Plaintiff Morgan Stanley Senior Funding, Inc. against Defendants MacAndrews & Forbes Holdings Inc. and Coleman (Parent) Holdings Inc. in the above Case No: CA 03-5165 AI. This notice applies to Case No. CA 03-5165 AI only.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 22ND day of October, 2004.

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Morgan Stanley Senior Funding, Inc.

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BY: Joseph Ianno, Jr.
Joseph Ianno, Jr.
Florida Bar No. 655351

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FAX COVER SHEET

		Phone Number	Fax Number
Date:	October 22, 2004		
To:	Jack Scarola	(561) 686-6300	(561) 684-5816
	Jerold Solovy/Michael Brody	(312) 222-9350	(312) 840-7711
	Thomas Clare	(202) 879-5993	(202) 879-5200
	Rebecca Beynon/Mark Hansen	(202) 326-7900	(202) 326-7999
From:	Joyce Dillard, CLA	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 29

Message:

Coleman v. Morgan Stanley & Co., Inc.

Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings, Inc.

To follow please find a copy of the following:

1. Morgan Stanley's Motion for Protective Order Concerning the Notice of Taking Videotaped Depositions served by CPH on October 18, 2004; and

2. Morgan Stanley's Motion for Protective Order Concerning the Notice of Taking Videotaped Depositions served by MAFCO on October 18, 2004

☐ ***Original to follow Via Regular Mail*** ☐ ***Original will Not be Sent*** ☑ ***Original will follow via Overnight Courier***

****
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TELECOPIER OPERATOR: _____

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MOTION FOR PROTECTIVE ORDER CONCERNING THE NOTICE OF TAKING VIDEOTAPED DEPOSITIONS SERVED BY COLEMAN (PARENT) HOLDINGS, INC. ON OCTOBER 18, 2004

Defendant Morgan Stanley & Co. Inc. ("Morgan Stanley") requests that this Court enter a Protective Order pursuant to Fla. R. Civ. P. 1.280(c) concerning the Notice of Taking Videotaped Depositions served on October 18, 2004, by Coleman (Parent) Holdings Inc. ("CPH"). In support of this Motion, Morgan Stanley states as follows:

1. On October 18, 2004 CPH served a Notice of Taking Videotaped Depositions ("Deposition Notice"). A copy of the Notice of Taking Videotaped Depositions is attached hereto as Exhibit A.

2. This Motion is directed to the deposition of Morgan Stanley scheduled for October 25, 2004 for those topics listed on Exhibit A to the Deposition Notice. A protective order should be issued because the topics listed on Exhibit A are not relevant nor reasonably calculated to lead to the discovery of admissible evidence to issues framed by the current pleadings in this action.

3. The Deposition Notice requests that Morgan Stanley designate one or more representatives to testify on the topics listed on Exhibit A to the Deposition Notice. These topics relate exclusively to misrepresentations and/or omissions alleged to have been made by CPH, MacAndrews & Forbes Holdings, Inc., or The Coleman Company in the now-dismissed action filed by Morgan Stanley Senior Funding, Inc. ("MSSF"). Since MSSF has voluntarily dismissed its complaint through service of its Notice of Voluntary Dismissal Without Prejudice, these topics are no longer relevant to any issue currently framed by the pleadings in this action and, therefore, the discovery is not reasonably calculated to lead to the discovery of admissible evidence.

WHEREFORE, Morgan Stanley respectfully requests that this Court enter a Protective Order that excuses Morgan Stanley from designating a representative to testify on those topics listed on Exhibit A to the Deposition Notice and award such other and further relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 22ND day of October, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
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Zhonette M. Brown
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655 15th Street, N.W., Suite 1200
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E-mail: jianno@carltonfields.com

BY: Joseph Ianno, Jr.
Joseph Ianno, Jr.
Florida Bar No. 655351

Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
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Counsel for Morgan Stanley & Co. Incorporated

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.
MORGAN STANLEY & CO., INC.,
Defendant.
/

CASE NO. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,
vs.
MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
/

CASE NO. CA 03-5165 AI

NOTICE OF TAKING VIDEOTAPED DEPOSITIONS

To: Thomas A. Clare, Esq.
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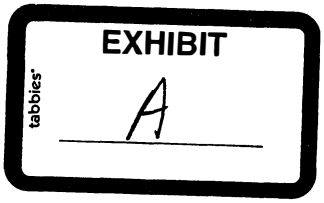
Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following parties and witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Ruth Porat	November 23-24, 2004
Michael Rankowitz	November 4, 2004
Morgan Stanley & Co., Inc. on the topics identified on Exhibit A.	October 25, 2004
Morgan Stanley & Co., Inc. on the topics identified on Exhibit B.	November 10, 2004
Morgan Stanley & Co., Inc. on the topics identified on Exhibit C.	October 27, 2004
Morgan Stanley & Co., Inc. on the topics identified on Exhibit D.	November 3, 2004



All of the depositions will be conducted at Esquire Deposition Services, 216 East 45th Street, New York, NY 10017 and will begin at 9:30 a.m. The depositions will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until completed.

With respect to the depositions of Morgan Stanley & Co., Inc. ("MS&Co.") identified above, please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List this 18th day of October 2004.

Dated: October 18, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: Andrea Conneel
One of Its Attorneys

Jerold S. Solovy
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Document Number: 1167384

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Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
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West Palm Beach, FL 33401

Exhibit A

CORPORATE DEPOSITION TOPICS

1. All misrepresentations and/or omissions which MS&Co. or any of its affilliates contends were committed by or on behalf of MacAndrews & Forbes Holdings Inc., Coleman (Parent) Holdings Inc. ("CPH"), or The Coleman Company, Inc. in connection with Sunbeam's acquisition of CPH's interest in The Coleman Company, Inc., including, but not limited to the following:

A. The identities of the individuals who allegedly made misrepresentations and/or omissions that were allegedly relied upon.

B. The individual(s) to whom the alleged misrepresentations and/or omissions were made;

C. The date and time that each alleged misrepresentation and/or omission was made;

D. The identities of the individuals who relied upon the alleged misrepresentations and/or omissions;

E. The reliance of each individual on the alleged misrepresentations and/or omissions.

Exhibit B

CORPORATE DEPOSITION TOPICS

1. The value of American Household, Inc. on the following dates: (a) February 6, 2001; and (b) September 20, 2004.

2. The value of MS&Co.'s or any of its affilliates' interest in American Household, Inc. on the following dates: (a) February 6, 2001; and (b) September 20, 2004.

Exhibit C

CORPORATE DEPOSITION TOPICS

1. All fees, expenses, other compensation, or assets billed by or otherwise due to Morgan Stanley & Co., Inc. ("MS&Co."), Morgan Stanley Senior Funding, Inc. ("MSSF"), or any of their affiliates concerning or on behalf of Sunbeam Corp. (including American Household, Inc.) and all fees, expenses, other compensation, or assets paid or provided by or on behalf of Sunbeam Corp. (including American Household, Inc.) to MS&Co., MSSF, or any of their affiliates.

Exhibit D

CORPORATE DEPOSITION TOPICS

1. All of the procedures of, rules for, and activities of the Equity Commitment Committee in 1997 and 1998.

2. The role of the Equity Commitment Committee in 1997 and 1998.

3. All documents typically or ordinarily generated by and for the Equity Commitment Committee in the course of a transaction in 1997 and 1998.

4. All of the procedures of, rules for, and activities of the Leveraged Finance Commitment Committee and/or the Leveraged Finance Committee from 1997 to the present.

5. The role of the Leveraged Finance Commitment Committee and/or the Leveraged Finance Committee in 1997 and 1998.

6. All documents typically or ordinarily generated by and for the Leveraged Finance Commitment Committee and/or the Leveraged Finance Committee in the course of a transaction in 1997 and 1998.

7. The process, procedures, and requirements for preparing, approving, or issuing "highly confident" letters in 1997 and 1998.

8. All non-transaction specific documents generated in connection with preparing, approving, or issuing "highly confident" letters in 1997 and 1998.

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MOTION FOR PROTECTIVE ORDER CONCERNING THE NOTICE OF TAKING VIDEOTAPED DEPOSITIONS SERVED BY MACANDREWS & FORBES HOLDINGS, INC. ON OCTOBER 18, 2004

Defendant Morgan Stanley & Co. Inc. ("Morgan Stanley") requests that this Court enter a Protective Order pursuant to Fla. R. Civ. P. 1.280(c) concerning the Notice of Taking Videotaped Depositions served on October 18, 2004, by MacAndrews & Forbes Holdings Inc. ("MAFCO"). In support of this Motion, Morgan Stanley states as follows:

1. On October 18, 2004, MAFCO served a Notice of Taking Videotaped Depositions of two individuals (Mr. Mitch Petrick and Mr. Simon Rankin) and four corporate representative depositions of Morgan Stanley Senior Funding, Inc. ("MSSF") pursuant to Florida Rule of Civil Procedure 1.310 ("Deposition Notice"). The deposition notice purports to require all six depositions take place in Florida. A copy of the Notice of Taking Videotaped Deposition is attached hereto as Exhibit A.

2. Neither Mr. Petrick nor Mr. Rankin are parties to this action; therefore, they cannot be compelled to attend a deposition in Florida and without service of a subpoena. Moreover, since MSSF has voluntarily dismissed its complaint through service of its Notice of Voluntary Dismissal Without Prejudice, neither Mr. Petrick nor Mr. Rankin is an employee,

managing agent, officer or director of any party seeking affirmative relief in this Court. Additionally, because neither MSSF nor MAFCO are parties to this action, the Deposition Notice is null and void. Consequently, MAFCO cannot compel the attendance of Mr. Petrick, Mr. Rankin, or designated representatives of MSSF at a deposition in Florida, or without issuance of a subpoena.

3. First, the Deposition Notice improperly attempts to compel Mr. Petrick to appear for a deposition in Florida. Since Mr. Petrick is not employed by a party seeking affirmative relief in this action, his attendance at a deposition cannot be compelled in Florida. Pursuant to Fla.R.Civ.P, Rule 1.410, a witness can ". . . be required to attend an examination only in the county wherein the person resides or is employed or transacts business in person or at such other convenient place as may be fixed by an order of court." Mr. Petrick resides in Connecticut and is employed and transacts business in New York. Therefore, he can only be compelled to attend a deposition in the one of those two locations.

4. Second, the Deposition Notice improperly attempts to compel Mr. Rankin to appear for a deposition in Florida without the service of a subpoena. Since Mr. Rankin is not a party to this action, his attendance at a deposition can only be compelled via subpoena. However, even if Plaintiff served a subpoena on Mr. Rankin, he cannot be compelled to appear for a deposition in Florida. Pursuant to Fla.R.Civ.P, Rule 1.410, a witness can ". . . be required to attend an examination only in the county wherein the person resides or is employed or transacts business in person or at such other convenient place as may be fixed by an order of court." Mr. Rankin resides in the United Kingdom and is employed and transacts business in the United Kingdom. Therefore, he can only be compelled to attend a deposition in the United Kingdom.

5. More importantly, the Deposition Notice is only issued by MAFCO, which is no longer a party to this action by virtue of the Notice of Voluntary Dismissal Without Prejudice served by MSSF. Pursuant to the Rules of Civil Procedure, only a "party" to an action can take depositions. In addition, only "parties" to an action can be compelled to attend a deposition without service of a subpoena. Since MSSF has voluntarily dismissed its action, MAFCO is not permitted to (a) compel the attendance of any MSSF employee or of MSSF without service of a subpoena and (b) compel the attendance of these witnesses in Florida unless they reside or transact business in Palm Beach County, Florida.

WHEREFORE, Morgan Stanley respectfully requests that this Court enter a Protective Order that:

(a) declares MAFCO's October 18, 2004 Deposition Notice null and void;

(b) requires Mr. Petrick to be deposed in Connecticut or New York;

(c) requires Mr. Rankin to be deposed in the United Kingdom;

(d) requires that the depositions of representatives of MSSF be taken only where the witnesses reside or transact business in person and;

(e) awards such other and further relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 22ND day of October, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
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Counsel for Morgan Stanley & Co. Incorporated

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BY: Joseph Ianno, Jr.
Joseph Ianno, Jr.
Florida Bar No. 655351

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Chicago, IL 60611

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,
vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,
vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITIONS

To: Thomas A. Clare, Esq.
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KELLOGG, HUBER, HANSEN, TODD
& EVANS, P.L.L.C.
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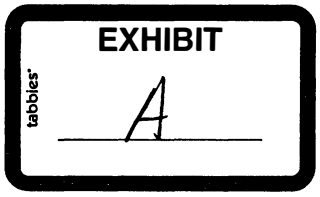
N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that MacAndrews & Forbes Holdings Inc. will take the deposition upon oral examination of the following parties and witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Mitch Petrick	November 1-2, 2004
Simon Rankin	October 25, 2004
Morgan Stanley Senior Funding, Inc. on topics identified on Exhibit A.	October 25, 2004
Morgan Stanley Senior Funding, Inc. on topics identified on Exhibit B.	October 29, 2004
Morgan Stanley Senior Funding, Inc. on topics identified on Exhibit C.	November 10, 2004
Morgan Stanley Senior Funding, Inc. on topics identified on Exhibit D.	October 27, 2004



All of the depositions will be conducted at Searcy Denney Scarola Barnhart & Shipley, P.A. 02139 Palm Beach Lakes Boulevard, West Palm Beach, Florida 33402 and will begin at 9:30 a.m. The depositions will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until completed.

With respect to the depositions of Morgan Stanley Senior Funding, Inc. ("MSSF") identified above, please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List this 18th day of October 2004.

Dated: October 18, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
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Document Number: 1167311

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Exhibit A

CORPORATE DEPOSITION TOPICS

1. All misrepresentations and/or omissions which MSSF contends were committed by or on behalf of MacAndrews & Forbes Holdings Inc., Coleman (Parent) Holdings Inc. ("CPH"), or The Coleman Company, Inc. in connection with Sunbeam's acquisition of CPH's interest in The Coleman Company, Inc., including, but not limited to the following:

A. The identities of the individuals who allegedly made misrepresentations and/or omissions that MSSF allegedly relied upon.

B. The individual(s) to whom the alleged misrepresentations and/or omissions were made;

C. The date and time that each alleged misrepresentation and/or omission was made;

D. The identities of the individuals who relied upon the alleged misrepresentations and/or omissions;

E. The reliance of each individual on the alleged misrepresentations and/or omissions.

Exhibit B

CORPORATE DEPOSITION TOPICS

1. The authenticity, creation, use, maintenance, and business purpose of documents produced by Morgan Stanley & Co., Inc. and Morgan Stanley Senior Funding, Inc. at Bates Nos. Morgan Stanley Confidential 0084771-0085783 and Morgan Stanley Confidential 0094003-0094032.

Exhibit C

CORPORATE DEPOSITION TOPICS

1. The value of American Household, Inc. on the following dates: (a) February 6, 2001; and (b) September 20, 2004.

2. The value of Morgan Stanley Senior Funding, Inc.'s interest in American Household, Inc. on the following dates: (a) February 6, 2001; and (b) September 20, 2004.

Exhibit D

CORPORATE DEPOSITION TOPICS

1. All fees, expenses, other compensation, or assets billed by or otherwise due to Morgan Stanley & Co., Inc. ("MS&Co."), Morgan Stanley Senior Funding, Inc. ("MSSF"), or any of their affiliates concerning or on behalf of Sunbeam Corp. (including American Household, Inc.) and all fees, expenses, other compensation, or assets paid or provided by or on behalf of Sunbeam Corp. (including American Household, Inc.) to MS&Co., MSSF, or any of their affiliates.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

FOUR TIMES SQUARE
NEW YORK 10036-6522

TELEPHONE NO.: (212) 735-3000
FACSIMILE NO.: (212) 735-2000

EMAIL: dspenner@skadden.com

FACSIMILE TRANSMITTAL SHEET

FROM: Dorothy Spenner
DIRECT DIAL: 212-735-2133
DIRECT FACSIMILE: 917-777-2133

DATE: October 22, 2004
FLOOR/OFFICE NO.: 40-126

THIS FACSIMILE IS INTENDED ONLY FOR USE OF THE ADDRESSEE(S) NAMED HEREIN AND MAY CONTAIN LEGALLY PRIVILEGED AND/OR CONFIDENTIAL INFORMATION. IF YOU ARE NOT THE INTENDED RECIPIENT OF THIS FACSIMILE, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS FACSIMILE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS FACSIMILE IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL FACSIMILE TO US AT THE ADDRESS ABOVE VIA THE LOCAL POSTAL SERVICE. WE WILL REIMBURSE ANY COSTS YOU INCUR IN NOTIFYING US AND RETURNING THE FACSIMILE TO US.

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PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

1. NAME: Gary I. Lerner, Esq. — FIRM: Cohen Lans LLP
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   FACSIMILE NO.: 212-980-3448

2. NAME: Robert T. Markowsky, Esq. — FIRM: Jenner & Block
   CITY: Chicago, IL — TELEPHONE NO.: 312-222-9350
   FACSIMILE NO.: 312-527-0484

3. NAME: Thomas A. Clare, Esq. — FIRM: Kirkland & Ellis LLP
   CITY: Washington, D.C. — TELEPHONE NO.: 202-879-5000
   FACSIMILE NO.: 202-879-5200

MESSAGE: Please see attached.

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HONG KONG
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SINGAPORE
SYDNEY
TOKYO
TORONTO
VIENNA

October 22, 2004

BY FACSIMILE

Gary I. Lerner, Esq.
Cohen Lans LLP
885 Third Avenue
New York, NY 10022

Re: Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co. – Subpoena to Skadden

Dear Mr. Lerner:

Enclosed are the objections and responses of Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden") to the subpoena duces tecum served on the Custodian of Records at Skadden on October 14, 2004 (the "Subpoena"), in connection with the above-captioned litigation.

As articulated in greater detail in the enclosed objections and responses, in sum, we believe the Subpoena is overbroad, burdensome, and includes requests for items that do not exist. The Subpoena also requests irrelevant, private, and privileged information. As such, it is unenforceable as a matter of law.

We also believe that any documents that are the proper subject of discovery have already been produced to Coleman (Parent) Holdings Inc. ("Coleman (Parent)") by Skadden or Sunbeam Corporation. As you know, Skadden has produced nearly 20,000 pages of documents over the past several years and most recently supplemented that production more than seven months ago. Those documents have been provided to your client.

As I have previously discussed with attorneys at Jenner & Block, Skadden remains willing to respond to a reasonably tailored request for calendars and time records for the attorneys principally involved in the Coleman transaction at issue in this action, if an agreement can be reached regarding the appropriate scope of the Subpoena.

Lastly, we note that the Subpoena calls for the deposition of Skadden's custodian of records. We believe such a deposition would be abusive and unnecessary, particularly in light of the parties' requests to depose multiple Skadden attorneys as fact witnesses in the case.

In accordance with CPLR 2304, we hereby request that Coleman (Parent) withdraw or modify the Subpoena, in accordance with the foregoing and Skadden's enclosed objections and responses.

Please call me if you would like to discuss the foregoing.

Very truly yours,

Christopher P. Malloy

Enclosure

cc: Robert T. Markowsky, Esq. (w/encl., by facsimile)
Jenner & Block
One IBM Plaza
Chicago, IL 60611-7603

Thomas A. Clare, Esq. (w/encl., by facsimile)
Kirkland & Ellis LLP
655 Fifteenth Street, N.W., Suite 1200
Washington, D.C. 20005

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the application of COLEMAN (PARENT) HOLDINGS INC.,

Petitioner,

for an order for the issuance of a subpoena duces tecum SKADDEN, ARPS, SLATE, MEAGHER & FLOM,

Respondent,

pursuant to a commission issued in an action pending in the Circuit Court of the Fifteenth Judicial District of the State of Florida entitled Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co. Inc., Case No. CA 03-5045 AI / Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al., Case No. CA 03-5165 AI.

INDEX NO. 114428/04

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP'S OBJECTIONS AND RESPONSES TO SUBPOENA FROM COLEMAN (PARENT) HOLDINGS INC.

Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden"), by its undersigned attorneys, hereby responds and objects to the subpoena served upon it by Coleman (Parent) Holdings Inc. ("Coleman (Parent)") as follows:

GENERAL OBJECTIONS

The following General Objections are incorporated into each specific response below as if fully repeated in each response. The production of any documents by Skadden pursuant to the Subpoena and these Objections and Responses shall be without prejudice to any objections Skadden may have to the relevance or admissibility of any document at any hearing or trial.

1. Skadden objects to the Subpoena on the grounds that it is overbroad and burdensome and fails to specify with reasonable particularity the items or categories of items requested.

2. Skadden objects to the Subpoena to the extent it would require Skadden to duplicate the search for documents it conducted in response to the subpoenas served on Skadden in March 2000 (the "2000 Subpoena"), in conjunction with In re Sunbeam Securities Litigation, (98-8258-Civ-Middlebrooks), pending at that time in the United States District Court for the Southern District of Florida, and in February 2002 (the "2002 Subpoena") in conjunction with Coleman (Parent) Holdings, Inc. v. Arthur Andersen LLP, et al., pending at that time in the Circuit Court of the Fifteenth Judicial District of the State of Florida. In response to the 2000 Subpoena and the 2002 Subpoena, Skadden undertook an exhaustive, costly and time-consuming search for and review of documents, and subject to certain limited objections, produced nearly 20,000 pages of documents and privilege and redaction logs. Skadden has produced these documents to Coleman (Parent) and most recently supplemented that production more than seven months ago.

3. Skadden objects to the Subpoena to the extent that it calls for the production of documents that are neither relevant to the issues raised in the Florida Actions nor reasonably calculated to lead to the discovery of admissible evidence. Skadden objects to such requests on the grounds that it would be unduly burdensome to produce such documents, given that the expense of the production outweighs its likely benefit, and that they are interposed for purposes of harassment or annoyance.

4. Skadden objects to the Subpoena to the extent that it seeks production of documents protected from disclosure by any applicable doctrine of privilege or immunity from

disclosure, including without limitation documents developed for or in anticipation of litigation, or documents that constitute or reflect attorney's work product or contain attorney-client communications. The production of any documents protected by any privilege or immunity is inadvertent and shall not be deemed a waiver of any such privilege or immunity.

5. Skadden objects generally to the Subpoena to the extent it seeks the production of documents containing confidential commercial, business, financial, proprietary or competitively sensitive documents, disclosure of which could injure Skadden or any of its clients.

6. Skadden objects to the Subpoena, including without limitation the Definitions and Instructions, to the extent it purports to impose obligations beyond those set forth in the CPLR.

7. Skadden objects to the Subpoena insofar as it seeks documents that are not in Skadden' possession, custody or control or which would require Skadden to collect documents in the possession, custody or control of every person arguably defined in the Subpoena as Skadden's agent on the ground that such an undertaking is unduly burdensome, an expenditure of unnecessary time and resources, and that no such obligation is imposed on Skadden by the CPLR.

8. Skadden objects to the Subpoena to the extent it seeks publicly available documents or documents that are obtainable from some other source that is more convenient, less burdensome, or less expensive.

9. Skadden objects to the Subpoena to the extent it seeks the production of documents already in the possession, custody or control of Coleman (Parent), including any documents that have been previously produced in this litigation or other litigations.

10. Skadden objects to the Subpoena to the extent it seeks the production of documents prepared, obtained, produced or exchanged in connection with any government investiga-

tion on the grounds that any such documents are either subject to an applicable privilege or immunity from production, are irrelevant to issues in the Florida Actions or are already in the possession of Coleman (Parent).

11. Skadden objects to the Subpoena to the extent that it purports to require Skadden to provide or ascertain information in the possession of third parties on the grounds that such information is not within Skadden's custody or control. Skadden further objects on the grounds that searching for such information would be unreasonably burdensome, time consuming and expensive because it would not be reasonably calculated to lead to the discovery of admissible evidence.

12. Skadden objects to the Subpoena to the extent it would require Skadden to conduct an unreasonably broad search of its own files for responsive documents which would have only marginal relevance to the issues in this case, on the grounds that searching for such information would be unduly burdensome, time consuming and expensive because such a search would not be reasonably calculated to lead to the discovery of admissible evidence.

13. Skadden objects to each request for production to the extent that it imposes an obligation to create documents for production to Coleman (Parent).

14. Skadden objects to the Subpoena to the extent it purports to require it to search for all electronically-stored information possibly responsive to the Subpoena on the grounds that conducting such a search would be unduly burdensome.

15. Skadden objects to the Definitions set forth in the Subpoena to the extent they attempt to define words beyond their ordinary meaning.

16. Skadden's failure to object to the Subpoena on a particular ground shall not be construed as a waiver of rights to object on that ground or any additional ground at any time.

17. Skadden's response that it will produce the documents sought by a particular request does not constitute an admission that Skadden actually possesses the documents requested or that any such documents exist.

18. Skadden reserves the right to supplement or amend these responses if further information becomes available to Skadden.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

1. Skadden objects to the definition of the "you" contained in Definition Number 10, and "Skadden," "CPH," "Sunbeam," "MS&Co.," "MSSF," "Davis Polk," and "Arthur Andersen," contained in Definition Numbers 1, 2, 3, 4, 5, 6, and 7, respectively on the grounds that they are vague, ambiguous and unduly broad. These definitions include not only the named entities themselves, but also numerous other entities such as "parents," "subsidiaries," "affiliates," "predecessors," "successors," "present and former" officers, directors, partners, employees, representatives, and agents. Searching for and providing documents based on these definitions would be unduly burdensome and expensive because the definitions are unduly broad and call for production of documents unrelated to the issues in the Florida Actions, and fail to specify with reasonable particularity the documents or categories of documents requested.

2. Skadden objects to the definition of "Documents" contained in Definition 8 to the extent it imposes obligations beyond those required by the CPLR. In responding to this Subpoena, Skadden will be governed by the aforementioned Rules.

3. Skadden objects to the Instructions as they impose obligations beyond those required by the CPLR. In responding to this Subpoena, Skadden will be governed by the aforementioned Rules.

4. Skadden objects to the Instruction Number 3, which purports to define the relevant time period, on the grounds that it renders the Subpoena unduly broad and burdensome and would call for the production of documents unrelated to the issues in the Florida Actions.

SPECIFIC OBJECTIONS

REQUEST FOR PRODUCTION NO. 1:

> All documents constituting or relating to the February 1998, March 1998, and April 1998 calendars of Skadden attorneys who worked on Sunbeam matters during the relevant time period, including but not limited to the calendars of Mr. Deitz, Mr. Easton, Mr. Fernicola, Mr. Fogg, Mr. Freed, and Ms. Amorison.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Skadden objects to this request on the grounds that searching for and producing responsive documents would be unduly burdensome and expensive because the request is unduly broad and calls for the production of documents that are neither relevant to the issues raised in the Florida Actions nor reasonably calculated to lead to the discovery of admissible evidence.

Skadden further objects to this request to the extent it seeks documents irrelevant to the Florida Actions – including, but not limited to, documents relating to matters that are unrelated to the Florida Actions.

Skadden also objects to this request to the extent it seeks documents that are protected by the attorney-client privilege and/or work product immunity.

Skadden further objects to this request on the grounds that the documents sought are private and confidential.

REQUEST FOR PRODUCTION NO. 2:

> All documents constituting or relating to billing records, expense reports, and/or attorney timesheets for work performed for Sunbeam by Skadden during February 1998, March 1998, and April 1998.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Skadden objects to this request on the grounds that searching for and producing responsive documents would be unduly burdensome and expensive because the request is unduly broad and calls for the production of documents that are neither relevant to the issues raised in the Florida Actions nor reasonably calculated to lead to the discovery of admissible evidence.

Skadden further objects to this request to the extent it seeks documents irrelevant to the Florida Actions – including, but not limited to, documents relating to Sunbeam matters that are unrelated to the Florida Actions.

Skadden also objects to this request to the extent it seeks documents that are protected by the attorney-client privilege and/or work product immunity.

Skadden further objects to this request on the grounds that the documents sought are private and confidential.

REQUEST FOR PRODUCTION NO. 3:

> All documents constituting or relating to March 1998 e-mail communications between or among Skadden, MS&Co., MSSF, Davis Polk, and Arthur Andersen, not previously produced to CPH in the course of litigation.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Skadden objects to this request on the grounds that searching for and producing responsive documents would be unduly burdensome and expensive because the request is unduly broad and calls for the production of documents that are neither relevant to the issues raised in the Florida Actions nor reasonably calculated to lead to the discovery of admissible evidence.

Skadden further objects to this request to the extent it seeks documents irrelevant to the Florida Actions – including, but not limited to, documents relating to Sunbeam matters that are unrelated to the Florida Actions.

Skadden also objects to this request to the extent it seeks documents that are protected by the attorney-client privilege and/or work product immunity.

Skadden further objects to this request on the grounds that it seeks documents that do not exist. Skadden searched for and produced documents constituting or relating to March 1998 e-mail communications between or among Skadden, MS&Co., MSSF, Davis Polk, and Arthur Andersen when it responded to the 2000 Subpoena and 2002 Subpoena. Skadden has nothing further to produce.

REQUEST FOR PRODUCTION NO. 4:

> All documents sufficient to show Skadden's total billings, by matter, for engagements by Sunbeam, and engagement by all other entities for which Al Dunlap served as an officer.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Skadden objects to this request on the grounds that searching for and producing responsive documents would be unduly burdensome and expensive because the request is unduly

broad and calls for the production of documents that are neither relevant to the issues raised in the Florida Actions nor reasonably calculated to lead to the discovery of admissible evidence.

Skadden further objects to this request to the extent it seeks documents irrelevant to the Florida Actions – including, but not limited to, documents relating to matters that are unrelated to Sunbeam or the Florida Actions.

Skadden also objects to this request to the extent it seeks documents that are protected by the attorney-client privilege and/or work product immunity.

Skadden further objects to this request on the grounds that the documents sought are private and confidential.

REQUEST FOR PRODUCTION NO. 5:

> All documents sufficient to show Skadden's total annual billings to any MS&Co. and/or MSSF entity from 1993 through and including 1998.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Skadden objects to this request on the grounds that searching for and producing responsive documents would be unduly burdensome and expensive because the request is unduly broad and calls for the production of documents that are neither relevant to the issues raised in the Florida Actions nor reasonably calculated to lead to the discovery of admissible evidence.

Skadden further objects to this request to the extent it seeks documents irrelevant to the Florida Actions – including, but not limited to, documents relating to matters that are unrelated to Sunbeam or the Florida Actions.

Skadden also objects to this request to the extent it seeks documents that are protected by the attorney-client privilege and/or work product immunity.

Skadden further objects to this request on the grounds that the documents sought are private and confidential.

REQUEST FOR PRODUCTION NO. 6:

> All evaluations of Mr. Deitz, Mr. Easton, Mr. Fernicola, Mr. Fogg, Mr. Freed, and Ms. Amorison for 1996, 1997, 1998, and 1999.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

Skadden objects to this request on the grounds that searching for and producing responsive documents would be unduly burdensome and expensive because the request is unduly broad and calls for the production of documents that are neither relevant to the issues raised in the Florida Actions nor reasonably calculated to lead to the discovery of admissible evidence.

Skadden further objects to this request to the extent it seeks documents irrelevant to the Florida Actions – including, but not limited to, documents relating to matters that are unrelated to Sunbeam or the Florida Actions.

Skadden also objects to this request to the extent it seeks documents that are protected by the attorney-client privilege and/or work product immunity.

Skadden further objects to this request on the grounds that the documents sought are private and confidential.

REQUEST FOR PRODUCTION NO. 7:

> All documents sufficient to show Mr. Fogg's compensation and/or percentage ownership interest in Skadden in 1996, 1997, 1998, and 1999.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

Skadden objects to this request on the grounds that searching for and producing responsive documents would be unduly burdensome and expensive because the request is unduly

broad and calls for the production of documents that are neither relevant to the issues raised in the Florida Actions nor reasonably calculated to lead to the discovery of admissible evidence.

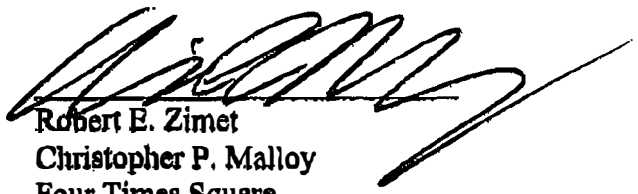
Skadden further objects to this request to the extent it seeks documents irrelevant to the Florida Actions – including, but not limited to, documents relating to matters that are unrelated to Sunbeam or the Florida Actions.

Skadden also objects to this request to the extent it seeks documents that are protected by the attorney-client privilege and/or work product immunity.

Skadden further objects to this request on the grounds that the documents sought are private and confidential.

Dated: October 22, 2004
New York, New York

SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP

By: 

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(212) 735-3000

Attorneys for Skadden, Arps, Slate,
Meagher & Flom LLP

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

COLEMAN (PARENT) HOLDINGS INC., Case No. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

MORGAN STANLEY SENIOR FUNDING, INC., Case No. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

_____/

NOTICE OF UNAVAILABILITY

The undersigned counsel for Plaintiff states that the law offices of Searcy Denney Scarola Barnhart & Shipley, P.A. will be closed from December 27, 2004 through and including December 31, 2004, and respectfully requests that no hearings, depositions, trials or any other matter involving the above-styled cause be scheduled during this time.

Coleman Holdings, Inc. vs Morgan Stanley & Company
Notice Of Unavailability
Case No.: 2003 CA 005045 AI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to all counsel on the attached list on this 25th day of October, 2004.

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Attorneys for Plaintiffs

Coleman Holdings, Inc. vs Morgan Stanley & Company
Notice Of Unavailability
Case No.: 2003 CA 005045 AI

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,

Defendant(s).

AMENDED NOTICE OF VIDEOTAPED DEPOSITION

PLEASE TAKE NOTICE that Morgan Stanley & Co. Incorporated will take the videotaped deposition of Anne Jordan, pursuant to Florida Rules of Civil Procedure 1.280 and 1.310. The oral examination will take place on October 27, 2004 at 1:00 pm and continue from day to day until completed at the offices of Kirkland & Ellis LLP, 655 Fifteenth Street, N.W., Washington, DC 20005. The deposition will be taken before a person authorized to administer oaths and recorded by stenographic and videographic means. The video operator will be Esquire Deposition Services, 1020 Nineteenth Street, N.W., Suite 620, Washington, DC 20036. The witness is instructed to bring all books, papers, and other things in his possession or under his control relevant to this lawsuit (and not previously produced in discovery) to the examination.

16div-007689

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and federal express on this 25th day of October, 2004.

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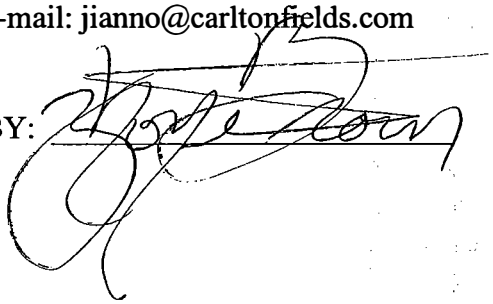
BY: 

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

CASE NO: CA 03-5045 AI

vs.

MORGAN STANLEY & CO. INC.,

Defendant.

_____/

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") will take the deposition of Coleman (Parent) Holdings, Inc. ("CPH") through a CPH representative or representatives with knowledge on the following topics, pursuant to Florida Rules of Civil Procedure 1.280 and 1.310, on the dates and times set forth below. The oral examination will take place at Kirkland & Ellis LLP, Citigroup Center, 153 East 53rd Street, New York, NY 10022-4611. The deposition will be taken before a person authorized to administer oaths and recorded by stenographic and videographic means. The video operator will be Esquire Deposition Services of 216 E. 45th Street in New York, New York.

Deponent	Date & Time
The value of the warrants and other consideration that CPH received from Sunbeam pursuant to the August 12, 1998 Settlement Agreement between CPH and Sunbeam.	November 8, 2004 9:30 am
All gains and/or losses experienced by CPH as a result of CPH's investment in The Coleman Company, including the value of all payments, consideration, and other financial benefits received by CPH, directly or indirectly, as a result of that investment.	November 8, 2004 9:30 am
CPH's decision not to hedge its position in the Sunbeam stock that CPH received from Sunbeam in connection with the February 27, 1998.	November 9, 2004 9:30 am
The authenticity, source, creation, use, maintenance, and business purpose of documents produced and/or authored by CPH and/or MacAndrews & Forbes bearing the bates numbers identified in the attached Exhibit A.	November 9, 2004 9:30 am

Deponent	Date & Time
The balances due and available under any Mafco Finance Corp. (or Marvel IV Holdings Inc.) Credit Agreement or Mafco Holdings Inc. Guaranty (including any Amendments or Restatements) in the first and second quarters of 1998.	November 10, 2004 9:30 am

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 25th day of October, 2004.

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BY: _____
Zhonette M. Brown

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FAX COVER SHEET

		Phone Number	Fax Number
Date:	October 25, 2004		
To:	Jack Scarola	(561) 686-6300	(561) 684-5816
	Jerold Solovy/Michael Brody	(312) 222-9350	(312) 840-7711
	Thomas Clare	(202) 879-5993	(202) 879-5200
	Rebecca Beynon/Mark Hansen	(202) 326-7900	(202) 326-7999
From:	Joyce Dillard, CLA	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 5

Message:

Coleman v. Morgan Stanley & Co., Inc.

To follow please find a copy of Morgan Stanley's Notice of Filing.

☐ ***Original to follow Via Regular Mail*** ☐ ***Original will Not be Sent*** ☑ ***Original will follow via Overnight Courier***

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (if long distance, please call collect) and return the original message to us at the above address via the U.S. Postal Service. Thank you.

IF THERE ARE ANY PROBLEMS OR COMPLICATIONS, PLEASE NOTIFY US IMMEDIATELY AT:
(561) 659-7070

TELECOPIER OPERATOR: _____

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF FILING SIGNATURE PAGE TO MORGAN STANLEY'S MOTION TO STRIKE EVIDENCE FROM CPH'S MOTION TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed the original signature page, page 47, to its Motion to Strike Evidence from Coleman (Parent) Holdings Inc.'s Motion to Amend its Complaint to Seek Punitive Damage. A copy of which is attached hereto.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 25th day of October, 2004.

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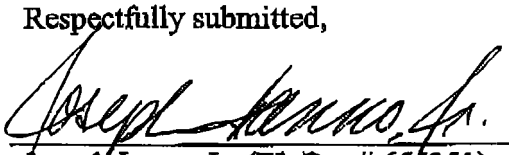
failed to predict with pinpoint accuracy Sunbeam's final net sales for the first quarter of 1998, Morgan Stanley suffered the same consequences as CPH. Sunbeam's failure to meet *its* projections does not, as a matter of law, entitle CPH to seek punitive damages from *Morgan Stanley*, particularly when CPH failed to do any due diligence of Sunbeam either before or after March 19, 1998.

Respectfully submitted,



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Counsel for:
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Plaintiff Morgan Stanley Senior Funding, Inc.

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Facsimile: (202) 326-7999

Dated: October 22, 2004

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY & CO. INCORPORATED'S
MOTION FOR ISSUANCE OF COMMISSION

Defendant, Morgan Stanley & Co. Incorporated ("Morgan Stanley") files its Motion for Issuance of Commission and states:

1. Morgan Stanley needs to depose and obtain documents concerning this case from the following witness residing in Massachusetts:

Donald Uzzi
7 Maxie Pond Road, # 103
Nantucket, MA 02554-2675

The commissioner that Morgan Stanley seeks to have appointed is:

Esquire Deposition Services
99 Summer Street, Suite 804
Boston, MA 02110

or any person duly authorized by it and able to administer oaths pursuant to the laws of Massachusetts.

2. Morgan Stanley requests that this Court issue a commission appointing a commissioner in Massachusetts to take the videotaped testimony of the above witness under oath

and on oral examination in accordance with Fla. R Civ. P. 1.300 and 1.310 and Florida Statutes § 92.251.

3. Attached as Exhibit "A" is the proposed commission to the commissioners authorizing them to take the deposition of the witness identified above.

WHEREFORE, Morgan Stanley respectfully requests that this Court issue the commission in the form attached as Exhibit "A."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 26th day of October, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

Mark C. Hansen
James M. Webster, III
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Sumner Square
1615 M Street, N.W., Suite 400
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Telephone: (202) 326-7900
Facsimile: (202) 326-7999

Counsel for Morgan Stanley & Co. Incorporated

CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368
E-mail: jianno@carltonfields.com

BY: Joseph Ianno, Jr.
Joseph Ianno, Jr.
Florida Bar No. 655351

SERVICE LIST

Jack Scarola
SEARCY, DENNEY, SCAROLA, BARNHARDT & SHIPLEY, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy
Michael Brody
JENNER & BLOCK, LLC
One IBM Plaza, Suite 400
Chicago, IL 60611

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

ORDER APPOINTING COMMISSIONER REGARDING
THE DEPOSITION OF DONALD UZZI

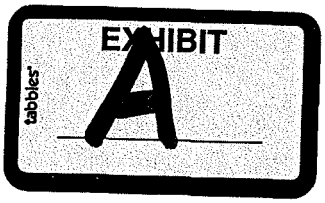
THIS CAUSE, having come before the Court on Morgan Stanley & Co. Incorporated's ("Morgan Stanley") Motion for Issuance of Commission. After reviewing the pleadings and being otherwise fully advised, it is hereby

ORDERED AND ADJUDGED as follows:

1. Morgan Stanley's Motion for Issuance of Commission dated October 26, 2004 is Granted. A commission is hereby issued for the taking of the deposition of:

Donald Uzzi
7 Maxie Pond Road, # 103
Nantucket, MA 02554-2675

2. The following commissioner, or any person duly authorized by him/her, is appointed as a commissioner to take the videotaped testimony (and obtain the requested documentation) of the above witness and other witnesses whose discovery is sought in the commissions' jurisdiction under oath and on oral examination in accordance with the applicable Florida Statutes and Rules of Civil Procedure:



Esquire Deposition Services
99 Summer Street, Suite 804
Boston, MA 02110

or any person able to administer oaths pursuant to the laws of New York and Delaware and duly authorized by him/her.

3. This order does not purport to grant the power of the commissioners appointed to subpoena witnesses or documents, but simply the power to administer oaths and transcribe deposition testimony.

DONE AND ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida this ____ day of _____, 2004.

_____
ELIZABETH T. MAASS
Circuit Court Judge

Copies furnished to:

Joseph Ianno, Jr.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas Clare
655 15th Street, NW, Suite 1200
Washington, DC 20005

John Scarola
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy
One IBM Plaza, Suite 4400
Chicago, IL 60611

Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
Sumner Square
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY & CO. INCORPORATED'S
MOTION FOR ISSUANCE OF COMMISSION

Defendant, Morgan Stanley & Co. Incorporated ("Morgan Stanley") files its Motion for Issuance of Commission and states:

1. Morgan Stanley needs to depose and obtain documents concerning this case from the following witness residing in Massachusetts:

Donald Uzzi
7 Maxie Pond Road, # 103
Nantucket, MA 02554-2675

The commissioner that Morgan Stanley seeks to have appointed is:

Esquire Deposition Services
99 Summer Street, Suite 804
Boston, MA 02110

or any person duly authorized by it and able to administer oaths pursuant to the laws of Massachusetts.

2. Morgan Stanley requests that this Court issue a commission appointing a commissioner in Massachusetts to take the videotaped testimony of the above witness under oath

and on oral examination in accordance with Fla. R Civ. P. 1.300 and 1.310 and Florida Statutes § 92.251.

3. Attached as Exhibit "A" is the proposed commission to the commissioners authorizing them to take the deposition of the witness identified above.

WHEREFORE, Morgan Stanley respectfully requests that this Court issue the commission in the form attached as Exhibit "A."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 26th day of October, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
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Mark C. Hansen
James M. Webster, III
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Washington, D.C. 20036
Telephone: (202) 326-7900
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Counsel for Morgan Stanley & Co. Incorporated

CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
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Telephone: (561) 659-7070
Facsimile: (561) 659-7368
E-mail: jianno@carltonfields.com

BY: Joseph Ianno, Jr.
Florida Bar No. 655351

SERVICE LIST

Jack Scarola
SEARCY, DENNEY, SCAROLA, BARNHARDT & SHIPLEY, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy
Michael Brody
JENNER & BLOCK, LLC
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Chicago, IL 60611

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

ORDER APPOINTING COMMISSIONER REGARDING THE DEPOSITION OF DONALD UZZI

THIS CAUSE, having come before the Court on Morgan Stanley & Co. Incorporated's ("Morgan Stanley") Motion for Issuance of Commission. After reviewing the pleadings and being otherwise fully advised, it is hereby

ORDERED AND ADJUDGED as follows:

1. Morgan Stanley's Motion for Issuance of Commission dated October 26, 2004 is Granted. A commission is hereby issued for the taking of the deposition of:

Donald Uzzi
7 Maxie Pond Road, # 103
Nantucket, MA 02554-2675

2. The following commissioner, or any person duly authorized by him/her, is appointed as a commissioner to take the videotaped testimony (and obtain the requested documentation) of the above witness and other witnesses whose discovery is sought in the commissions' jurisdiction under oath and on oral examination in accordance with the applicable Florida Statutes and Rules of Civil Procedure:

Esquire Deposition Services
99 Summer Street, Suite 804
Boston, MA 02110

or any person able to administer oaths pursuant to the laws of New York and Delaware and duly authorized by him/her.

3. This order does not purport to grant the power of the commissioners appointed to subpoena witnesses or documents, but simply the power to administer oaths and transcribe deposition testimony.

DONE AND ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida this ____ day of _____, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

Copies furnished to:

Joseph Ianno, Jr.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas Clare
655 15th Street, NW, Suite 1200
Washington, DC 20005

John Scarola
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

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James M. Webster, III
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1615 M Street, N.W., Suite 400
Washington, D.C. 20036

WPB#585503.2

#23058 0/mep

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

COLEMAN (PARENT) HOLDINGS INC., Case No. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

MORGAN STANLEY SENIOR FUNDING, INC., Case No. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

_____/

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: November 3, 2004

TIME: 8:45 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

Coleman (Parent) Holdings Inc.'s Motion to Unseal Material Previously Redacted from Court Records

Coleman Holdings, Inc. vs Morgan Stanley & Company
Case No. 2003 CA 005045 AI
Notice of Hearing

Moving counsel certifies that he or she contacted opposing counsel and attempted to resolve the discovery dispute without hearing.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to all Counsel on the attached list, this 26th day of Oct., 2004.

JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 478-0754
Attorney for CPH and MAFCO

Colem n Holdings. Inc. vs Morgan Stanley & Company
Case N o. 2003 CA 005045 AI
Notice of Hearing

COUNSEL LIST

Josep h anno, Jr., Esquire
Carlt n Fields, et al.
222 La eview Avenue
Suite 1400
West P lm Beach, FL 33401

Thor a s D. Yannucci, P.C.
Thor a s A. Clare
Bret M cGurk
Kirk a d and Ellis
655 15 h Street, N.W., Suite 1200
Was n gton, DC 20005

Jero d S. Solovy, Esq.
Jenn er & Block LLP
One IB M Plaza
Suit 4400
Chic ag o, IL 60611

Mar c C. Hansen, Esq.
Kell gg, Huber, Hansen, Todd & Evans,
P.L.L. C.
Sum n r Square
161 1 M. Street, N.W.
Suit 400
Wa hi gton, D.C. 20036-3206

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO: 2003 CA 005045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC. CASE NO. 2003 CA 005165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO UNSEAL MATERIAL PREVIOUSLY REDACTED FROM COURT RECORDS

Plaintiff Coleman (Parent) Holdings Inc. ("CPH"), hereby moves for entry of an order unsealing material that CPH erroneously filed under seal on October 22, 2004. In support of this motion, CPH states as follows:

1. On October 22, 2004, CPH filed a Motion for A Determination of the Admissibility of Morgan Stanley Performance Evaluations regarding performance evaluations that Morgan Stanley & Co., Inc. ("Morgan Stanley") produced in this case ("Performance

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Motion To Seal
Case No. 2003 CA 005045 AI

Evaluation Motion"). Because CPH cited and attached documents that were marked "confidential" by Morgan Stanley, CPH filed the Performance Evaluation Motion "under seal."

2. The same documents cited by CPH and attached to the Performance Evaluation Motion were previously the subject of CPH's Motion for Determination of Protectability of Material Redacted From Court Records filed September 21, 2004 that concerned CPH's Motion To Amend Its Complaint To Seek Punitive Damages .

3. At the Case Management Conference held on October 14, 2004, Morgan Stanley agreed that the documents at issue attached to CPH's Motion to Amend did not require a confidentiality designation and could be unsealed. (10/13 Tr. at 5-7).

4. Accordingly, following the October 14 Case Management Conference, this Court entered an Order directing the Clerk to unseal the documents attached to CPH's Motion to Amend.

5. Because the Court has made a prior determination that the documents attached to CPH's Performance Evaluation Motion are not confidential, CPH requests that the Motion be unsealed.

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Motion to Seal
Case No : 2003 CA 005045 AI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 25th day of October, 2004.

JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 478-0754
Attorney for CPH and Mafco

Colen ar (Parent) Holdings Inc. vs Morgan Stanley & Company
Motio ı ˙ o Seal
Case No : 2003 CA 005045 AI

COUNSEL LIST

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Carlt or Fields, et al.
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Suite 1⁴ 00
Wes P alm Beach, FL 33401

Thor na s D. Yannucci, P.C.
Thor na s A. Clare
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Mari: C . Hansen, Esq.
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Jero d S. Solovy
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CHIC \G) 1170337_1

McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP
ATTORNEYS AT LAW

THREE GATEWAY CENTER
100 MULBERRY STREET
NEWARK, NEW JERSEY 07102-4079
(973) 622-7711
FACSIMILE (973) 622-5314

CLAIRE C. CECCHI
Direct Dial (973) 565-2072
Email ccecchi@mdmc-law.com

October 26, 2004

VIA FACSIMILE AND OVERNIGHT MAIL
Thomas A. Clare, Esq.
Kirkland & Ellis, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

RE: In The Matter Of The Petition Of Coleman (Parent) Holdings, Inc. Pursuant To Rule 4:11-4 For The Issuance Of A Subpoena To Take A Deposition For Use In An Action Pending In Florida
Misc. No. BER L 12927-04

We are New Jersey counsel to Coleman (Parent) Holdings, Inc. in the Florida action captioned Coleman (Parent) Holdings Inc., v. Morgan Stanley & Co., Inc., docket number CA 03-5045 AI.

Enclosed is a copy of an Ex Parte Order executed by the Honorable Patrick F.X. Fitzpatrick, J.S.C., pursuant to Rule 4:11-4 authorizing the issuance of service of a subpoena upon Dwight Sipprelle. Also enclosed is the Subpoena, Document Demand and Notice of Deposition, which direct Mr. Sipprelle to appear and produce documents at 9:30 a.m. on November 5, 2004 at the offices of McElroy, Deutsch, Mulvaney & Carpenter, LLP, located at Three Gateway Center, 100 Mulberry Street, Newark, New Jersey.

We have been advised that you have agreed to accept service on behalf of Mr. Sipprelle.

Please call if you have any questions.

Very truly yours,

Claire C. Cecchi

CCC/la
Encl.
cc: Joseph Ianno, Jr., Esq. (via facsimile and overnight mail w/encl.)
Mark C. Hansen, Esq. (via facsimile and overnight mail w/encl.)

FILED
OCT 26 2004
PATRICK F.X. FITZPATRICK
J.S.C.

McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP
Three Gateway Center
100 Mulberry Street
Newark, NJ 07102-4079
(973) 622-7711
Attorneys for Petitioner Coleman (Parent) Holdings, Inc.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

IN THE MATTER OF THE PETITION OF COLEMAN (PARENT) HOLDINGS, INC. PURSUANT TO RULE 4:11-4 FOR THE ISSUANCE OF A SUBPOENA TO TAKE A DEPOSITION FOR USE IN AN ACTION PENDING IN FLORIDA

MISC. NO. BER L 12927-04
Civil Action

EX-PARTE ORDER AUTHORIZING ISSUANCE OF SUBPOENA PURSUANT TO RULE 4:11-4

This matter having been opened to the Court by McElroy, Deutsch, Mulvaney & Carpenter, LLP, attorneys for petitioner, Coleman (Parent) Holdings for an *Ex Parte* Order pursuant to Rule 4:4-11, authorizing the issuance and service of a subpoena upon Dwight Sipprelle, and it appearing that the Fifteenth Judicial Circuit Court of the State of Florida has issued a Commission in a pending case captioned *Coleman (Parent) Holdings Inc., plaintiff, v. Morgan Stanley & Co., Inc., defendant*, case number CA 03-5045 AI, authorizing Coleman (Parent) Holdings Inc. to take the deposition on oral testimony and issue a subpoena *duces tecum* for the production of things or documents to Dwight Sipprelle who lives, resides or does business in the County of Bergen, New Jersey, and it further appearing that good cause exists.

IT IS on this 26th day of October, 2004,

ORDERED that a subpoena may issue commanding Dwight Sipprelle to appear for a deposition before a person authorized to administer oaths on November 5, 2004 at 9:30 o'clock in the a.m. at the offices of McElroy, Deutsch, Mulvaney & Carpenter, LLP, located at Three Gateway Center, 100 Mulberry Street, Newark, New Jersey to give oral testimony under oath and to produce things or documents in the above captioned matter; and it is further,

ORDERED that the petitioner may adjourn and reschedule the time, date and place of the deposition by oral testimony and extend the time to produce things or documents by consent without any further application to this Court.

PATRICK F.X. FITZPATRICK, J.S.C., J.S.C.

McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP
Three Gateway Center
100 Mulberry Street
Newark, NJ 07102-4079
(973) 622-7711
Attorneys for Petitioner Coleman (Parent) Holdings, Inc.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

MISC. NO. BER L 12927-04

IN THE MATTER OF THE PETITION OF COLEMAN (PARENT) HOLDINGS, INC. PURSUANT TO RULE 4:11-4 FOR THE ISSUANCE OF A SUBPOENA TO TAKE A DEPOSITION FOR USE IN AN ACTION PENDING IN FLORIDA

Civil Action

SUBPOENA DUCES TECUM

To: DWIGHT SIPPRELLE
155 Lincoln Street
Engelwood, New Jersey 07631-3120

YOU ARE HEREBY COMMANDED to attend and give testimony upon oral examination before a person authorized by the laws of New Jersey to administer oaths, on November 5, 2004 commencing at 9:30 a.m. at the offices of McElroy, Deutsch, Mulvaney & Carpenter, LLP, located at Three Gateway Center, 100 Mulberry Street, Newark, New Jersey, with respect to all matters relevant to the subject matter involved in this action, pursuant to the Rules Governing the Courts.

YOU ARE ALSO COMMANDED to bring with you and produce all documents described in Attachment A, attached hereto, to the offices of McElroy, Deutsch, Mulvaney & Carpenter, LLP, located at Three Gateway Center, 100 Mulberry Street, Newark, New Jersey, on November 5, 2004.

Failure to appear and produce any documents in your possession according to the command of this subpoena will subject you to a penalty, damages in a Civil Suit and punishment for contempt of court. The subpoenaed evidence shall not be produced or released until the date specified for the taking of this deposition in this matter. If the deponent is notified that a motion to quash the subpoena has been filed, the deponent shall not produce or release the subpoenaed evidence until ordered to do so by the Court, or the release is consented to by all parties to the action.

DONALD F. PHELAN
Clerk of the Superior Court

McELROY, DEUTSCH, MULVANEY & CARPENTER
Attorneys for Petitioner
Coleman (Parent) Holdings, Inc

By: _____
Claire C. Cecchi

Dated: October 19, 2004

EXHIBIT A
TO SUBPOENA TO NON-PARTY
DWIGHT SIPPRELLE

You are hereby requested to produce the following documents pursuant to the definitions and instructions set forth below.

DOCUMENTS REQUESTED

1. All calendars, diaries, timekeeping sheets or records maintained concerning any activities or services performed during your employment at Morgan Stanley or MSSF for or relating to Sunbeam and/or Coleman.

2. All documents concerning, relating to, or referring to Sunbeam, Coleman, and/or the Coleman Transaction, including without limitation:

A. All documents concerning Sunbeam's actual or expected sales, revenues, or earnings for all or any portion of 1996, 1997, or 1998.

B. All documents concerning any investigations, analysis or due diligence concerning Sunbeam or Coleman that was provided to or conducted by or on behalf of Morgan Stanley or MSSF.

C. All documents concerning the Credit Agreement, the Bank Facilities, or the Subordinated Debenture Offering, including but not limited to documents concerning the sales of the Subordinated Debentures: communications with potential investors, CPH, Coleman, Mafco, or analysts; and/or communications with or among Morgan Stanley's personnel.

D. All documents reflecting or concerning any communications between or among any of Morgan Stanley, MSSF, Davis Polk, Sunbeam, Arthur Andersen LLP, and/or Skadden concerning Sunbeam, the Coleman Transaction, the Subordinated Debenture Offering, the Bank Facility, or the Credit Agreement.

E. All documents concerning Morgan Stanley or MSSF's approvals of any loans to Sunbeams.

F. All documents concerning the March 10, 1998 meeting of the Equity Commitment Committee, including but not limited to notes from that meeting, memoranda relating to that meeting, minutes from that meeting, and agendas for that meeting.

G. All documents concerning the March 19, 1998 drafting session and/or meeting that took place at Global Financial Press concerning the Offering Memorandum, including all documents concerning any conversations or communications of any kind involving John Tyree and/or Lawrence Bernstein concerning Sunbeam.

H. All documents concerning any "comfort letters" prepared in connection with the Subordinated Debenture Offering or the Credit Agreement including but not limited to Arthur Andersen's letters dated March 19, 1998 and March 25, 1998 and any drafts of those letters.

I. All documents concerning Sunbeam's March 19, 1998 press release, including but not limited to the decision of whether to issue the press release, whether to include all or any portion of the March 19, 1998 press release in the Offering Memorandum, or concerning the contents or drafting of the press release.

J. All documents concerning the Offering Memorandum.

K. All documents concerning the March 20, 1998 meeting of the Leveraged Finance Commitment Committee, including but not limited to notes from that meeting, memoranda relating to that meeting, minutes from that meeting, and agendas for that meeting.

L. All documents concerning any valuation of Coleman or Sunbeam securities that were: (a) prepared or performed by Morgan Stanley or MSSF; or (b) provided to Morgan Stanley or MSSF.

M. All documents relating to synergies that might be achieved from a business combination of Sunbeam, and any or all of Coleman, Signature Brands USA, and First Alert, Inc.

N. All documents concerning the "bring-down" due diligence for the Subordinated Debenture Offering.

O. All documents relating or referring to Morgan Stanley's fees for services performed for or on behalf of Sunbeam.

3. All documents concerning or referring to Morgan Stanley or MSSF's Equity Commitment Committee, including but not limited to documents relating to the purpose of the committee, the procedures for the committee, and the approval process followed by the committee.

4. All documents concerning or referring to Morgan Stanley or MSSF's Leveraged Finance Commitment Committee, including but not limited to documents relating to the purpose of the committee, the procedures for the committee, the approval process followed by the committee, and the sources of capital for loans approved by the committee.

5. All documents concerning Morgan Stanley and/or MSSF's procedures for the drafting, approval(s), and/or issuance of "highly confident" letters.

DEFINITIONS

1. "Arthur Andersen" means Arthur Andersen LLP and its present and former partners and employees

2. "CPH" means Coleman (Parent) Holdings Inc., and its present and former officers, directors, and employees.

3. "Coleman Transaction" means the transaction by which Sunbeam acquired CPH's interest in The Coleman Company.

4. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise) by letter, memorandum, facsimile, orally electronically or otherwise.

5. "Concerning" means concerning, reflecting, relating to, referring to, describing, evidencing, or constituting.

6. "Credit Agreement" means that agreement entered into by Sunbeam Corporation, as borrower, with Morgan Stanley Senior Funding, Inc., Bank of America National Trust and Savings Association, and First Union National Bank (now known as Wachovia Bank, National Association), as lenders, dated March 30, 1998 and amended periodically thereafter by agreement of the parties.

7. "Documents" shall be given the broad meaning provided in CPLR Rule 3120 and refers to any form or means, whether physical, visual, or electronic, in or by which words, numbers, or ideas are recorded or preserved, whether fixed in tangible medium or electronically stored including any and all drafts of any final document. The word "documents" shall include, by way of example and not by way of limitation, all of the following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, notes, messages, reports, studies, press releases, comparisons, books, accounts, checks, audio and video recordings and transcriptions thereof, pleadings, testimony, articles, bulletins, pamphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk calendars, pocket calendars, lists,

logs, publications, notices, diagrams, instructions, diaries, minutes for meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements, memoranda of understanding, letters of intent, computer tapes, computer drives or memories, computer diskettes or disks, e-mail, CD-ROMs, or any other tangible thing on which any handwriting, typing, printing, photostatic, electronic, or other form of communication or information is recorded or reproduced, together with all notations on any of the foregoing, all originals, file copies, or other unique copies of the foregoing, and all versions or drafts thereof, whether used or not.

8. "Morgan Stanley" means Morgan Stanley & Co., Inc. and any of its direct or indirect parents, affiliates, subsidiaries, and present and former officers, directors, partners, employees, representatives, and agents.

9. "MSSF" means Morgan Stanley Senior Funding, Inc. and any of its direct or indirect parents, affiliates, subsidiaries, and present and former officers, directors, partners, employees, representatives, and agents.

10. "Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, governmental authority, or other entity.

11. "Skadden" means Skadden, Arps, Slate, Meagher & Flom LLP and any of its present and former partners, employees, representatives and agents.

12. "Subordinated Debenture Offering" means the offering of Sunbeam's Zero Coupon Convertible Senior Subordinated Debentures Due 2018.

13. "Sunbeam" means Sunbeam Corporation and any of its present and former officers, directors, employees, representatives, and agents.

14. "You" or "your" means Dwight Sipprelle and any of Dwight Sipprelle's present and former representatives and agents.

INSTRUCTIONS

1. Documents shall be produced as they are kept in the usual course of business, or organized and labeled to correspond to the categories in this Request. Documents attached to each other should not be separated.

2. All documents shall be produced in the file folder, envelope or other container in which the documents are kept or maintained by you. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks.

3. The relevant period, unless otherwise indicated, shall be April 1, 1997 through the date of service of this subpoena, and shall include all documents and information which relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received prior or subsequent to that period. Please supplement or correct your responses to these requests if, at any time, you become aware that your responses are incomplete or incorrect in any respect.

4. If you claim the attorney-client privilege, or any other privilege or work-product protection for all or any portion of a document, you shall provide a privilege log that describes the withheld material sufficiently to allow CPH to test the privilege or protection asserted.

5. The following rules of construction apply:

a. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be outside of their scope;

b. The term "including" shall be construed to mean "without limitation"; and

c. The use of the singular form of any word includes the plural and vice versa.

McElroy, DEUTSCH, MULVANEY & CARPENTER, LLP
Three Gateway Center
100 Mulberry Street
Newark, NJ 07102-4079
(973) 622-7711
Attorneys for Petitioner Coleman (Parent) Holdings, Inc.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

MISC. NO. BER L 12927-04

IN THE MATTER OF THE PETITION OF COLEMAN (PARENT) HOLDINGS, INC. PURSUANT TO RULE 4:11-4 FOR THE ISSUANCE OF A SUBPOENA TO TAKE A DEPOSITION FOR USE IN AN ACTION PENDING IN FLORIDA

Civil Action

NOTICE OF DEPOSITION

To: DWIGHT SIPPRELLE
155 Lincoln Street
Englewood, New Jersey

NOTICE IS HEREBY given that, pursuant to New Jersey rules governing oral depositions and the production of documents, petitioner Coleman (Parent) Holdings, Inc. ("Coleman"), intends to take the deposition of Dwight Sipprelle ("Sipprelle") located at 155 Lincoln Street, Englewood, New Jersey 07631, upon oral examination, with production of documents. Coleman requests that Sipprelle produce at his deposition the documents and things described in Attachment "A" hereto. The deposition will take place at the offices of McElroy, Deutsch, Mulvaney & Carpenter LLP at Three Gateway Center, 100 Mulberry Street, Newark, New Jersey 07102, (973) 622-7711, commencing on November 5, 2004, at 9:30 a.m.

DATED: October 19, 2004

McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP
Attorneys for Petitioner
Coleman (Parent) Holdings, Inc.

By: _____
Claire C. Cecchi

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INCORPORATED'S
FOURTH SET OF REQUESTS FOR ADMISSION

Pursuant to Florida Rule of Civil Procedure 1.370, Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") submits this fourth set of requests for admission to Plaintiff Coleman (Parent) Holdings, Inc. ("CPH"). The specific requests are preceded by Instructions and Definitions which shall govern the specific requests. Morgan Stanley requests that Plaintiff answer, under oath, the following requests for admission in accordance with the Florida Rules of Civil Procedure, or within such shorter period as may be agreed by counsel, and submit them in writing to counsel for Morgan Stanley at the offices of Kirkland & Ellis LLP, 655 Fifteenth Street, NW, Suite 1200, Washington, DC 20005.

INSTRUCTIONS

1. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

2. The use of the singular form of any word includes the plural and vice versa.

3. If you cannot admit or deny a request for admission after making a reasonable inquiry and the information known or readily attainable by CPH is insufficient to enable CPH to

admit or deny fully, so state and admit or deny to the extent possible, specifying your inability to answer the remainder; stating whatever information or knowledge you have concerning the unanswered portion; and detailing what you did in attempting to secure the information.

4. The terms "any," "all," and "each" shall be construed to mean "any," "all," or "each".

5. The term "including" shall be construed to mean "including but not limited to."

6. The present tense shall be construed to include the past and future tenses.

DEFINITIONS

1. "Coleman" means The Coleman Company, Inc. and any of its current or former officers, directors, employees, representatives, and agents.

2. "Coleman Transaction" means Sunbeam's acquisition of Coleman Company, Inc. from CPH and all related communications, agreements, and financing transactions.

3. "CPH" means Coleman (Parent) Holdings Inc. and any of its officers, directors, former or present employees, representatives, agents, corporate parents or subsidiaries including but not limited to CLN Holdings Inc.

4. "February 23, 1998 Letter" means the letter drafted by Joram Salig (marked as Morgan Stanley Exhibit 307) and thereafter sent by Sunbeam to Coleman on or about February 23, 1998, an unsigned copy of which has been marked as Morgan Stanley Exhibit 134.

5. "February 27, 1998 Agreement" means the Agreement and Plan of Merger dated February 27, 1998 among Sunbeam Corp., Laser Acquisition Corp., CLN Holdings, Inc., and Coleman (Parent) Holdings Inc.

6. "February 27, 1998 Company Agreement" means the Agreement and Plan of Merger dated February 27, 1998 among Sunbeam Corp., Camper Acquisition Corp., and The

Coleman Company, Inc.; and all schedules, exhibits, and documents related to those Agreements.

7. "Long Range Strategic Plan" means the document which has been identified as CPH Exhibit 187A and bears bates numbers CPH0254621 - 40.

8. "Mafco" means MacAndrews & Forbes Holdings Inc. and any of its officers, directors, former or present employees, representatives, and agents.

9. "March 19, 1998 Press Release" means the press release issued by Sunbeam on March 19, 1998 concerning its net sales in the first quarter of 1998.

10. The term "person" is defined as any natural person or any business, legal or governmental entity or association.

11. "Sunbeam" means Sunbeam Corporation or any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents.

12. "Sunbeam Research Analysts" means any financial analysts that provided published reports concerning Sunbeam debt or equity, including but not limited to Nicholas Haymann, William Steele, Andrew Shore, John Gibbons, Scott Graham, and Constance Maneaty.

REQUESTS FOR ADMISSION

1. The February 23, 1998 Letter was drafted by counsel for CPH and signed by or on behalf of Coleman.

2. The February 23, 1998 Letter is one of the Confidentiality Agreements identified in the February 27, 1998 Company Agreement at section 7.2, and one of the Confidentiality Agreements identified in the February 27, 1998 Agreement at section 6.7.

3. CPH signed the February 27, 1998 Agreement without requesting from Sunbeam copies of its interim financial statements for the months (to date) of January or February 1998.

4. CPH signed the February 27, 1998 Agreement without requesting from Sunbeam its actual net sales or net income (loss) to date in the first quarter of 1998.

5. Before signing the February 27, 1998 Agreement, CPH learned that 50 percent of Sunbeam's sales typically occurred in the last month of the quarter.

6. In 1997 CPH had concerns about Sunbeam's "international sales pipeline fillings."

7. In January 1998, CPH learned that the Sunbeam Research Analysts were decreasing their estimates of Sunbeam's earnings per share for 1998.

8. On or around February 23, 1998, CPH representatives were told by Sunbeam representatives that Sunbeam's sales for January and February [1998] were "slow."

9. CPH received Sunbeam's 1997 Annual Report on form 10-K before March 30, 1998.

10. Between March 19, 1998 and March 30, 1998, CPH did not request from either Sunbeam or Morgan Stanley the net sales (to date) that Sunbeam had recorded on its books and records for the first quarter of 1998.

11. Between March 19, 1998 and March 30, 1998, CPH did not request from either Sunbeam or Morgan Stanley a projection of Sunbeam's net sales for Sunbeam's first quarter of 1998.

12. Between March 19, 1998 and March 30, 1998, CPH did not request from either Sunbeam or Morgan Stanley a projection of Sunbeam's net earnings (loss) for Sunbeam's first quarter of 1998.

13. CPH made no inquiries of Sunbeam at the March 30, 1998 closing of the Coleman Transaction about Sunbeam's actual (to date) net sales or net earnings (loss) for the first quarter of 1998.

14. CPH did not request from Sunbeam, Arthur Andersen, or Morgan Stanley a copy of any comfort letter issued by Arthur Andersen to any person in connection with the Coleman Transaction before the closing of the Coleman Transaction.

15. The Coleman Transaction involved a transaction negotiated at arm's length by two large, sophisticated, and publicly traded corporations that were represented by prominent, highly paid advisors: Morgan Stanley, Skadden Arps, and Arthur Andersen for Sunbeam, and Credit Suisse First Boston and Wachtell, Lipton, Rosen & Katz for The Coleman Company.

16. Between December 1, 1997 and March 31, 1998, Sunbeam made the only proposal to CPH or Coleman's shareholders to acquire Coleman in whole or in part, whether by purchase of stock or assets.

17. A Sunbeam representative orally presented Sunbeam's Long Range Strategic Plan on February 23, 1998.

18. Each of the following statements in CPH Exhibit 9 is a statement of subjective opinion:

(a) "Sunbeam represents an attractive growth story and investment opportunity."

(b) "Sunbeam has undergone a profound transformation since the arrival of new management in July 1996."

(c) Sunbeam has "renewed focus on profitability and growth."

(d) There is "tremendous intrinsic value in Sunbeam."

(e) Sunbeam had a "strong management team that is opportunistic but disciplined."

(f) Sunbeam had a "valuable opportunity to penetrate and become a global market leader of branded consumer devices."

19. The 1998 and 1999 estimates on pages CP026296 and CP026297 of CPH Exhibit 9 were from an Oppenheimer research report dated December 11, 1997.

20. Each of the following statements, which CPH alleges were made on February 23, 1998, is a projection of future performance:

(a) that in 1998 Sunbeam expected significant growth in sales and earnings over and above 1997 levels;

(b) that Sunbeam's 1998 revenues were expected to increase by 34 percent over 1997 levels;

(c) that Sunbeam's 1999 revenues were expected to increase 25 percent over 1998 levels;

(d) that Sunbeam's gross profit was expected to increase by 31 percent in both 1998 and 1999;

(e) that Sunbeam would "meet or exceed Wall Street's expectations for Sunbeam's earnings estimates" for 1998;

(f) that "analysts' favorable 1998 earnings estimates of $1.90 to $2.12 per share were low"; or

(g) that "Sunbeam's plan to earn $2.20 per share in 1998 were easily achievable and probably low."

21. A statement made on March 19, 1998 that Sunbeam's net sales for the first quarter of 1998 may be lower than the range of Wall Street analysts' estimates is a projection of future performance.

22. A statement made on March 19, 1998 that Sunbeam's net sales for the first quarter of 1998 are expected to exceed 1997 first quarter net sales is a projection of future performance.

23. CPH or Mafco requested Sunbeam stock as part of the consideration for CPH's interest in Coleman.

24. CPH or Mafco requested expedited Hart-Scott-Rodino approval for the Transaction to allow the Transaction to close before or at the end of the first quarter of 1998.

25. Between February 27, 1998 and March 30, 1998 CPH did not exercise its rights, pursuant to section 6.7 of the February 27, 1998 Agreement, to access Sunbeam's books, records, properties, plants, and personnel.

26. The documents listed in the attached Exhibits A and B are what they purport to be or are otherwise true and authentic copies of original documents within the meaning of Florida Evidence Code § 90.901.

27. The documents listed in the attached Exhibits A and B business records within the meaning of Florida Evidence Code § 90.803(6).

28. CPH authored the documents listed in the attached Exhibit B.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 25th day of October, 2004.

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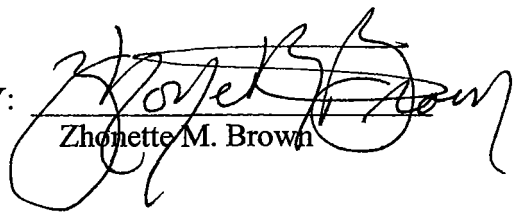
BY: 
Zhonette M. Brown

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Jerold S. Solovy
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JENNER & BLOCK, LLC
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Chicago, IL 60611

Exhibit A

Morgan Stanley Deposition Exhibits:
67
68
90
187
239
248
282
288
316
326
379
381
382
383
395

Bates Numbers:
CPH 0014850
CPH 0627084-0627210
CPH 0634056-0634064
CPH 0634065-0634075
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CPH 0637558-0637570
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Exhibit B

Bates
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DPW 0013821-0013822
DPW 0013662
DPW 0013767-0013768
CPH 0637558-0637570

CARLTON FIELDS, P.A.

ATTORNEYS AT LAW

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TEL (561) 659-7070 FAX (561) 659-7368

FAX COVER SHEET

		Phone Number	Fax Number
Date:	October 26, 2004		
To:	Jerold Solovy, Esq.	(312) 222-9350	(312) 840-7711
	Thomas Clare, Esq.	(202) 879-5993	(202) 879-5200
	Jack Scarola, Esq.	(561) 686-6300	(561) 684-5816
	Rebecca Beynon	(202) 326-7934	(202) 326-7999
From:	Joseph Ianno, Jr., Esq.	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:** 048

Total Number of Pages Being Transmitted, Including Cover Sheet: 6

Message:

Coleman v. Morgan Stanley & Co., Inc.

Morgan Stanley Senior Funding, Inc. v. Macandrews & Forbes Holdings, Inc.

☐ *Original to follow Via Regular Mail* ☐ *Original will Not be Sent* ☐ *Original will follow via Overnight Courier*

****

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****

IF THERE ARE ANY PROBLEMS OR COMPLICATIONS, PLEASE NOTIFY US IMMEDIATELY AT:
(561) 659-7070

TELECOPIER OPERATOR: _____

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

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITION

TO: ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that pursuant to Fla.R.Civ.P. Rules 1.310 and 1.410, the undersigned counsel will take the deposition of the following:

NAME:	DATE/TIME:	LOCATION:
Philip Harlow	November 17, 2004 at 9:30 a.m.	Precision Reporting Ocean Executive Suites 515 Seabreeze Blvd., 2nd Floor Ft. Lauderdale, Florida

Upon oral examination before a notary public or other officer authorized by law to take depositions in the State of Florida. The name and address of the videographer is set forth below. This examination may continue from day to day until completed. The deposition is being taken for the purpose of discovery, for use at trial, or for such other purposes, as is permitted under the applicable and governing rules.

Individuals who have a disability that may need accommodation should contact the undersigned seven (7) days prior to the deposition.

CERRTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and U.S. Mail and e-mail to all counsel of record listed below on this 26th day of October, 2004.

CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368
E-mail: jianno@carltonfields.com

BY: Joseph Ianno, Jr.
JOSEPH IANNO, JR.
Florida Bar No: 655351

SERVICE LIST

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West Palm Beach, Florida 33409

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Counsel for Morgan Stanley & Co. Incorporated

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Visual Evidence
601 N. Dixie Highway
West Palm Beach, FL 33405

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

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.
_____/

SUBPOENA FOR DEPOSITION

THE STATE OF FLORIDA:

TO: Phillip E. Harlow
608 Second Key Drive
Ft. Lauderdale, Florida 33304

YOU ARE COMMANDED to appear before a person authorized by law to take depositions in the State of Florida at Precision Reporting, Ocean Executive Suites, 515 Seabreeze Blvd., 2nd Floor Ft. Lauderdale, Florida on November 17, 2004 at 9:30 a.m., for the taking of your deposition.

If you fail to appear you may be in contempt of court.

You are subpoenaed to appear by the following attorneys and unless excused from this Subpoena by these attorneys or the Court, you shall respond to this Subpoena as directed.

Dated: October 26, 2004

Joseph Ianno, Jr. (FL Bar # 655351)
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368

Counsel for Defendant
Morgan Stanley & Co. Incorporated

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(312) 527-0484 FAX

DEIRDRE E. CONNELL
312-923-2661 Direct Dial
312-840-7661 Direct Facsimile

TELECOMMUNICATION TRANSMITTAL

DATE:	October 26, 2004		
TO:	**Thomas A. Clare, Esq.** KIRKLAND & ELLIS, LLP	**VOICE:** **FAX:**	(202) 879-5993 (202) 879-5200
	Joseph Ianno, Jr., Esq. CARLTON FIELDS, P.A.	**VOICE:** **FAX:**	(561) 659-7070 (561) 659-7368
	Mark C. Hansen Esq. KELLOGG, HUBER, HANSEN, TODD & EVANS, P .L.L.C.	**VOICE:** **FAX:**	(202) 326-7900 (202) 326-7999
FROM:	Deirdre E. Connell	**SECY. EXT.:**	6486
EMP. NO.:	035666	**CLIENT NO.:**	41198-10003

IMPORTANT: THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS ATTORNEY WORK PRODUCT, PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA POSTAL SERVICE. THANK YOU.

MESSAGE: **Please see attached.**

Total number of pages including this cover sheet: 4

DATE SENT: 10/26/04 TIME SENT: 4:10 pm SENT BY: S. EDDINGTON

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OR (312) 222-9350, EXT. 6120, 6121

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
et al.,
Defendants.
_____/

CASE NO. CA 03-5165 AI

NOTICE OF TAKING VIDEOTAPED DEPOSITIONS

To:

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
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Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates and times set forth below:

DEPONENT	DATE AND TIME
Tarek Abdel-Meguid	November 16, 2004 at 9:30 a.m.
Joseph Perella	November 17, 2004 at 9:30 a.m.
Robert Scott	November 18, 2004 at 9:30 a.m.
Bruce Fiedorek	November 19, 2004 at 9:30 a.m.

The deposition will be conducted at Esquire Deposition Services, 216 East 45th Street, New York, NY 10017. The deposition will be recorded by videotape and stenographic means.

The videographer will be Esquire Deposition Services. The deposition will be taken before a person authorized to administer oaths and will continue day to day until completed.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and federal express to all counsel on the attached Service List this 26th day of October 2004.

Dated: October 26, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART
& SHIPLEY P.A.
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(561) 686-6300

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GREENBERG
ATTORNEYS AT LAW
TRAURIG

Transmittal Cover Sheet

TO

Name:	Joseph Ianno, Jr., Esq..	Name:	Jerold S. Solovy, Esq.
Company:	Carlton Fields, P.A.	Company:	Jenner & Block, LLC
Fax No.:	659-7368	Fax No.:	312-840-7671
Phone No.:	659-7070	Phone No.:	312-923-2711
Name:	Jack Scarola, Esq.	Name:	Michael Brody, Esq.
Company:	Searcy, Denney et al.	Company:	Jenner & Block, LLC
Fax No.:	684-5816	Fax No.:	312-840-7711
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Name: Thomas D. Yannucci, Esq.
Copy to: Lawrence P. Bemis, Esq.
Copy to: Thomas A. Clare, Esq.
Copy to: Zhonette M. Brown, Esq.
Company: Kirkland & Ellis LLP
Fax No.: 202-879-5200
Phone No.: 202-879-5000

FROM Lorie Gleim, Esq.

File Number 16560.071300

Comments

Date October 27, 2004

No. Pages Including this cover sheet 6

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The information contained in this transmission is attorney privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone collect and return the original message to us at the address below via the U.S. Postal Service. We will reimburse you for your postage. Thank you.

777 South Flagler Drive, Suite 300 East. West Palm Beach, Florida 33401 (561) 650-7900 Fax (561) 655-6222

Greenberg Traurig

LORIE M. GLEIM, ESQ.
WEST PALM BEACH OFFICE
DIRECT DIAL: (561) 650-7948
Email: gleiml@gtlaw.com

October 27, 2004

VIA HAND DELIVERY

Honorable Elizabeth T. Maass
Palm Beach County Courthouse
205 N. Dixie Highway, Room 11-1208
West Palm Beach, FL 33401

Re: Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.
Case No. 03-CA-5045-AI

Dear Judge Maass:

Attached please find Sunbeam's Notice of Submission of Documents to Court for In-Camera Inspection pursuant to this Court's October 14, 2004 Order on Non-Party Sunbeam's Motion for Protective Order and Morgan Stanley's Motion to Compel Documents. Enclosed in the attached envelope marked DO NOT OPEN PURSUANT TO THE COURT'S ORDER ON NON-PARTY SUNBEAM'S MOTION FOR PROTECTIVE ORDER AND MORGAN STANLEY'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS ENTERED OCTOBER 14, 2004" is a copy of (i) the Report Prepared by Skadden, Arps, Meagher & Flom, LLP; (ii) the Report's Exhibits; and (iii) the transmittal letter to MAFCO.

If Your Honor requires any further documentation or information, please do not hesitate to contact my office.

Respectfully,

Lorie M. Gleim

LMG/dt
Enclosures

cc: Mark F. Bideau, Esq.
Joseph Ianno, Esq.
Thomas D. Yannucci, Esq.
Jack Scarola, Esq.
Jerold S. Solovy, Esq.

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

CASE NO. 03 CA 5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

v.

MACANDREWS & FORBES HOLDING, INC., et al.,

Defendants.

CASE NO. CA 03-5165 AI

NOTICE OF SUBMISSION OF DOCUMENTS TO COURT FOR IN-CAMERA INSPECTION

Non-Party, Sunbeam Corporation, (n/k/a American Household, Inc.) hereby files its Notice of Submission of Documents to Court for in-camera inspection and in support thereof, state the following:

1. Non-Party, Sunbeam, just received today, October 27, 2004, a copy of this Court's October 14, 2004 Order on Non-Party Sunbeam's Motion for Protective Order and Defendant Morgan Stanley's Motion to Compel Production of Documents (the "October 14, 2004 Order").

2. A copy of the October 14, 2004 Order was not furnished to counsel for Sunbeam. Despite Sunbeam's counsel having numerous conversations with both parties to this case since October 14, 2004, neither side informed Sunbeam of the Court's ruling.

3. Pursuant to this Court's October 14, 2004 Order, Sunbeam hereby certifies that it has submitted directly to the Court in a sealed envelope marked "DO NOT OPEN PURSUANT TO THE COURT'S ORDER ON NON-PARTY SUNBEAM'S MOTION FOR PROTECTIVE ORDER AND MORGAN STANLEY'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS ENTERED OCTOBER 14, 2004" a copy of (i) the Report Prepared by Skadden, Arps, Meagher & Flom, LLP; (ii) the Report's Exhibits; and (iii) the transmittal letter to MAFCO.

4. Its Sunbeam's understanding that pursuant to a standing order of this Court, the Court will return the privileged documents provided by Sunbeam and that any order of the Court on Non-Party Sunbeam's Motion for Protective Order and Morgan Stanley's Motion to Compel Production of Documents will include a period of time for Sunbeam to make a production, if necessary, so that Sunbeam can protect its rights on appeal.

WHEREFORE, Sunbeam hereby files its Notice of Submission of Documents to Court for In-Camera Inspection pursuant to this Court's October 14, 2004 Order.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished

via facsimile and mail to the addressees on the attached Service List, this 27 day of October, 2004.

GREENBERG TRAURIG, P.A.
777 South Flagler Drive - Suite 300 East
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Telephone: (561) 650-7900
Facsimile: (561) 655-6222

By: Lorie M. Gleim
Mark F. Bideau
Florida Bar No. 564044
Lorie M. Gleim
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WPB-FS1\517189v01\16560.071300

#23[illegible]05 30/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

Case No. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs.

MAC ANDREWS & FORBES HOLDINGS, INC.,

Defendant,

_____/

Case No. CA 03-5165 AI

RE-NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: November 2, 2004

TIME: 8:45 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

CPH's Motion for Leave to File in Excess of 30 Interrogatories

Moving counsel certifies that he or she contacted opposing counsel and attempted to resolve the discovery dispute without hearing.

Cole na ı (Parent) Holdings Inc. vs Morgan Stanley & Company
Case N·.: 2003 CA 005045 AI
Noti e ·f Hearing

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Mail to all Counsel on the attached list, this 27 day of Oct, 2004.

JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 478-0754
Attorney for CPH and MAFCO

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Case No : 2003 CA 005045 AI
Notice of Hearing

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#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

Case No. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

_____/

Case No. CA 03-5165 AI

SUPPLEMENTAL NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: November 5, 2004

TIME: 8:00 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

MS' Motion for Protective Order Concerning the Notice of Taking Videotaped Depositions Served by Coleman (Parent) Holdings Inc. on October 18, 2004.

Coler ıaı Holdings, Inc. vs Morgan Stanley & Company
Case ٧c : 2003 CA 005045 AI
Notic ɔ c : Hearing

Moving counsel certifies that he or she contacted opposing counsel and attempted to reso. vɛ the discovery dispute without hearing.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax ın i Fedex to all Counsel on the attached list, this 27 day of Oct., 2004.

JACK SCAROLA
Florida Bar No.: 169440
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West Palm Beach, FL 33409
Phone: (561) 686-6300
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Attorney for CPH and MAFCO

Colen an Holdings, Inc. vs Morgan Stanley & Company
Case No 2003 CA 005045 AI
Notic o Hearing

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO. INC.,

Defendant.

_____/

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED'S EIGHTH REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF

Pursuant to Rules 1.280 and 1.350 of the Florida Rules of Civil Procedure, Morgan Stanley & Co. Incorporated ("Morgan Stanley") requests that plaintiff produce the documents and things referred to in the following specific requests. The specific requests are preceded by Instructions and Definitions which shall govern the specific requests. Documents and things responsive to these requests should be produced to counsel for Morgan Stanley & Co. Incorporated at the law firm of Kirkland & Ellis LLP, 655 15th Street, NW. Suite 1200, Washington DC, 20005, within the time required by Florida Rule of Civil Procedure 1.350(b) or as otherwise agreed to by the parties or specified by the Court.

INSTRUCTIONS

1. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

2. The use of the singular form of any word includes the plural and vice versa.

3. Documents requested and to be produced include all Documents in the possession, custody or control of the plaintiff including, but not limited to, any agents,

16div-007767

employees, contractors, attorneys, and consultants or experts working for or in favor of the plaintiff or its attorneys.

4. If, in responding to this Request for Production, you encounter any ambiguities when construing a request or definition, the response shall set forth the matter deemed ambiguous and the construction used in responding.

5. Whenever in this Request you are asked to identify or produce a document which is deemed by you to be properly withheld from production for inspection or copying under claim of privilege (including, but not limited to, the work product doctrine), provide a privilege log that includes: the type of document, the general subject matter of the document, the date of the document, and such other information as is sufficient to identify the document, including, where appropriate, the author, addressee, custodian, and any other recipient of the document, and where not apparent, the relationship of the author, the addressee, custodian, and any other recipient to each other, in a manner that, without revealing the information claimed to be protected, will enable this party to assess the applicability of the privilege protection claimed by you. The privilege log shall be provided within the time set forth in the agreed-upon order.

6. If production of any requested document(s) is objected to on the grounds that production is unduly burdensome, describe the burden or expense of the proposed discovery.

7. When a document contains both privileged and non-privileged material, the non-privileged material must be disclosed to the fullest extent possible without disclosing the privileged material. If a privilege is asserted with regard to part of the material contained in a document, the party claiming the privilege must clearly indicate the portions as to which the privilege is claimed. When a document has been redacted or altered in any fashion, identify as to

each document the reason for the redaction or alteration. Any redaction must be clearly visible on the redacted document.

8. If a responsive document exists but is no longer in your possession, custody, or control, state: its date, author(s), recipient(s), subject matter, what disposition was made of the document, and the person or entity, if any, now in possession, custody, or control of the document. If a responsive document has been destroyed, identify the date of destruction, the person who destroyed the document and the person who directed that the document be destroyed and state the reason for its destruction.

9. Produce all of the documents responsive to the numbered requests below either as they are kept in the usual course of business or by custodian.

10. If any of these documents cannot be produced in full, you are requested to produce them to the fullest extent possible, specifying clearly the reasons for your inability to produce the remainder and stating any information, knowledge, or belief you have concerning the unproduced portion.

11. If the requested documents are maintained in a file, the file folder is included in the request for production of those documents.

12. The terms "any," "all" and "each" shall be construed to mean "any," "all," or "each".

13. The term "including" shall be construed to mean "including but not limited to."

14. The present tense shall be construed to include the past and future tenses.

15. The specificity of any request herein shall not be construed to limit the generality or reach of any other request herein.

16. Unless otherwise specified, this Request calls for the production of documents created, delivered, distributed, sent, received, accessed, or modified up to the date of your response to this Request.

DEFINITIONS

1. The term "concerning" means relating to, referring to, describing, evidencing, or constituting.

2. "Coleman" means Coleman Company, Inc.

3. "CPH" means Coleman (Parent) Holdings Inc.

4. "Document" means any recording in any tangible form of any information, whether handwritten, typed, printed, stored on computer disks, tapes, or databases, or otherwise reproduced. "Document" or "documents" also includes electronic documents whether stored on servers or hard drives, e-mail, backup tapes, voicemail and video and audio recordings. A draft or non-identical copy is a separate document within the meaning of this term.

5. "Mafco" means MacAndrews & Forbes Holdings, Inc. and any of its officers, directors, former or present employees, representatives and agents.

6. The term "person" is defined as any natural person or any business, legal or governmental entity or association.

7. The terms "plaintiff" and "defendant" as well as a party's full or abbreviated name or pronoun referring to a party mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

8. The term "relating to" means concerning, evidencing, referring to, or constituting.

DOCUMENTS TO BE PRODUCED

1. All documents not previously produced or provided by CPH that are responsive to any Request for the Production of Documents that Morgan Stanley has served upon CPH in the above captioned cases.

2. All documents concerning any proposed sale of CPH's interest in Coleman, including without limitation all documents concerning communications with potential buyers and investment bankers, between January 1, 1997 and March 31, 1998.

3. All documents from January 1, 1996 to March 31, 1998 concerning the valuation of Coleman, including without limitation all documents concerning any valuation of Coleman performed by Chase Securities and all studies done to support all valuations.

4. All documents concerning the value of the warrants and other consideration that CPH received from Sunbeam pursuant to the August 12, 1998 Settlement Agreement between CPH and Sunbeam.

16div-007771

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 25th day of October, 2004.

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Counsel for
Morgan Stanley & Co. Incorporated

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BY: _____
Zhonette M. Brown

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,

Defendant(s).

_____/

AMENDED NOTICE OF VIDEOTAPED DEPOSITION

PLEASE TAKE NOTICE that Morgan Stanley & Company Incorporated will take the videotaped deposition of James Maher, pursuant to Florida Rules of Civil Procedure 1.280 and 1.310. The oral examination will take place on November 2, 2004 at 9:00 a.m. and on November 3, 2004 at 9:00 a.m. and continue until complete at the offices of Kirkland & Ellis, LLP, 153 East 53rd Street, New York, New York, 10022. The deposition will be taken before a person authorized to administer oaths and recorded by stenographic and videographic means. The video operator will be Esquire Deposition Services of 216 E. 45th Street in New York, New York. The witness is instructed to bring all books, papers, and other things in his possession or under his control relevant to this lawsuit (and not previously produced in discovery) to the examination.

16div-007774

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 27th day of October, 2004.

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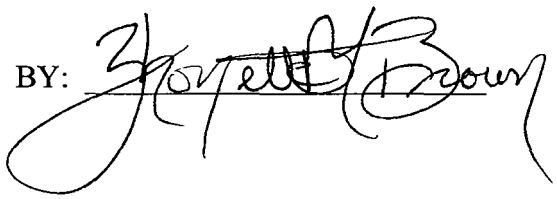
BY: 

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Counsel for Coleman(Parent) Holdings

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,

vs.

MAFCO HOLDINGS INC., MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL COMPLIANCE WITH THIS COURT'S SEPTEMBER 30, 2004 ORDER

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, respectfully requests that this Court enter an Order compelling Morgan Stanley Senior Funding, Inc. ("MSSF") to comply with this Court's Order of September 30, 2004 on CPH's and MAFCO's motion to compel within seven days. In support of this motion, CPH states as follows:

1. On August 17, 2004, CPH and MAFCO filed a motion to compel MSSF to answer interrogatories relating to the contention that the Morgan Stanley entities supposedly relied on certain "synergy" projections made by CPH and MAFCO in connection with Sunbeam's acquisition of Coleman. In an Order dated September 30, 2004, this Court directed MSSF to provide synergy-related information responsive to two interrogatories propounded by CPH and MAFCO within 20 days, by October 20, 2004.

2. A day before MSSF was to comply with this Court's Order, Morgan Stanley's counsel contacted CPH's counsel and requested an extension of time to comply with this Court's September 30 Order. Morgan Stanley's counsel cited undisclosed "logistical" reasons for the request for an extension. CPH's counsel agreed to extend the time for compliance with this Court's Order to and including Friday, October 22. *See* Ex. A, Letter from J. Ianno to J. Solovy.

3. On that day, October 22, MSSF filed a motion for voluntary dismissal of its complaint without prejudice. MSSF, however, did not provide the interrogatory answers as required by this Court's September 30 Order.

4. On Monday, October 25, CPH's counsel wrote Morgan Stanley's counsel inquiring as to the whereabouts of the interrogatory answers required by this Court's September 30 Order. *See* Ex. B, Letter from M. Brody to T. Clare. The next day, October 26, Morgan Stanley wrote stating that because MSSF had dismissed its complaint, MSSF had no obligation to comply with this Court's September 30 Order. *See* Ex. C, Letter from J. Ianno to M. Brody.

5. This position is indefensible. MSSF was required, by an existing Court Order, to provide relevant information to CPH and MAFCO. The fact that CPH's counsel extended the professional courtesy of enlarging the time for compliance with the September 30 Order for two days should not relieve MSSF of the responsibility of complying with that Order.

6. That is especially true given that the information called for by the interrogatories in question is directly relevant to key issues presently pending before this Court. In its answer to CPH's complaint, which remains pending, Morgan Stanley has attempted to deflect responsibility for its own misconduct by asserting (at ¶ 42) that an opinion that it provided to the Sunbeam Board of Directors in connection with the Coleman acquisition was based in part "on synergy analyses which MS&Co. received from CPH." The interrogatories that this Court has

directe l MSSF to answer relate directly to the synergy projections supposedly provided by CPH and MAFCO and to whether the Morgan Stanley entities in fact relied on those projections. Thus, MSSF should be directed to comply with this Court's September 30 Order within seven days

Date l: October 28, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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16div-007779

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 28th day of OCT, 2004.

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October 21, 2004

Jerold Solovy, Esq.
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VIA FACSIMILE
AND FEDERAL EXPRESS

Re: *Coleman (Parent) Holdings Inc. v Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v MacAndrews & Forbes Holdings Inc., et al

Dear Jerry:

Thank you for your telephone call on Wednesday concerning the above matters. This letter will confirm our conversation.

First, with regard to the pending motion to appoint commissioners, Coleman (Parent) Holdings objects to the appointment of a commission unless Morgan Stanley agrees to provide one-half of the time to CPH for their questioning of the witnesses. As we have previously stated, it is unreasonable to demand one-half of the time when CPH has never requested the depositions of the witnesses at issue. As we discussed, we submit that this is not a valid objection to the issuance of the commissions. Also, this objection jeopardizes the ability to complete discovery within the deadlines sought by CPH and ordered by the Court. Notwithstanding the foregoing, we recognize the right of CPH to question witnesses and will not interfere with that right. Thus, we agree that CPH may use whatever time is reasonable to conduct its cross-examination of the witnesses once Morgan Stanley has concluded its direct examination. Coincidentally, this is the same agreement we suggested with regard to Mr. Levin that was not accepted. Please let me know if CPH withdraws its objection and agrees to the form of the order attached to the motion so that we may proceed with discovery to attempt to meet the Court's discovery deadlines.

EXHIBIT
tabbies
A

Second, thank you for the courtesy of extending the time to respond to the Court's September 30, 2004 Order concerning interrogatories until the close of business on Friday, October 22, 2004.

Sincerely,

Joseph Ianno, Jr.

/ ed

c: Thomas Clare, Esq. (via facsimile)
Jack Scarola, Esq. (via facsimile)
Rebecca Beynon, Esq. (via facsimile)

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October 25, 2004

By *Telecopy*

Thomas A. Clare, Esq.
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Tom:

On September 30, 2004, Judge Maass ordered your client Morgan Stanley Senior Funding, Inc. to supplement answers to interrogatories within 20 days. On the twentieth day, Joe Ianno requested an extension of time on those responses due to "logistical difficulties." We agreed to that request, and extended the time for your response until Friday, October 22, 2004. We have not received the supplemental response as ordered by the Court.

We do not believe that Morgan Stanley Senior Funding's voluntary dismissal relieves it of its obligations to comply with Court Orders. Consequently, unless we receive MSSF"s supplemental response by Tuesday, October 26, 2004, we will bring this matter to the Court's attention.

Very truly yours,

Michael T. Brody

MTB:cjg
cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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EXHIBIT
tabbies
B

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October 27, 2004

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VIA FACSIMILE AND FEDERAL EXPRESS

Re: *Coleman (Parent) Holdings Inc. v Morgan Stanley & Co. Inc.*

Dear Mike:

We are in receipt of your letter to Mr. Clare concerning interrogatories directed to Morgan Stanley Senior Funding, Inc. As you should be aware, interrogatories can only served by "a party" and directed to "a party" in the action. Since MSSF voluntarily dismissed its complaint, as it had an absolute right to do, it is no longer a party. Therefore, the answers to interrogatories referenced in your letter and any subsequent interrogatories are moot.

Thank you.

Sincerely,

Joseph Ianno, Jr.

/ oj

cc Jack Scarola, Esq. (via facsimile and Federal Express)
Thomas Clare, Esq. (via facsimile)
Rebecca Beynon, Esq. (via facsimile)

EXHIBIT
tabbies C

WP #581542.4

#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

Case No. CA 03-5045 AI

Case No. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

_____/

SUPPLEMENTAL NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: November 5, 2004

TIME 8:00 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

Coleman (Parent) Holdings Inc.'s Motion to Compel Compliance with this Court's September 30, 2004 Order

Coleman Holdings, Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

Moving counsel certifies that he or she contacted opposing counsel and attempted to resolve the discovery dispute without hearing.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Fedex to all Counsel on the attached list, this 28 day of Oct., 2004.

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Coleman Holdings, Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

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FAX COVER SHEET

		Phone Number	Fax Number
Date:	October 28, 2004		
To:	Michael T. Brody, Esq.	(312) 222-9350	(312) 840-7711
	Thomas Clare, Esq.	(202) 879-5993	(202) 879-5200
	Jack Scarola, Esq.	(561) 686-6300	(561) 684-5816
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From:	Joyce Dillard, CLA	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:** 048

Total Number of Pages Being Transmitted, Including Cover Sheet: 4

Message:

Coleman v. Morgan Stanley & Co., Inc.

Attached please find a copy of Morgan Stanley's Notice of Hearing.

☐ *Original to follow Via Regular Mail* ☐ *Original will Not be Sent* ☐ *Original will follow via Overnight Courier*

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (if long distance, please call collect) and return the original message to us at the above address via the U.S. Postal Service. Thank you.

IF THERE ARE ANY PROBLEMS OR COMPLICATIONS, PLEASE NOTIFY US IMMEDIATELY AT:
(561) 659-7070

TELECOPIER OPERATOR: _____

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a hearing has been set in the above-styled case as follows:

DATE:	November 5, 2004
TIME:	8:00 a.m.
PLACE:	Palm Beach County Courthouse, Courtroom 11A 205 North Dixie Highway West Palm Beach, Florida 33401
BEFORE:	Judge Elizabeth T. Maass
CONCERNING:	Morgan Stanley's Motion for Protective Order Concerning the Notice of Taking Videotaped Depositions Served by MacAndrews & Forbes Holdings, Inc. on October 18, 2004, served October 22, 2004

KINDLY GOVERN YOURSELVES ACCORDINGLY.

The undersigned counsel hereby certifies that a good faith attempt to resolve the issues contained in the foregoing motions or matters will be made with opposing counsel prior to hearing on these matters on the Court's Motion Calendar.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West

Palm Beach, Florida 33401; telephone number (561) 355-2431 within two (2) working days of your receipt of this notice; if you are hearing or voice impaired, call 1-800-955-8771.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 28th day of October, 2004.

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC., *et al.*,
Defendants.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S AND MACANDREWS & FORBES HOLDINGS INC.'S RESPONSE TO MOTION FOR PROTECTIVE ORDER CONCERNING THE NOTICE OF TAKING VIDEOTAPED DEPOSITIONS SERVED BY MAFCO ON OCTOBER 18, 2004

MS&Co. has filed a motion requesting this Court to declare null and void a deposition notice served by MAFCO that seeks to schedule the depositions of two individuals (Mitch Petrick and Simon Rankin) and four corporate representatives of MSSF. MS&Co. seeks this relief on the ground that neither the two individuals nor MSSF presently is a party to this action.

Concerning the deposition notice directed to Messrs. Petrick and Rankin, MS&Co.'s motion is moot. MS&Co. has agreed to make both of these individuals available for their depositions and dates have been set.

Concerning MAFCO's deposition notice directed to the four corporate representatives of MSSF, MS&Co.'s motion also could be moot, depending on MS&Co.'s response to an inquiry we have made. Specifically, we have asked whether the corporate representatives of MS&Co., who are scheduled to be deposed about the same issues that we had

intended to address with the MSSF corporate representatives, will be prepared to testify about MSSF's knowledge on those issues. We have made this request because MSSF is basically a shell corporation with no employees of its own; as a result, during the course of this litigation, individuals employed by MS&Co. routinely have taken positions and fulfilled tasks on behalf of MSSF. Accordingly, we expect that MS&Co.'s knowledge of the issues we intend to inquire about will be identical to that of MSSF.

3. MS&Co. has not yet answered our inquiry. If MS&Co. responds that the MS&Co. corporate representatives will testify about MSSF's knowledge, then it will not be necessary to proceed with the MSSF depositions, in which case MS&Co.'s motion will be moot. If MS&Co. responds that the MS&Co. corporate representatives will not be prepared to testify about the MSSF issues, then it will be necessary to proceed with the MSSF depositions.

Dated: October 29, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

**COLEMAN (PARENT) HOLDINGS INC.'S
MOTION TO COMPEL PRODUCTION OF DOCUMENTS
RESPONSIVE TO ITS SIXTH REQUEST FOR PRODUCTION**

Pursuant to Fla. R. Civ. P. 1.380, Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, respectfully requests that this Court enter an Order directing Morgan Stanley & Co., Inc. ("Morgan Stanley") to produce documents responsive to Request Nos. 5, 7, and 9 in CPH's Sixth Request for Production. In support of this motion, CPH states as follows:

1. This motion arises from Morgan Stanley's failure to produce documents related to American Household, Inc. ("AHI"). AHI is the entity formerly known as Sunbeam Corporation ("Sunbeam") and was created on December 18, 2002, upon Sunbeam's emergence from bankruptcy. MSSF, Morgan Stanley's sister company, is a substantial shareholder in AHI — having received those shares when its loan to Sunbeam was extinguished in the Sunbeam bankruptcy. AHI is soon to be purchased by Jarden Corporation pursuant to a September 19, 2004 Securities Purchase Agreement.

2. On September 27, 2004, CPH served its Sixth Request for Production on Morgan Stanley, requesting several categories of documents relating to AHI, its impending sale to Jarden, and MSSF's relationship to these entities. *See* Ex. A. This motion to compel relates to CPH's request for (1) documents reflecting, fees, monies, or compensation that Morgan Stanley or MSSF may receive from the sale of AHI (Req. No. 5); (2) documents sufficient to disclose the

shareholders of AHI (including MSSF) and their respective interests in the company since December 18, 2002 (Req. No. 7); and (3) documents reflecting any payments made by AHI to MSSF since December 18, 2002 (Req. No. 9). In short, CPH is seeking basic information about how much money MSSF has received from its interest in AHI to date, as well as how much MSSF will receive in connection with the sale of AHI to Jarden.

3. Responses to CPH's document request were due on Wednesday, October 27, 2004. Morgan Stanley, however, did not respond by that date or request or receive an extension of time. Instead, on the evening of October 29, Morgan Stanley sent its written response to CPH, stating that Morgan Stanley objected to the Sixth Request for Production in its entirety and would not produce any documents. *See* Ex. B.

4. Given Morgan Stanley's delinquent and inadequate response, CPH notified Morgan Stanley that CPH considered the objections to be waived as well as unfounded. Nov. 2, 2004 Letter from M. Brody to T. Clare, at 1. In response, Morgan Stanley claimed that it had "advis[ed]" CPH by voicemail — the day after Morgan Stanley's answers were due — that the answers would be tardy, and asserted that the answers were timely because CPH had not "object[ed]" to the voicemail message. Nov. 3, 2004 Letter from T. Clare to M. Brody, at 1.

5. Morgan Stanley has waived its objections to CPH's Sixth Request for Production by failing to timely respond to that request. *See, e.g., Insurance Co. of North Am. v. Noya*, 398 So. 2d 836, 838 (Fla. 5th DCA 1981) (failure to timely object to discovery requests "waives these objections"). Morgan Stanley's assertion that leaving a voicemail message "advising" that it would need extra time to prepare its response is insufficient. The voicemail was left the day after the response was due and the burden was upon Morgan Stanley to request and receive consent for a late response — which Morgan Stanley failed to do.

6. In addition, Morgan Stanley's waiver of its objections aside, CPH's motion should be granted because the documents sought by CPH are relevant to important issues in this litigation, including Morgan Stanley's defense that it was a victim rather than a perpetrator of the Sunbeam fraud, which lost money as a result of that fraud. As Morgan Stanley has asserted, "rather than being a *co-participant* in alleged fraud at Sunbeam, the pleadings demonstrate that MS & Co. was itself a *victim* of that fraud, as its own affiliate invested and lost hundreds of millions of dollars in the same transaction that is the subject of this lawsuit." Morgan Stanley Mot. to Dismiss at 1 (June 25, 2003) (emphasis in original). The requested documents would enable CPH to test whether MSSF's substantial stake in the stock of AHI actually has caused MSSF or Morgan Stanley to incur substantial losses. as Morgan Stanley has asserted.

7. Morgan Stanley's objections to the CPH's Sixth Request for Production, even if they had been timely made, are without merit.

a. Morgan Stanley relies in its document request response to a great extent on the public availability of the September 19, 2004 Securities Purchase Agreement for the sale of AHI to Jarden. That document, however, does not reveal the particular percentage of AHI shares owned by MSSF at any particular time or the revenues MSSF has obtained and will obtain in the future due to its stake in AHI. That information is important to the issues in this case.

b. Morgan Stanley also makes objections of overbreadth and relevance, which not only are insufficient boilerplate, but incorrect. Those objections are impossible to square with Morgan Stanley's refusal to accept CPH's invitation to stipulate that Morgan Stanley will not present any evidence or argument at trial about the alleged injuries that Morgan Stanley or MSSF suffered as a result of the Sunbeam fraud. Morgan Stanley's refusal leads one to ask: if Morgan Stanley will not stipulate that it will not attempt to argue that it lost money as a result of having to accept AHI shares in exchange for the extinguishment in bankruptcy of the loan to

Sunbeam, how can Morgan Stanley argue that CPH's attempt to discover the actual loss or gain is irrelevant and overbroad? Morgan Stanley has yet to provide an answer — because it has no answer.

c. Morgan Stanley's boilerplate objections based on attorney-client privilege and confidentiality likewise do not justify Morgan Stanley's complete refusal to produce responsive documents. To the extent Morgan Stanley claims that certain documents are privileged, Morgan Stanley can provide a privilege log, but it cannot withhold all responsive documents wholesale. As for Morgan Stanley's claim of confidentiality — a claim that is inconsistent with the position Morgan Stanley has taken in this litigation with respect to the documents of others — the Stipulated Confidentiality Order can be invoked to shield any documents as to which Morgan Stanley can make a legitimate claim of confidentiality.

WHEREFORE, because Morgan Stanley's objections to and refusal to produce any documents responsive to CPH's Sixth Request for Production are both waived and baseless, and because CPH seeks documents that could lead to the discovery of admissible evidence, CPH respectfully requests that this Court enter an Order directing Morgan Stanley to produce documents responsive to Request Nos. 5, 7, and 9 of CPH's Sixth Request for Production within seven days.

Dated: November 10, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 10th day of NOV., 2004.

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

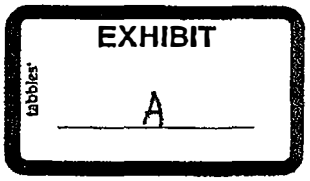
MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

PLAINTIFF COLEMAN (PARENT) HOLDINGS INC.'S SIXTH REQUEST FOR PRODUCTION OF DOCUMENTS TO MORGAN STANLEY & CO., INC.

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys Searcy Denney Scarola Barnhart & Shipley P.A. and Jenner & Block LLP, hereby serves its Sixth Request for Production of Documents upon Morgan Stanley & Co., Inc. ("MS&Co."), and requests responses and the production of documents at the office of Searcy Denney Scarola Barnhart & Shipley P.A., 2139 Palm Beach Lakes Blvd., West Palm Beach, Florida, within thirty (30) days from the date of service.



DEFINITIONS AND INSTRUCTIONS

Except as otherwise provided below, CPH incorporates by reference its Definitions and Instructions set forth in CPH's First Request for Production of Documents, served on MS&Co. on May 9, 2003. In addition, CPH defines the following terms as follows:

1. "Jarden" means Jarden Corporation, or any of its affiliates, subsidiaries, divisions, predecessors, successors, present and former employees, representatives, agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

2. "AHI" means American Household, Inc. or any of its affiliates, subsidiaries, divisions, predecessors, successors, present and former employees, representatives, agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

3. "MSSF" means Morgan Stanley Senior Funding, Inc. or any of its affiliates, subsidiaries, divisions, predecessors, successors, present and former employees, representatives, agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

4. "MS&Co." means Morgan Stanley & Co., Inc. or any of its affiliates, subsidiaries, divisions, predecessors, successors, present and former employees, representatives, agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

5. "The Sale of AHI" means the transaction contemplated by the September 19, 2004 Securities Purchase Agreement By and Among American Household, Inc., the Sellers Identified Herein, and Jarden Corporation.

DOCUMENTS REQUESTED

1. All documents involving, relating to, or referring to the The Sale of AHI, including, but not limited to, all documents relating to communications between or among Jarden,

MSSF, MS&Co., and/or Skadden, and all documents exchanged between or among Jarden, MSSF, MS&Co., and/or Skadden.

2. All documents relating to the value of AHI for the time period beginning December 18, 2002 to the present.

3. All documents referring or relating to any cash payments, consideration, or other item of value that MSSF expects to receive pursuant to the terms of the September 19, 2004 Securities Purchase Agreement By and Among American Household, Inc., the Sellers Identified Herein, and Jarden Corporation or any other agreement related to The Sale of AHI.

4. All documents referring or relating to the accounting or tax treatment for any aspect of The Sale of AHI.

5. All documents reflecting or referring to fees, monies, or other compensation that MSSF, MS&Co., any affiliates of MSSF and MS&Co., and/or Skadden may receive in connection with The Sale of AHI.

6. All minutes of the meetings of AHI's board of directors and all materials distributed to AHI's board of directors in connection with those meetings.

7. Documents sufficient to show the identity of all shareholders or security holders of AHI and the size and nature of their respective interests in AHI from December 18, 2002 to the present.

8. All documents reflecting amounts lent or charged to, or received from or applied to any loans to, Sunbeam or AHI, or any debts payable by Sunbeam or AHI, to MSSF or in which MSSF has participated or held any interest. This request includes without limitation any loan histories and schedules of advances or payments made.

9. All documents reflecting any payments made by AHI to MSSF or any of its affiliates since December 18, 2002, including but not limited to, dividends, fees, principal or interest payments.

Dated: September 27, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a copy of the foregoing has been furnished by U.S. Mail and facsimile to the following counsel of record on this 27th day of September, 2004:

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Deirdre E. Connell

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO: CA 03-5045 AI

MORGAN STANLEY'S RESPONSE TO DEFENDANT COLEMAN (PARENT) HOLDINGS INC.'S SIXTH REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Rules 1.280 and 1.350 of the Florida Rules of Civil Procedure, Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") hereby interposes the following objections and responses to Coleman (Parent) Holdings Inc.'s ("CPH") Sixth Request for Production dated September 27, 2004.

GENERAL OBJECTIONS

Except as otherwise provided below, Morgan Stanley incorporates by reference its Objections to Definitions and Instructions and its General Objections to Plaintiff's First, Second, Third, Fourth, and Fifth Request for Production of Documents.

SPECIFIC RESPONSES AND OBJECTIONS

Request No. 1: All documents involving, relating to, or referring to The Sale of AHI, including, but not limited to, all documents relating to communications between or among Jarden, MSSF, MS&Co., and/or Skadden, and all documents exchanged between or among Jarden, MSSF, MS&Co., and/or Skadden.

Morgan Stanley Response: Morgan Stanley objects to this request on the grounds that the request is overbroad, expressly requests the production of communications that are protected from discovery by the attorney-client privilege, and improperly seeks production of materials

EXHIBIT
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that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to issues framed by the current pleadings in his action. The September 19, 2004 Securities Purchase Agreement relating to The Sale of AHI, which reflects the consideration payable to MSSF upon closing, is publicly available. Morgan Stanley will not produce additional documents responsive to this request.

Request No. 2: All documents relating to the value of AHI for the time period beginning December 18, 2002 to the present.

Morgan Stanley Response: Morgan Stanley objects to this request on the grounds that the request is overbroad, fails to identify with reasonable particularity the documents requested, and improperly seeks production of materials that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to issues framed by the current pleadings in his action. Morgan Stanley will not produce documents responsive to this request.

Request No. 3: All documents referring or relating to any cash payments, consideration, or other item of value that MSSF expects to receive pursuant to the terms of the September 19, 2004 Securities Purchase Agreement By and Among American Household, Inc., the Sellers Identified Herein, and Jarden Corporation or any other agreement related to The Sale of AHI.

Morgan Stanley Response: The September 19, 2004 Securities Purchase Agreement relating to The Sale of AHI, which reflects the consideration payable to MSSF upon closing, is publicly available. Morgan Stanley will not produce additional documents responsive to this request.

Request No. 4: All documents referring or relating to the accounting or tax treatment for any aspect of The Sale of AHI.

Morgan Stanley Response: Morgan Stanley objects to this request on the grounds that the request is overbroad and improperly seeks production of materials that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to issues framed by the current pleadings in his action. Morgan Stanley will not produce documents responsive to this request.

Request No. 5: All documents reflecting or referring to fees, monies, or other compensation that MSSF, MS&Co., any affiliates of MSSF and MS&Co., and/or Skadden may receive in connection with The Sale of AHI.

Morgan Stanley Response: Morgan Stanley objects to this request on the grounds that the request is overbroad and improperly seeks production of materials that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to issues framed by the current pleadings in his action. The September 19, 2004 Securities Purchase Agreement relating to The Sale of AHI, which reflects the consideration payable to MSSF upon closing, is publicly available. Morgan Stanley will not produce additional documents responsive to this request.

Request No. 6: All minutes of the meetings of AHI's board of directors and all materials distributed to AHI's board of directors in connection with those meetings.

Morgan Stanley Response: Morgan Stanley objects to this request on the grounds that the request is overbroad and improperly seeks production of materials that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to issues framed by the current pleadings in his action. Morgan Stanley further objects to this request on the ground that the request seeks materials distributed to AHI's board of directors in their capacity as directors of a privately-held company. To the extent that such materials are relevant, they must be requested

from AHI, which must be given an opportunity to interpose objections to the requested discovery on behalf of AHI. Morgan Stanley will not produce documents responsive to this request.

Request No. 7: Documents sufficient to show the identity of all shareholders or security holders of AHI and the size and nature of their respective interests in AHI from December 18, 2002 to the present.

Morgan Stanley Response: Morgan Stanley objects to this request on the grounds that the request is overbroad and improperly seeks production of materials that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to issues framed by the current pleadings in his action. Morgan Stanley will not produce documents responsive to this request.

Request No. 8: All documents reflecting amounts lent or charged to, or received from or applied to any loans to, Sunbeam or AHI, or any debts payable by Sunbeam or AHI, to MSSF or in which MSSF has participated or held any interest. This request includes without limitation any loan histories and schedules of advances or payments made.

Morgan Stanley Response: Morgan Stanley objects to this request on the grounds that the request is overbroad and improperly seeks production of materials that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to issues framed by the current pleadings in his action. The September 19, 2004 Securities Purchase Agreement relating to The Sale of AHI, which reflects the consideration payable to MSSF upon closing, is publicly available. Morgan Stanley will not produce additional documents responsive to this request.

Request No. 9: All documents reflecting any payments made by AHI to MSSF or any of its affiliates since December 18, 2002, including but not limited to, dividends, fees, principal or interest payments.

Morgan Stanley Response: Morgan Stanley objects to this request on the grounds that the request is overbroad and improperly seeks production of materials that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to issues framed by the current pleadings in his action. The September 19, 2004 Securities Purchase Agreement relating to The Sale of AHI, which reflects the consideration payable to MSSF upon closing, is publicly available. Morgan Stanley will not produce additional documents responsive to this request.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by e-mail on this 29th day of October, 2004.

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BY: /s/ Thomas A. Clare

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,

vs.

MAFCO HOLDINGS INC., MACANDREWS & FORBES HOLDINGS INC.,
et al,
Defendants.
_____/

**COLEMAN (PARENT) HOLDINGS INC.'S
RESPONSE IN OPPOSITION TO MORGAN STANLEY'S
MOTION FOR PROTECTIVE ORDER TO BAR RULE 1.310 DEPOSITION**

Morgan Stanley has moved for a protective order to bar the deposition of a Morgan Stanley Rule 1.310 witness concerning the misrepresentations (including misrepresentations about the alleged synergies that would result from Sunbeam's acquisition at The Coleman Company) supposedly made by CPH and its affiliated companies. Morgan Stanley's sole ground for this relief is that, as a result of MSSF's voluntary dismissal of its lawsuit against CPH and MAFCO, the alleged misrepresentations concerning synergies and other matters "are no longer relevant to any issue currently framed by the pleadings in this action and, therefore, the discovery is not reasonably calculated to lead to the discovery of admissible evidence" (¶ 3).

Morgan Stanley's assertion is baseless. Although MSSF has withdrawn its complaint for money damages against CPH and MAFCO, Morgan Stanley has yet to represent that it will not attempt to present evidence or argument concerning the alleged misrepresentations about synergies and other matters supposedly made by CPH and its affiliates. To the contrary, in its

answer filed in this case, Morgan Stanley seeks to place the purported misrepresentations of CPH and its affiliates squarely in issue (Ex. A, ¶ 43, emphasis added):

> MS&Co. admits that at that February 27, 1998 New York meeting [of the Sunbeam Board of Directors at which the Coleman acquisition was approved], it provided Sunbeam with a written "fairness opinion" regarding the fair acquisition price of Coleman. This opinion was based on financial information provided to MS&Co. by Sunbeam, Coleman, and Arthur Andersen and on synergy analyses which MS&Co. received from CPH.

In sum, contrary to Morgan Stanley's assertion in its motion, the topics on which CPH intends to examine Morgan Stanley's corporate representative are relevant to an "issue currently framed by the [Morgan Stanley's very own] pleadings in this action." Thus, Morgan Stanley's motion for a protective order should be denied, and Morgan Stanley should be directed to produce a Rule 1.310 witness to testify about the topics listed on Exhibit A to the deposition notice without further delay. In the alternative, if Morgan Stanley agrees to stipulate that it will not attempt to raise any evidence or argument at trial concerning synergy or other alleged misrepresentations purportedly made by CPH or MAFCO, then the deposition would not be necessary.

Dated: October 29, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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#1170143

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I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 29th day of OCT, 2004.

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

CC L EMAN (PARENT) HOLDINGS, INC., Plaintiff,	2003 CA 005045 AI
v.	Judge Elizabeth T. Maass
MOI GAN STANLEY & CO., INC., Defendant.	

ANSWER OF MORGAN STANLEY & CO. INCORPORATED

Defendant Morgan Stanley & Co. Incorporated ("MS & Co.") responds to Pl: in iff Coleman (Parent) Holdings, Inc.'s ("CPH") Complaint by denying generally that MS & Co. ngaged in any fraudulent or negligent misrepresentations, any conspiracy to defraud, that M3 & Co. assisted Sunbeam Corporation ("Sunbeam") or any employee, director or agent of Sunbeam in the commission of a fraudulent scheme, or that MS & Co. otherwise defrauded CPH in any manner. Specifically, MS & Co. responds to CPH's allegations as follows:

Nature of the Action

1. MS & Co. denies the allegations contained in Paragraph 1.

2. MS & Co. admits that, beginning in mid-1997, MS & Co. served as an investment banker for Sunbeam. MS & Co. admits that it attempted to identify a party interested in purchasing Sunbeam, and that those efforts were ultimately unsuccessful. MS & Co. admits that it recommended that Sunbeam's management consider acquiring other companies instead and suggested, as is common in corporate mergers and acquisitions, that Sunbeam consider, among other options, using Sunbeam stock as part of the consideration for such an acquisition. MS & Co. denies that it had any knowledge as to the accuracy of the value of Sunbeam's stock, or that

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Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 42 and consequently denies them.

43. MS & Co. admits that at that February 27, 1998 New York meeting, it provided Sunbeam with a written "fairness opinion" regarding the fair acquisition price of Coleman. This opinion was based on financial information provided to MS & Co. by Sunbeam, Coleman, and Arthur Andersen, and on synergy analyses which MS & Co. received from CPH. The written fairness opinion explicitly stated that MS & Co. "[has] not made any independent valuation or appraisal of the assets or liabilities of [Sunbeam]." (Feb. 27, 1998 Fairness Op. at 3 (Ex. 4).) MS & Co. denies any remaining allegations contained in Paragraph 43.

44. MS & Co. admits that the Sunbeam Board of Directors approved the Coleman acquisition at the February 27, 1998 meeting in New York. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 44 and consequently denies them.

45. MS & Co. admits that it continued to provide investment banking services to Sunbeam after the Coleman acquisition was approved. MS & Co. denies any remaining allegations contained in Paragraph 45.

46. MS & Co. admits that the Coleman acquisition was announced on March 2, 1998. MS & Co. responds that the allegations contained in Paragraph 46 regarding stock prices pertain to publicly available information, and refers to such information for the truth or falsity of such allegations. To the extent that further response is required, MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 46 and consequently denies them.

47. MS & Co. admits that it agreed to serve as underwriter for Sunbeam's subordinated debentures. The "cash portion" of the consideration set forth in the Merger Agreement was also financed in part through a $680 million loan made by Morgan Stanley Senior Funding, an affiliate of MS & Co. (*See* Credit Facilities Mem.) MS & Co. lacks

WHEREFORE, MS & Co. denies that CPH is entitled to any relief whatsoever, and to the extent that CPH should recover any damage award, that award should be offset by CPH's failure to take appropriate steps to mitigate its damages. MS & Co. respectfully requests that the Court enter judgment for MS & Co. dismissing the complaint with prejudice, award MS & Co. its attorneys' fees, costs and expenses, and grant such other and further relief as may be just and proper.

Dated: June 23, 2003

Respectfully Submitted,

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ATTORNEYS FOR DEFENDANT,
MORGAN STANLEY & CO. INCORPORATED.

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,

vs.

MAFCO HOLDINGS INC., MACANDREWS & FORBES HOLDINGS INC., *et al*,
Defendants.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE IN OPPOSITION TO WACHOVIA BANK, N.A.'S MOTION TO QUASH SUBPOENA OR, IN THE ALTERNATIVE, MOTION FOR PROTECTIVE ORDER

Wachovia Bank, N.A. ("Wachovia") which filed its motion to quash or for a protective order on July 29, 2004, has never scheduled its motion for a hearing and has rejected all of CPH's attempts to compromise this discovery dispute. CPH's subpoena contains 13 document requests, many of which pertain to the issues relating to CPH's motion for contempt. Because this Court has stricken that motion, CPH no longer is requesting contempt-related documents from Wachovia. Instead, as CPH has advised Wachovia, CPH currently is requesting only the documents responsive to Request Nos. 12 and 13 in the subpoena (Wachovia Mot., Ex. A):

> 12. All documents concerning the value of American Household, Inc., or any portion of American Household, Inc.
>
> 13. All financial statements of American Household, Inc.[1]

[1] The relevant time period set forth in the subpoena is January 1, 2001 through the date of trial in this matter. *Id.*, Instruction No. 3.

These documents clearly are relevant to the issues in this case, including Morgan Stanley's defenses to CPH's claims. In particular, Morgan Stanley has signaled that it will contend that CPH's claim that Morgan Stanley participated in the Sunbeam fraud is unfounded because MSSF, Morgan Stanley's sister company, loaned money to Sunbeam and lost hundreds of millions of dollars when Sunbeam went into bankruptcy and MSSF's claim loan was discharged in exchange for the stock of Sunbeam, which now is known as American Household, Inc. The documents requested from Wachovia relate directly to the value of American Household, Inc., and thus, to Morgan Stanley's contention that its sister company lost money on the Sunbeam loan.

Wachovia plainly possesses documents responsive to the above requests. Wachovia, along with MSSF, loaned money to Sunbeam to finance Sunbeam's acquisition of Coleman and other entities — and, thus, stands on essentially the same footing as MSSF. Wachovia, like MSSF and other Morgan Stanley entities, has filed its own Sunbeam fraud-related lawsuit against Andersen and related entities and so Wachovia is no stranger to this controversy. The documents in question clearly would be easy to find and not burdensome to produce. Wachovia therefore should be required to produce them without further delay.

Conclusion

For the foregoing reasons, CPH respectfully requests that this Court direct Wachovia Bank, NA to produce all documents concerning the value of American Household, Inc. or any portion of American Household, Inc., and all financial statements of American Household, Inc., within 4 days.

Dated: October 29, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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CERTIFICATE OF SERVICE

HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 29th day of Oct, 2004.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.
Defendants.
_____/

CASE NO. CA 03-5165 AI

COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE TO MORGAN STANLEY'S MOTION FOR PROTECTIVE ORDER

Morgan Stanley is seeking a protective order barring CPH from taking the deposition of a Morgan Stanley representative pursuant to Fla. R. Civ. P. 1.310 to address the admissibility of personnel evaluations produced by Morgan Stanley, on the ground that all factual issues concerning the admissibility of the evaluations have been resolved, and the only remaining issues are legal ones for this Court to decide. In response to Morgan Stanley's motion, CPH has filed a cross-motion, requesting that this Court rule that the personnel evaluations are admissible at trial. If this Court grants CPH's motion, that would moot CPH's need to take the deposition of a Morgan Stanley Rule 1.310 witness on the subject of admissibility.

However, if this Court determines that there are unresolved factual issues concerning the admissibility of Morgan Stanley's personnel evaluations, CPH will need to take the deposition of a Morgan Stanley Rule 1.310 witness to address those issues. Thus, in the event the Court rules that factual questions remain concerning the admissibility of Morgan Stanley's personnel

evaluations, CPH respectfully requests that this Court deny Morgan Stanley's motion for a protective order and direct Morgan Stanley to produce a corporate representative pursuant to Rule 1.310 to address those issues.

Dated: October 29, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC. and
MACANDREWS & FORBES HOLDINGS INC.

By: _____
One of Its Attorneys

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#11703-4

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I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 29th day of Oct, 2004.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,

Defendant(s).

_____/

NOTICE OF VIDEOTAPED DEPOSITION

PLEASE TAKE NOTICE that Morgan Stanley & Company Incorporated will take the videotaped deposition of William Reid, pursuant to Florida Rules of Civil Procedure 1.280 and 1.310. The oral examination will take place on November 23, 2004 at 9:30 a.m. and continue until complete at the offices of Kirkland & Ellis, LLP, 153 East 53rd Street, New York, New York, 10022. The deposition will be taken before a person authorized to administer oaths and recorded by stenographic and videographic means. The video operator will be Esquire Deposition Services of 216 E. 45th Street in New York, New York. The witness is instructed to bring all books, papers, and other things in his possession or under his control relevant to this lawsuit (and not previously produced in discovery) to the examination.

16div-007831

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 29th day of October, 2004.

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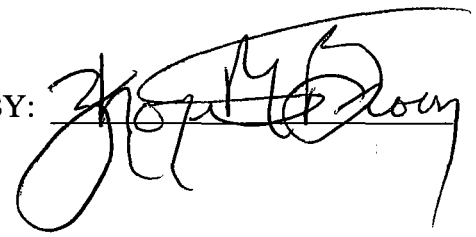
BY: 

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Coleman v. Morgan Stanley & Co., Inc.

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY & COMPANY, INC.'S OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC.'S MOTION FOR A DETERMINATION OF THE ADMISSIBILITY OF MORGAN STANLEY PERFORMANCE EVALUATIONS

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The Court should deny Coleman (Parent) Holdings Inc.'s ("CPH") Motion For A Determination Of The Admissibility Of Morgan Stanley & Co. Incorporated's Performance Evaluations ("Motion") because the snippets of Mr. Strong's evaluations are grossly misleading, are not relevant, and constitute hearsay. But most importantly, the snippets should be excluded because CPH is offering the documents solely as evidence of Mr. Strong's propensity or bad character, which is specifically prohibited by the Florida Rules of Evidence. Finally, even if Mr. Strong's evaluations had some minimal relevance, the Court should exclude the snippets unless ***all*** five years of Mr. Strong's evaluations are presented to the jury. And that would waste the court's time, lead to jury confusion, and unduly prejudice Mr. Strong and Morgan Stanley. Indeed, what is clear from the plaintiff's Motion To Amend Its Complaint To Add A Claim For Punitive Damages ("Motion to Amend") and this Motion, is that CPH does not intend to try Morgan Stanley for participation in the "3 step plan" allegedly hatched by Sunbeam in 1996, but instead try Mr. Strong for being a investment banker who earns money for his firm and is paid for his services.

FACTS

On March 15, 2004 the Court ordered Morgan Stanley to produce, over objection,[1] employee performance evaluations for seven years to the extent the evaluations reflected:

- All references (positive or negative) to work performed by the employee on Sunbeam-related engagements.
- All references (positive or negative) to the employee's performance in fee generation.

[1] Feb. 17, 2004 Morgan Stanley Opp. to CPH Mot. to Compel Prod. of Docs Relating to Employee Performance.

- All references (positive or negative) to the employee's performance of due diligence activities, regardless of whether designated specifically as such.

- All references (positive or negative) to the employee's truthfulness, veracity, or moral turpitude.

(Mar. 15, 2004 Modified Order Granting in Part and Denying in Part Plf. CPH Mot. to Compel Prod. of Docs. Relating to Employee Performance at 2 ("March 15 Order") (Ex. 1).)[2]

Thereafter Morgan Stanley produced 1044 pages of documents, which consisted of performance evaluations for 28 Morgan Stanley employees who in one way or another "worked" on the Coleman transaction. Out of that thousand pages of documents, CPH selected 16 snippets on 13 pages, and argued in their Motion to Amend, that one Morgan Stanley employee, William Strong, "got the message and understood precisely what he had to do to advance his career at Morgan Stanley — he had to bring in fees — and he was prepared to do whatever was required." (Sept. 21, 2004 Motion to Amend. at 4.)

In the current Motion, Mr. Strong's conduct has swelled to "unethical" and "engag[ing] in questionable business practices," and that Morgan Stanley has been accused of "rewarding [Strong's] ethically dubious tactics." (Oct. 22, 2004 Coleman (Parent) Holdings Inc.'s Mot. For

[2] Morgan Stanley has repeatedly disputed the admissibility and relevancy of the performance evaluations. First, on July 6, 2004, CPH served its Second Set of Requests for Admission, which sought the authentication of Morgan Stanley's employee performance evaluations and the admission that such documents were "regularly conducted business activity within the meaning of Florida Evidence Code § 90.803(6)." (*See* July 6, 2004 CPH's 2nd Set of Reqs. for Admiss. at 2.) Morgan Stanley denied the evaluations are business records. (Aug. 5, 2004 Morgan Stanley Resp. & Objs. to CPH 2nd Set of Reqs. for Admiss. at 2-3 (Ex. 2).) CPH then filed its Motion To Amend Its Complaint To Seek Punitive Damages on September 21, 2004. CPH's factual proffer cited as "evidence" the evaluations at issue here, to which Morgan Stanley objected to on the grounds asserted here. Morgan Stanley also filed a motion to strike the factual proffer. (*See* Oct. 22, 2004 Morgan Stanley Mot. to Strike Evidence from CPH's Mot. to Am. Its Compl. to Seek Punitive Damages.) Then, on September 30, 2004, CPH served a notice of deposition for testimony on the "authenticity, creation, use, maintenance, and business purpose" of the personnel evaluations. (Sept. 30, 2004 Notice of Taking Dep. at 4.) Again, Morgan Stanley objected and filed a motion for a protective order. (Oct. 19, 2004 Motion for Protective Order.)

A Determination Of The Admis. Of Morgan Stanley & Co. Incorporated's Performance Evaluations at 3.) None of this lawyer manufactured hyperbole is in the documents at issue.

CPH's motion requests that the Court not only enter an order on the admissibility of the snippets, but also rule on the admissibility of all 1044 pages of evaluations without examining their contents. (Motion at 2.)

That would be error.

ARGUMENT

I. The Court Must Determine The Admissibility Of The Personnel Evaluations Document By Document, Not By An Omnibus Motion.

The 1044 pages of personnel evaluations are a compilation of commentary from various Morgan Stanley personnel — some identified, some anonymous, some supervisory, some subordinate — spanning 7 years[3] that have almost nothing to do with Sunbeam or the Coleman transaction. There is no principled basis for the Court to rule on the admissibility of all these documents in bulk without CPH first offering the document evidence, giving Morgan Stanley an opportunity to object, and the Court an opportunity to examine the documents and rule on the objections.

For example, Florida Rule of Evidence § 90.803(18)(d) governs the admissibility of hearsay admissions. Specifically, section 90.803(18)(d) provides that "[a] statement [made] by the party's agent or servant concerning a matter within the scope of the agency or employment thereof, made during the existence of the relationship" is an exception to section 90.802. This evidentiary rule has been applied by the Florida courts in the manner of a three-part conjunctive

[3] Pursuant to the Court's March 15 Order, Morgan Stanley reviewed and produced employee performance evaluations for a seven-year period. Mr. Strong had only five years of evaluations.

test, which delineates the "requirements for the admissibility of an employee's admission against the interests of his employer" as the following: "(1) the declarant is an employee of the employer; (2) the matter is within the scope of the employment; and (3) the employee made the statement while employed by that employer." *Chaney v. Winn Dixie Stores, Inc.*, 605 So. 2d 527, 529 (Fla. 2d DCA 1992). Moreover, as Judge Campbell noted in his dissent, there must be evidence offered by the proponent that the witness has personal knowledge of the facts asserted in the statement. *Id.* at 531 (citing *Keyes v. Tallahassee Mem. Regional Med. Ctr.*, 579 So. 2d 201, 204-205 (Fla. 1st DCA 1991); *but see, Miami v. Fletcher*, 167 So. 2d 638, 639 (Fla. 3d DCA 1964).[4]

CPH not only failed to analyze each snippet in accordance with *Chaney*, but CPH made absolutely no proffer as the 1044 pages of documents. As a result, the Court cannot rule in a blanket order that the evaluations are admissible *en masse*.

II. CPH May Not Mislead The Jury By Presenting Merely The Snippets Of Morgan Stanley's Employee Performance Evaluations Which It Deems Helpful To Its Case.

If CPH is permitted to introduce into evidence snippets of Mr. Strong's performance, the Court must apply the "rule of completeness." The rule provides that "[w]hen a writing or recorded statement or part thereof is introduced by a party, an ***adverse party may require him or her at that time to introduce any other part or any other writing or recorded statement that in fairness ought to be considered contemporaneously.***" Fla. R. Evid. § 90.108 (emphasis added). This rule — which is fundamentally a rule of fairness — is intended to preclude the cherry-picking of evidence, and to permit the trier of fact to hear the facts in fair and not misleading manner.

[4] There is a split of authority on this issue in Florida. The Fourth District does not appear to have ruled.

The "rule of completeness" has consistently been applied by Florida courts in furtherance of this goal of fairness. *See, e.g., McGee v. State*, No. 1D03-237, 2004 WL 2146695, at *1 (Fla. 1st DCA Sept. 27, 2004) (reversing conviction because court erred under the rule of completeness, in excluding after the state's introduction of incriminating statements by the appellant, his contemporaneous consistent statements); *Eberhardt v. State*, 550 So. 2d 102, 105 (Fla. 1st DCA 1989) (reversing conviction and holding that the rule of completeness is designed to promote fairness by allowing introduction of the complete testimony (or writing) "necessary for the jury to accurately perceive the whole context of what has transpired").

By invoking the rule of completeness, the Court will ensure that CPH's cherry-picked comments are fairly counter-balanced by other contemporaneous evaluations. For example, CPH proposes to introduce the following hearsay — and anonymous hearsay on hearsay — about Mr. Strong from his 1997 performance evaluation:

> Bill continues to suffer the consequences of less then a straightforward approach. Gives people, including me, the impression that he is not completely upfront. This needs to improve; there are numerous approaches to me from very credible people on this issue.

(MSC0085462.)[5]

Through application of the "rule of completeness," the fact finder will also be able to hear that John Spence, a colleague of Mr. Strong's believed that "Bill's judgment and decision making are tremendous strengths," and that "[h]e is a rational and analytical thinker with extraordinary ability to cut through a variety of complex issues" (MSC0085460), or that Saul Nathan deemed Mr. Strong "one of the most outstanding senior officers [that he had] come

[5] Morgan Stanley production documents referenced herein are attached as Exhibit A to CPH's Motion.

across ... a model for the involved, supportive and well-rounded corporate financier" (MSC0085462), or that Ruth Porat commented that Mr. Strong "has a tremendous work ethic and very strong execution skills .... His blend of strong deal skills and administrative skills is rare" (MSC0085462). In fact, the jury would be entitled to an abundance of positive evaluation comments:

- During one potential IPO, the client wanted to proceed with their filing. The collective MSDW view was that the client should wait until early 1999 to file. Bill effectively persuaded the client to follow that advice, even though the two co-managers on the deal both recommended that the client file immediately. (John Spence (1998) MSC0085478.)

- He is very focused on their [client] needs and issues, ensures that they get first class service whether from him or a product group but can also effectively deliver a hard message when he must. (James Stynes (1998) MSC0085478.)

- He is incredibly energetic, very diligent. (Tarek Abdel-Meguid (1998) MSC0085477.)

- Bill has established a high profile reputation within the Chicago business community, and is proactively sought out because of his statute and referrals, both from clients and other professionals such as attorneys. (Francis Oelerich (1998) MSC0085477.)

- I believe Bill is one of the most effective coverage officers in IBD. Clients trust and respect his judgment. He has built [sic] the trust through a combination of consistent hard work on their behalf and excellent judgment. (Ruth Porat (1998) MSC0085478.)

- Outstanding understanding of client's needs .... (James Glascott (C), Robert Niehaus (1998) MSC0085478.)

- Excellent deal judgment — Bill is very effective managing transactions to get the right outcome for the client and the firm. (Ruth Porat (1998) MSC0085479.)

- Solid grounding in all aspects of banking; M&A, debt, equity, etc .... Good communicator — always keeps teams fully informed/responds promptly to all communications. (James Stynes (1998) MSC0085479.)

- I have difficulty identifying development areas .... On every dimension — execution skills, leadership and teamwork, Bill is at the top of my list. (Ruth Porat (1998) MSC0085481.)

- Bill is, by some distance, the best manager, leader and all-around banker I've worked for or with. (anonymous (1998) MSC0085483.)

- Bill is the consummate senior banker. (anonymous (1998) MSC0085485.)

- In my opinion, Bill is one of the truly outstanding professionals in the industry. (anonymous (1998) MSC0085485.)

- Bill is one of the best bankers I have worked with .... (anonymous (1998) MSC0085485.)

- Bill is a great team player.... Communication is another one of Bill's hallmarks. (Steven Alley (1997) MSC0085458.)

- [Clients] trust his judgment and rely on him for guidance without question. His strength with clients comes from the combination of strong deal judgment and work ethic. (Ruth Porat (1997) MSC0085459.)

- When the Company pre-announced weaker than expected earnings, he very adeptly turned the business into a high yield deal .... (Ruth Porat (1997) MSC0085459.)

- Bill is extremely knowledgeable about a wide array of banking products. He quickly identifies the relevant issues, has sound judgment and articulates himself very concisely. (Christopher Niehaus (1997) MSC0085460.)

- Bill's judgment and decision making are tremendous strengths. He is a rational and analytical thinker with extraordinary ability to cut through a variety of complex issues .... When I have had difficult situations to deal with, I have frequently turned to Bill for a sanity check on my judgments. Bill's communication skills are quite strong .... (John Spence (1997) MSC0085460.)

- Bill is a model for the involved, supportive and well-rounded corporate financier. Would that all coverage officers had his depth of relationships, strategic foresight and attention to detail. (Saul Nathan (1997) MSC0085462.)

- Bill is one of the best bankers I've ever seen, and is, without a doubt the best manager I've seen. He leads by example — meaning hard work, integrity, creativity and extreme commitment to the firm .... (anonymous (1997) MSC0085463.)

- He has a way of being quite intense and driving people but in such a pleasing way that he is not intimidating. (anonymous (1997) MSC0085463.)

- Several times this year I went to Bill with complicated issues that needed senior focus. Bill never pushed me off, and on every occasion, helped me resolve the situation in the right way for the Firm, the client, and me (in that order). (anonymous (1997) MSC0085463.)

- I truly believe that he may be our single most valuable resource .... He is a textbook senior banker. (anonymous (1997) MSC0085465.)

- Outstanding professional skills at every level, from CFO communication to understanding client politics to the mid-period discount rate adjustment of a DCF. Bill eats, sleeps, dreams about banking. The result speaks for itself. (Derek Kirkland (1996) MSC0085440.)

- Bill is a great communicator. He is an excellent ambassador for the Firm. (Steven Alley (1996) MSC0085440.)

- Chicago team developing nicely to his credit. (Joseph Perella (1996) MSC0085441.)

- Outstanding. I would follow Bill anywhere (almost). Bill is the kind of colleague that will keep me at MSCo. long after the money is in the bank. (Derek Kirkland (1996) MSC0085441).)

- Bill is a franchise player. He represents the Firm well in the region. He contributes to committees, recruits and tries to build his team. He works to support the other departments and tries to promote a partnership culture. He's probably the only colleague who will ask my opinion or support on a partner-to-partner basis. (Richard Kauffman (1996) MSC0085442.)

- Commercial instincts are sharp ... does not drop the ball .... (Joseph Perella (1995) MSC0085422.)

- Bill is a franchise player. He is completely committed to the firm .... (Richard Kauffman (1995) MSC0085422.)

- Bill is building real presence in the Midwest that is enhancing the MS franchise greatly. (Gary Parr (1995) MSC0085422.)

- He is a role model to all who work with him or for him. (Richard Swift (1995) MSC0085423.)

- Bill has great potential and is proving it. (Joseph Perella (1995) MSC0085424.)

- [A] sounding board of outstanding investment banking judgment .... (anonymous (1995) MSC0085425.)

- Bill works hard, gives 100%, and always does what is right for the client and for MS. (anonymous (1995) MSC0085425.)

- Great with clients, very effectively deals with CFO level clients because of his excellent judgment, presence, and trustworthiness. Focused, dedicated, hardworking and intense. Team player, team builder. (Robert Matschullat (1993) MSC0085405.)

- On management skills alone, he can be extremely valuable to MS over the long term. (Jon Anda (1993) MSC0085407.)

- Bill is a model of senior client relationship manager .... He displays excellent priority and goal setting skills, is an excellent listener and provides exemplary leadership both in internal and client meeting situations. (John Crompton (1993) MSC0085407.)

- Bill has no major weaknesses. (Robert Scott (1993) MSC0085407.)

- The quintessential coverage officer .... (Charles Stonehill (1993) MSC0085407.)

- Bill is a very effective communicator. . . he will bend over backwards to update and post me on developments. (anonymous (1993) MSC0085409.)

- Bill does a great job at setting and communicating his vision. Keeping staff informed as to all aspects of the business. (anonymous (1993) MSC0085409.)

- Bill is simply the best manager I have worked for in my career, I make that statement without hesitation. (anonymous (1993) MSC0085409.)

- Thoughtful. Bill is reflective and exercises good judgment on both internal and client matters. (anonymous (1993) MSC0085410.)

Only through the presentation of complete documentary evidence will a fact finder have a fair, accurate and non-confusing picture of the facts of this case.

III. CPH Is Offering The Snippets Of Mr. Strong's Evaluations As Propensity Evidence, Which Is Prohibited By Rule 90.404.

CPH admits that it is offering William Strong's snippets as evidence of his bad character and propensity to act unethically:

> The documents [evaluations] demonstrate that, prior to assigning Strong to the Sunbeam deal, Morgan Stanley senior management was well aware of Strong's ***propensity*** to engage in questionable business practices and ***unethical*** behavior to achieve the fee objectives demanded of him.

(Motion at 3 (emphasis added).)

Florida law is clear and codified: "[e]vidence of a person's character or a trait of character is inadmissible to prove action in conformity with it on a particular occasion ...." Fla. R. Evid. § 90.404(1). Moreover, if CPH is proffering the ***six*** snippets as "other crimes, wrongs, or acts," CPH makes no attempt to show how the comments rise to the level of "crimes or wrongs" or that the snippets are "relevant to prove a material fact at issue." In the absence of these two foundational proffers, the evaluations are inadmissible because the evidence is "***relevant solely to prove bad character or propensity.***" Fla. R. Evid. § 90.404(2)(a) (emphasis added); *see, e.g., Midtown Enters., Inc. v. Local Contractors, Inc.*, 785 So. 2d 578, 581 (Fla. 3d DCA 2001) (holding that evidence regarding bad acts was not relevant or essential to prove a material fact and served only to demonstrate bad character and propensity) (citing *Smith v. Hooligan's Pub & Oyster Bar, Ltd.*, 753 So. 2d 596, 600 (Fla. 3d DCA 2000).

None of the evaluations at issue mention Mr. Strong's work on Sunbeam — the subject matter of the case before this Court. These evaluations of evidence are, therefore, irrelevant. Further, CPH admits that it is offering the selected evaluations as evidence designed purely to show Mr. Strong's bad character or propensity to act unethically. The evaluations are not admissible for that purpose.

IV. The Probative Value Of Mr. Strong's Performance Evaluations Is Far Outweighed By Their Undue Prejudice And Likelihood For Confusion.

Even when evidence tending to prove bad character or propensity survives analysis under section 90.404, the evidence may still be inadmissible under section 90.403. This rule provides

that "[r]elevant evidence is inadmissible if its probative value is ***substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury***, or needless presentation of cumulative evidence." Fla. R. Evid. § 90.403 (emphasis added).

The overwhelming majority of Mr. Strong's employee performance evaluations or CPH claims do not mention and have no bearing on the Coleman transaction. The admission of Mr. Strong's evaluations for five of the past seven years would be a monumental waste court of time, confuse the jury, and prejudice Morgan Stanley and Mr. Strong.

CPH will not try its "three step" fraud claim as pled. Instead, CPH intends to try Mr. Strong on matters unrelated to Sunbeam, and then argue his "mere presence" with Sunbeam — given his "bad character" — is enough to find Morgan Stanley liable for Sunbeam's fraud. This strategy is prohibited by section 90.403. *See Midtown Enterprises, Inc.*, 785 So. 2d at 581 (holding that the probative value of the proffered evidence was outweighed by its prejudicial effect, and therefore properly excluded); *Long Term Care Foundation, Inc. v. Martin*, 778 So. 2d 1100, 1103 (Fla. 5th DCA 2001) (reversing the trial court's admission of evidence on the on the basis that it's probative value was "outweighed by the unfair prejudice against the center"); *Simmons v. Baptist Hosp. of Miami, Inc.*, 454 So. 2d 681, 682 (Fla. 3d DCA 1984) (finding that the probative value of even somewhat relevant evidence can be excluded on the basis of undue prejudice).

V. Employee Performance Evaluations Are Not Business Records.

CPH argues that Morgan Stanley's employee performance evaluations are admissible as business records. There is no Florida decision on point.[6]

[6] *CF Chemicals, Inc. v. Florida Department of Labor and Employment Security*, 400 So. 2d 846 (Fla. 2d DCA 1981) is not on point. Although a document entitled an "Employee Relations Analysis" was admitted under the (Continued...)

In Georgia, the court in *Finch v. Caldwell*, 273 S.E.2d 216 (Ga. Ct. App. 1980) held that disciplinary reports concerning employees did not qualify as business records because the reports reflected narrative observations of supervisors that merely expressed the supervisors' opinions. *See also, Casey v. State*, 523 S.E.2d 395, 397 (Ga. Ct. App. 1999) (refusing to admit employee evaluation because "[b]usiness records are admissible if the record reflects an act, occurrence or event — not an opinion").

Massachusetts courts have held likewise: "[o]pinions contained in business records are not admissible unless they fall within some other exception to the hearsay rule," and that employee performance evaluations, "by their very nature consisted almost entirely of judgmental evaluations and opinions and, as such, were not admissible under the business records exception to the hearsay rule." *Burke v. Memorial Hosp.*, 558 N.E.2d 1146, 1149 (Mass. Ct. App. 1990) (*quoted and discussed in Vassallo v. Baxter Healthcare Corp.*, 696 N.E.2d 909, 920-21 (Mass. 1998) (finding that scientific studies containing primarily factual data were admissible, in contrast to the purely subjective nature of employee performance evaluations).

These cases, and cases in other states, are consistent with the inherent nature of business records. The United States Supreme Court has distinguished ad hoc records, such as accident reports from general business records in that "[a]n accident report may affect that business in the sense that it affords information on which the management may act. It is not, however, typical of entries made systematically or as a matter of routine to record events or occurrences, to reflect transactions with others, or to provide internal controls." *Palmer v. Hoffman*, 318 U.S. 109, 113

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business records exception, the document attendance records, unlike performance evaluations, contained no opinion or other subjective data. *Pritchard v. MacNeal Hosp.*, 960 F. Supp. 1321, 1325 (N.D. Ill. 1997) (emphasis added), is also distinguishable. In *Pritchard*, the court found that "employee evaluations, notice of warning, and supervisor memoranda" which were "*made by Pritchard's supervisors, persons with direct, personal knowledge of her performance*," were granted a business record exception. CPH has not proffered any similar evidence.

(1943). But even if a report is regularly created, if it is not comprised of a "necessary component" of the company's "daily operation," then it is not "inherently trustworthy as the product of a necessary habit of accuracy," whereby inaccuracies would be readily detected as a result of the constant reliance on the data. *Owens-Illinois v. Armstrong*, 591 A.2d 544, 550 (Md. Ct. App. 1991), *aff'd in part, rev'd in part on other grounds*, 604 A.2d 47 (Md. 1992) (further identifying, among other, payrolls, accounts receivable and payable, bills of lading as examples of the types of records admitted pursuant to the business records exception)[7]

Florida requires that "opinions" in business records must satisfy the admissibility requirements of section 90.701 governing lay opinion. This suggests strongly that personnel evaluations are not automatically and without more, business records. Employee performance evaluations quite plainly are not conducive to the trust and credibility accorded business records. They are not habitual; there is plausible temptation to err; they are not depended on regularly so

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[7] *See also*, 5 *Wigmore on Evidence* § 1522 (Chadbourne rev. 1974), which attributes the inherent guarantee of trustworthiness and credibility of a business record to the following:

> (1) The habit and system of making such a record with regularity calls for accuracy through the interest and purpose of the entrant; and the influence of habit may be relied on, by very inertia, to prevent casual inaccuracies and to counteract the possible temptation to misstatements.
>
> (2) Since the entries record a regular course of business transactions, an error or misstatement is almost certain t be detected and the result disputed by those dealing with the entrant; misstatements cannot safely be made, if at all, except by a systematic and comprehensive plan of falsification. As a rule, this fact (if no motive of honest obtained) would deter all but the most daring and unscrupulous from attempting the task; the ordinary man may be assumed to decline to undertake it. In the long run this operates with fair effect to secure accuracy.
>
> (3) If, in addition to this, the entrant makes the record under a duty to an employer or other superior, there is the additional risk of censure and disgrace from the superior, in case of inaccuracies — a motive on the whole the most powerful and most palpable of the three.

as to detect errors or falsehoods; and employees are not under an affirmative obligation to contribute to their creation.

CPH does not cite a single case for its bold statement that the evaluations are admissible lay opinion. Lay opinion, of course, must be based on personal knowledge. Section 90.604 states that "except as provided in *section 90.702*, a witness may not testify to a matter unless evidence is introduced which is sufficient to support a finding that the witness has personal knowledge of the matter." (Emphasis added.) CPH has not introduced any evidence that Robert Scott, Kirsten Feldman, Richard Kauffman, Tarek Abdel-Meguid, Joseph Perell, or "an investment banker who worked for Strong" have personal knowledge sufficient to qualify the selected snippets as business records.

VI. Morgan Stanley's Employee Performance Evaluations Of Mr. Strong Are Not Admissions.

As previously discussed in Section I, *supra*, under the *Chaney* test three elements must be met for an employee's statement to be admitted into evidence as an admission of his or her employer. Contrary to the misleading statements of CPH, Florida courts have twice — not repeatedly — held that some internal employee reports were admissible under the party admission exception to the hearsay rule. Both cases, however, are distinguishable from the facts here.

In *Lee v. Department of Health and Rehabilitative Services*, 698 So. 2d 1194, 1200 (Fla. 1997), for example, the report was created by an employee/investigator whose job responsibility was the creation of this report. Further, while the report itself was deemed admissible, the admissibility of the second layer of hearsay — that of the personnel contributing information to the employee/investigator — was not decided.

A similar result was held in *Scholz v. RDV Sports, Inc.*, 710 So. 2d 618 (Fla. 5th DCA 1998), a wrongful discharge case involving the Orlando Magic professional basketball team. In *Scholz*, the court refused to attribute to RDV Sports, Inc. — an owner of the Magic —statements made by a Magic player regarding the company's decisions as to Scholz's employment. The court found that the employee's responsibilities did not include personnel issues, thereby precluding the admissions hearsay exception. *Id.*, at 628. *See also, Zaben v. Air Products and Chemicals, Inc.*, 129 F.3d 1453, 1455 (11th Cir. 1997) (holding that employees statements were not admissions because the declarants neither had "input in the RIF decisions [nor] played any role in Lewis' dismissal"); *Daley v. Wellpoint Health Networks, Inc.* 146 F. Supp. 2d 92, 101-102 (D. Mass. 2001) (holding hearsay on hearsay not admissible).

The excerpts contained in CPH's Motion are replete with the "double-hearsay" issues which concerned the *Daley* court. For example, Mr. Kauffman was relying on the statements of others when he wrote that "those reporting to Strong were 'afraid of Bill's reaction.'" (Motion at 5; MSC0085424.) Similarly, Mr. Abdel-Meguid's statement that he "continue[s] to hear comments about [Strong's] greater general concern for his own people/business unit relative to the Firm's best interest" is clearly founded on inadmissible hearsay. (*Id.* at 6; *see* MSC0085480.) And he could not have known that Mr. Strong "[g]ives people ... the impression that he is not completely upfront" without having been told this by others. (*Id.*; *see* MSC0085481.)

Finally, CPH has proffered no evidence that the opinions are based on personal knowledge, even when the hearsay on hearsay is not clearly evident. See Section I, *supra*.

CONCLUSION

The Court should deny CPH's Motion because the documents are inadmissible hearsay. But even if some of the evaluations at issue are deemed business records or admissions, the

documents are pure and simple character and propensity evidence excludable under section 90.404. Finally, Mr. Strong's evaluations should be excluded under section 90.403 because either singly or when considered with all the evaluations that the Court must in fairness admit under section 90.108, they would lead to jury confusion and unduly prejudice Mr. Strong and Morgan Stanley.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 29th day of October, 2004.

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EXHIBIT "1"

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

v. CASE NO: CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.
_____/

MODIFIED ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF COLEMAN (PARENT) HOLDINGS INC.'S, MOTION TO COMPEL PRODUCTION OF DOCUMENTS RELATING TO EMPLOYEE PERFORMANCE

THIS CAUSE having come before the Court on its Order entered March 3, 2004 on Plaintiff Coleman (Parent) Holdings Inc.'s Motion to Compel Production of Documents Relating To Employee Performance, and the Court having reviewed the pleadings on file, being advised of the parties agreement to the modification, and otherwise being fully advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

1. The Motion is Granted In Part, and Denied, In Part.

2. Defendant shall produce, on or before April 2, 2004, copies of documents responsive to Plaintiff's May 9, 2003 Request to Produce number 44 for the Morgan Stanley employees who worked on the 1997-98 Sunbeam-related engagements. Specifically, Morgan Stanley shall produce, for those employees and for the time period from 1992 through and including 1998:

(a) All references (positive or negative) to work performed by the employee on Sunbeam-related engagements.

(b) All references (positive or negative) to the employee's performance in fee generation.

(c) All references (positive or negative) to the employee's performance of due diligence activities, regardless of whether designated specifically as such.

(d) All references (positive or negative) to the employee's truthfulness, veracity, or moral turpitude.

Privileged information only may be redacted.

3. Defendant shall produce, on or before April 2, 2004, additional documents (if any) responsive to Plaintiff's May 9, 2003 Request to Produce numbers 45 and 46.

4. This ruling is without prejudice to Plaintiff's ability to request additional employee performance-related discovery based upon the content of the production requested pursuant to this Order.

5. This order supersedes the Order Granting In Part and Denying In Part Plaintiff's Motion to Compel Production of Documents Relating to Employee Performance entered by this Court on March 3, 2004.

SIGNED

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this ___ day of March 2004.

JUDGE ELIZABETH T. MAASS

ELIZABETH T. MAASS
Circuit Court Judge

16div-007857

Copies furnished:

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EXHIBIT "2"

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO: CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.
_____/

CASE NO: CA 03-5165 AI

MORGAN STANLEY & CO., INC.'S RESPONSES AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC.'S SECOND SET OF REQUESTS FOR ADMISSION

Defendant Morgan Stanley & Co. Incorporated ("MS & Co."), by its attorneys and pursuant to Florida Rule of Civil Procedure 1.370, hereby responds and objects to Coleman (Parent) Holdings Inc.'s ("CPH") Second Set of Requests for Admission.

INITIAL OBJECTIONS

1. MS & Co. objects to CPH's Second Set of Requests for Admission, including all Definitions, to the extent that they purport to impose upon MS & Co. any requirements that exceed or are otherwise inconsistent with the Florida Rules of Civil Procedure or any other applicable rule or court order.

2. MS & Co. objects to CPH's Second Set of Requests for Admission to the extent that they seek information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable privilege, doctrine, immunity or rule.

3. MS & Co. objects to the definitions of "Morgan Stanley" and "MSSF" to the extent that they include MS & Co.'s or MSSF's counsel in this litigation and entities not a party to this action. Specifically, MS & Co. interprets these definitions to exclude Kirkland & Ellis LLP and Carlton Fields, P.A and affiliates, parents, and others not a party to this action.

4. MS & Co. objects to the Requests for Admission as unduly burdensome, abusive, and vexatious, since many of them are duplicative and constitute an unnecessary waste of time and concern factual allegations uniquely within the possession of CPH, MAPCO, or third parties, which could be confirmed with less expense and burden on the parties through more traditional techniques of discovery.

5. MS & Co. incorporates, as though fully set forth therein, these General Objections into each of the Responses and Objections set forth below.

RESPONSES

1. Admit that documents bates-numbered Morgan Stanley Confidential 084771 through 0085783 and Morgan Stanley Confidential 0094003 through 0094032 are true and authentic copies of original documents within the meaning of Florida Evidence Code § 90.901.

RESPONSE: Admitted.

2. Admit that documents bates-numbered Morgan Stanley Confidential 0084771 through 0085783 and Morgan Stanley Confidential 0094003 through 0094032 are records of regularly conducted business activity within the meaning of Florida Evidence Code § 90.803(6).

RESPONSE: Admitted in part and denied in part. MS & Co. admits that the referenced documents are generated in the course of a regularly conducted business activity, but denies that the documents, which largely reflect the opinions of out-of-court declarants, qualify for the hearsay exception of Florida Evidence Code § 90.803(6). MS & Co. reserves all evidentiary

objections to the admissibility of the referenced documents, but will not dispute that the documents are kept in the ordinary course of its business.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 5th day of August, 2004.

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY'S OPPOSITION TO COLEMAN (PARENT) HOLDING INC.'S MOTION TO COMPEL PRODUCTION OF FINANCIAL STATEMENTS OF SUNBEAM'S SUCCESSOR COMPANY

Coleman (Parent) Holdings, Inc.'s ("CPH") motion to compel the production of financial statements of American Household, Inc. ("AHI") should be denied because the financial statements requested by CPH are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to issues framed by the current pleadings in his action.

UNDISPUTED FACTS

The following facts are undisputed:

1. Only one action remains in this litigation. On October 22, 2004, Morgan Stanley Senior Funding, Inc. ("MSSF") filed a Notice of Voluntary Dismissal Without Prejudice dismissing its previously-consolidated lawsuit against CPH and MacAndrews & Forbes Holdings, Inc. ("MAFCO"). Morgan Stanley & Co. Incorporated ("Morgan Stanley") — the only defendant in the remaining action — makes no claim for relief against CPH.

2. In the sole remaining action, CPH alleges claims of fraud, negligent misrepresentation, aiding and abetting fraud, and conspiracy to commit fraud against Morgan Stanley. (May 8, 2003 Compl., Counts I - IV.) [1]

3. CPH's claims are all based on representations allegedly made by Morgan Stanley during the course of "face-to-face discussions" that occurred over a period of four months, between December 1997 and March 1998. (*Id.* ¶ 39.)

4. CPH also alleges that Morgan Stanley made (or allowed Sunbeam to make) misrepresentations in a March 19, 1998 press release regarding Sunbeam's first quarter 1998 earnings. (*Id.* ¶¶ 59-68.)

5. Finally, CPH alleges that Morgan Stanley committed a tort of omission after the Coleman acquisition agreement was signed, when Morgan Stanley learned relevant information concerning Sunbeam, but nonetheless "allowed" Sunbeam's acquisition and financing transactions to close. (*Id.* ¶¶ 72-73.) All of the acquisition and financing transactions alleged in CPH's Complaint were completed in March 1998.

6. In February 2001, Sunbeam Corporation filed for bankruptcy in the United States District Court for the Southern District of New York.

7. In December 2002, Sunbeam emerged from bankruptcy protection and changed its name to American Household, Inc.

8. AHI is not a party to this action. Since it emerged from bankruptcy and changed its name, AHI has been a privately-held corporation.

[1] Based on this Court's Order determining that New York law applies to the fraud and negligent misrepresentation claims, the legal sufficiency of these counts to state a cause of action is extremely doubtful.

ARGUMENT

In its motion, CPH argues that the requested financial statements are "indisputably ... relevant to many issues" in this case — but it only identifies one. (Oct. 22, 2004 CPH's Mot. to Compel Prod. of Fin. Statements of Sunbeam's Successor Co. at 1.) CPH argues that the requested AHI financial statements are relevant to "MSSF's claim that it has suffered hundreds of millions of dollars in damages because it had to forgive its loan to Sunbeam in exchange for Sunbeam's greatly devalued stock." (*Id.* at 1-2.)

But that argument is unavailing. With the filing of its Notice of Voluntary Dismissal Without Prejudice, MSSF has dismissed all of its claims against CPH and MAFCO. There is no remaining claim that "MSSF suffered hundreds of millions of dollars" because it loans to Sunbeam were extinguished "in exchange for Sunbeam's greatly devalued stock." (*Id.*) In the sole remaining action, Morgan Stanley has not alleged any affirmative defense that relates to or depends upon the financial performance of AHI. Accordingly, as framed by the current pleadings in this action, there is no basis for the discovery requested in CPH's motion.

The requested financial statements of AHI have no logical or temporal connection to any of the claims or defenses raised by the parties. All of CPH's claims arise out of financial transactions that were negotiated, executed, and closed in 1997 and 1998. CPH's damage claims are based exclusively on the notion that the Sunbeam stock that CPH bargained for and received in the acquisition transaction was extinguished during Sunbeam's bankruptcy. The financial statements of AHI — a company that did not even exist until ***after*** Sunbeam emerged from bankruptcy and ***after*** CPH's equity interest in Sunbeam had already been extinguished — cannot possibly be relevant to any of the issues in this lawsuit.

Finally, Morgan Stanley has not "selectively" produced AHI's financial statements as CPH suggests. Morgan Stanley conducted a good faith search of its files in response to CPH's

discovery requests and produced financial statements of Sunbeam (and AHI) located during the course of that search. Now that MSSF's claims have been voluntarily dismissed and the only possible relevance of those financial statements to this action have been eliminated, Morgan Stanley should not be required to produce documents irrelevant to the remaining claims.

CONCLUSION

For the foregoing reasons, Morgan Stanley requests that the Court deny CPH's Motion to Compel in its entirety.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 29th day of October, 2004.

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO: CA 03-5045 AI

MORGAN STANLEY'S RESPONSE TO DEFENDANT COLEMAN (PARENT) HOLDINGS INC.'S SIXTH REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Rules 1.280 and 1.350 of the Florida Rules of Civil Procedure, Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") hereby interposes the following objections and responses to Coleman (Parent) Holdings Inc.'s ("CPH") Sixth Request for Production dated September 27, 2004.

GENERAL OBJECTIONS

Except as otherwise provided below, Morgan Stanley incorporates by reference its Objections to Definitions and Instructions and its General Objections to Plaintiff's First, Second, Third, Fourth, and Fifth Request for Production of Documents.

SPECIFIC RESPONSES AND OBJECTIONS

Request No. 1: All documents involving, relating to, or referring to The Sale of AHI, including, but not limited to, all documents relating to communications between or among Jarden, MSSF, MS&Co., and/or Skadden, and all documents exchanged between or among Jarden, MSSF, MS&Co., and/or Skadden.

Morgan Stanley Response: Morgan Stanley objects to this request on the grounds that the request is overbroad, expressly requests the production of communications that are protected from discovery by the attorney-client privilege, and improperly seeks production of materials

that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to issues framed by the current pleadings in his action. The September 19, 2004 Securities Purchase Agreement relating to The Sale of AHI, which reflects the consideration payable to MSSF upon closing, is publicly available. Morgan Stanley will not produce additional documents responsive to this request.

Request No. 2: All documents relating to the value of AHI for the time period beginning December 18, 2002 to the present.

Morgan Stanley Response: Morgan Stanley objects to this request on the grounds that the request is overbroad, fails to identify with reasonable particularity the documents requested, and improperly seeks production of materials that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to issues framed by the current pleadings in his action. Morgan Stanley will not produce documents responsive to this request.

Request No. 3: All documents referring or relating to any cash payments, consideration, or other item of value that MSSF expects to receive pursuant to the terms of the September 19, 2004 Securities Purchase Agreement By and Among American Household, Inc., the Sellers Identified Herein, and Jarden Corporation or any other agreement related to The Sale of AHI.

Morgan Stanley Response: The September 19, 2004 Securities Purchase Agreement relating to The Sale of AHI, which reflects the consideration payable to MSSF upon closing, is publicly available. Morgan Stanley will not produce additional documents responsive to this request.

Request No. 4: All documents referring or relating to the accounting or tax treatment for any aspect of The Sale of AHI.

Morgan Stanley Response: Morgan Stanley objects to this request on the grounds that the request is overbroad and improperly seeks production of materials that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to issues framed by the current pleadings in his action. Morgan Stanley will not produce documents responsive to this request.

Request No. 5: All documents reflecting or referring to fees, monies, or other compensation that MSSF, MS&Co., any affiliates of MSSF and MS&Co., and/or Skadden may receive in connection with The Sale of AHI.

Morgan Stanley Response: Morgan Stanley objects to this request on the grounds that the request is overbroad and improperly seeks production of materials that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to issues framed by the current pleadings in his action. The September 19, 2004 Securities Purchase Agreement relating to The Sale of AHI, which reflects the consideration payable to MSSF upon closing, is publicly available. Morgan Stanley will not produce additional documents responsive to this request.

Request No. 6: All minutes of the meetings of AHI's board of directors and all materials distributed to AHI's board of directors in connection with those meetings.

Morgan Stanley Response: Morgan Stanley objects to this request on the grounds that the request is overbroad and improperly seeks production of materials that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to issues framed by the current pleadings in his action. Morgan Stanley further objects to this request on the ground that the request seeks materials distributed to AHI's board of directors in their capacity as directors of a privately-held company. To the extent that such materials are relevant, they must be requested

from AHI, which must be given an opportunity to interpose objections to the requested discovery on behalf of AHI. Morgan Stanley will not produce documents responsive to this request.

Request No. 7: Documents sufficient to show the identity of all shareholders or security holders of AHI and the size and nature of their respective interests in AHI from December 18, 2002 to the present.

Morgan Stanley Response: Morgan Stanley objects to this request on the grounds that the request is overbroad and improperly seeks production of materials that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to issues framed by the current pleadings in his action. Morgan Stanley will not produce documents responsive to this request.

Request No. 8: All documents reflecting amounts lent or charged to, or received from or applied to any loans to, Sunbeam or AHI, or any debts payable by Sunbeam or AHI, to MSSF or in which MSSF has participated or held any interest. This request includes without limitation any loan histories and schedules of advances or payments made.

Morgan Stanley Response: Morgan Stanley objects to this request on the grounds that the request is overbroad and improperly seeks production of materials that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to issues framed by the current pleadings in his action. The September 19, 2004 Securities Purchase Agreement relating to The Sale of AHI, which reflects the consideration payable to MSSF upon closing, is publicly available. Morgan Stanley will not produce additional documents responsive to this request.

Request No. 9: All documents reflecting any payments made by AHI to MSSF or any of its affiliates since December 18, 2002, including but not limited to, dividends, fees, principal or interest payments.

Morgan Stanley Response: Morgan Stanley objects to this request on the grounds that the request is overbroad and improperly seeks production of materials that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to issues framed by the current pleadings in his action. The September 19, 2004 Securities Purchase Agreement relating to The Sale of AHI, which reflects the consideration payable to MSSF upon closing, is publicly available. Morgan Stanley will not produce additional documents responsive to this request.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by e-mail on this 29th day of October, 2004.

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY'S WRITTEN RESPONSES TO RULE 1.310 TOPICS

Pursuant to the agreement of the parties, Morgan Stanley & Co. Incorporated ("Morgan Stanley") provides the following written response to the following corporate deposition topic set forth in the Notice of Deposition issued by Coleman (Parent) Holdings, Inc. The written response is based on current knowledge and a good faith search for information.

Corporate Deposition Topic

All fees, expenses, other compensation, or assets billed by or otherwise due to Morgan Stanley & Co., Inc. ("MS&Co."), Morgan Stanley Senior Funding, Inc. ("MSSF"), or any of the their affiliates concerning or on behalf of Sunbeam Corp. (including American Household, Inc.) and all fees, expenses, other compensation, or assets paid or provided by or on behalf of Sunbeam Corp. (including American Household) to MS&Co., MSSF, or any of their affiliates.

Response

Morgan Stanley earned revenue from Sunbeam in three principal areas: (1) revenues earned through the provision of financial advisory services rendered in connection with Sunbeam's acquisitions of Coleman, First Alert, and Signature Brands ("M&A Revenues"); (2) revenues earned through the underwriting of Sunbeam's offering of Zero-Coupon Convertible Debentures ("Underwriting Revenues"); and (3) revenues earned through Morgan Stanley's loan

to Sunbeam ("Loan Revenues"). In some instances, Morgan Stanley also billed Sunbeam for expenses incurred in connection with these engagements. Each of these three revenue categories are addressed below.

M&A Revenue -- Morgan Stanley's records reflect that it earned a total of $13,540,000 from the provision of financial advisory services to Sunbeam in connection with Sunbeam's acquisition of Coleman, First Alert, and Signature Brands. Morgan Stanley recorded $9,369,000 of this M&A Revenue in March 1998, and the remaining $4,171,000 in April 1998. In addition, Morgan Stanley invoiced Sunbeam for $264,863.60 in out-of-pocket expenses incurred in connection with the provision of these M&A services.

Underwriting Revenues – Morgan Stanley's records reflect that it earned a total of $18,178,185 in connection with the services it performed as the underwriter of Sunbeam's Zero-Coupon Convertible Debenture Offering. The Underwriting Revenues earned by Morgan Stanley are summarized in the following table:

Management Fees	$4,501,290
Underwriting Fees	$751,290
Selling Concessions	$13,524,054
Subtotal (gross revenue)	$18,776,634
Less Expenses	($598,449)
Total Net Revenue	$18,178,185

Loan Revenues – Morgan Stanley's records reflect that it earned the following revenues in connection with its loan to Sunbeam:

	1998	1999	2000	2001	2002	2003	9/30/2004
Underwriting Fees	$0	$11,566,667	$3,390,000	$2,485,200	$0	$0	$0
Net Carry	$7,850,778	$13,917,365	$19,415,981	($20,838,136)	($11,716,177)	($14,733,529)	($380,537)
Other Fees	$542,009	$757,895	$867,052	$781,214	$2,795,512	$110,992	$0
	$8,392,788	$26,241,927	$23,673,033	($17,571,722)	($8,920,665)	($14,622,537)	($380,537)

VERIFICATION

I, James F. Doyle, being duly sworn, depose and say that I have read the forgoing Written Responses to Rule 1.310 Topics, and based on information and belief and to the best of my knowledge, the response is true and correct.

James F. Doyle

Sworn to before me this
29th day of October 2004

Notary Public

Notary Public, State of New York
Qualified in New
Commission Expires 1/31/2007

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 29th day of October, 2004.

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SUPREME COURT OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the application off COLEMAN (PARENT) HOLDINGS, INC.,	INDEX NO. 114428/04
Petitioner,	
for an order for the issuance of a Subpoena duces tecum to SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP,	
Respondent,	
pursuant to a commission issued in an action pending in the Circuit Court of the Fifteenth Judicial District of the State of Florida entitled Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc. Case No. CA 03-5045 AI/ Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al. Case No. CA 03-5165 AI.	

MEMORANDUM OF LAW IN SUPPORT OF SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP'S MOTION TO QUASH SUBPOENA *DUCES TECUM* OR, IN THE ALTERNATIVE, FOR A PROTECTIVE ORDER

This Memorandum of Law is submitted in support of the motion of respondent Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden"), pursuant to CPLR 2304, to quash or modify the Subpoena Duces Tecum (the "Subpoena"),[1] served on it by Coleman (Parent) Holdings Inc. ("Coleman Parent") on October 14, 2004.[2] In the

[1] A copy of the Subpoena is annexed as Exhibit A to the accompanying Affidavit of Christopher P. Malloy in Support of Motion to Quash or Modify Subpoena, dated October 29, 2004 ("Malloy Aff.").

[2] A copy of the Ex Parte Order authorizing issuance of the Subpoena, dated October 12, 2004, is found at Malloy Aff. Exhibit C.

alternative, Skadden requests that the Court grant a protective order pursuant to CPLR 3103(a).

PRELIMINARY STATEMENT

The Subpoena was issued to Skadden for demonstrably retributive purposes. It seeks personal information regarding Skadden lawyers, including performance evaluations and compensation arrangements, and seeks to invade Skadden's relationships with its clients — none of which information has any legitimate bearing on the underlying litigation pending in Florida state court between Coleman Parent and Morgan Stanley & Co.

In the underlying actions (the "Florida Actions"), Coleman Parent and Morgan Stanley & Co., Inc., and its affiliates, ("Morgan Stanley") have sued each other for fraud and negligent misrepresentation in connection with the March 1998 sale by Coleman Parent of its controlling interest in The Coleman Company ("Coleman") to Sunbeam Corporation ("Sunbeam") for cash and Sunbeam stock (the "Coleman Transaction"). Morgan Stanley acted as Sunbeam's financial advisor in connection with the Coleman Transaction and as underwriter of a debenture offering and lender on a credit agreement used to finance the Coleman Transaction and other acquisitions Sunbeam was pursuing. (Malloy Aff. ¶ 6) Skadden was Sunbeam's regular outside counsel and represented Sunbean in connection with a broad range of corporate and litigation matters, including the Coleman Transaction. (Id. ¶ 8) Neither Sunbeam nor Skadden is or ever was a party to the Florida Actions. There are no allegations relating to Skadden in either complaint in the Florida Actions. (Exs. D & E)

For nearly a year, Skadden has responded to both parties' numerous discovery requests voluntarily, at its own expense, and without the need for formal

process. But there was a limit to Skadden's willingness to cooperate. Skadden was not willing to provide Coleman Parent with documents relating to work Skadden performed for clients other than Sunbeam, which had no connection to any issue in the Florida Actions.

With that narrow dispute presented, Coleman Parent decided to raise the stakes and obtained the ex parte order authorizing it to issue the Subpoena to Skadden under CPLR 3102(e) by submitting to the Ex Parte Motions Office a year-old commission issued by the Florida court. The Subpoena vastly expands upon the prior informal requests and requests performance evaluations for Skadden attorneys as well as information relating to the compensation and ownership interests in Skadden of a Skadden partner involved in the Sunbeam engagements.

The Subpoena suffers from multiple defects, described below, including the fact that it is overly broad and seeks irrelevant information. It should be quashed in its entirety because it is an offensive, obviously tactical maneuver that is unnecessary to the prosecution or defense of the Florida Actions.

FACTUAL BACKGROUND

The Coleman Transaction and related financing transactions occurred in March 1998. In June 1998, certain accounting issues at Sunbeam came to light which led to a restatement of its 1996, 1997 and first quarter 1998 financial statements and an investigation of events that transpired under Sunbeam's former management led by reputed restructuring specialist Albert Dunlap. As a result of those events, Sunbeam became embroiled in a wide range of shareholder, bondholder and other litigation and was the subject of an investigation by the United States Securities Exchange Commission.

In February 2001 Sunbeam filed for bankruptcy protection; it has since emerged from bankruptcy and is now known as American Household Products. (Malloy Aff. ¶ 7)

Skadden represented Sunbeam in connection with the Coleman Transaction and the related financing transactions. Skadden also represented Sunbeam in connection with a wide variety of litigation and corporate matters over the years, including the SEC's investigation of Sunbeam and litigation arising out of Sunbeam's restatement of its financial statements. As can be imagined, hundreds of attorneys from Skadden offices worldwide have worked on various Sunbeam matters and Skadden has a substantial amount of privileged information in its possession relating to Sunbeam. Skadden's records show that 411 of its attorneys worked on 111 separate Sunbeam engagements during the "relevant time period" of April 1997 to the present defined in the Subpoena. (Malloy Aff. ¶¶ 8-9)

The Florida Actions were commenced in May 2003. During the course of the litigation, Skadden has cooperated with both parties, at its own expense. Among other things, Skadden has made available to Coleman Parent and Morgan Stanley nearly 20,000 pages of documents relating to Sunbeam and the Coleman Transaction that Skadden produced in prior Sunbeam litigations. In response to requests from both Coleman Parent and Morgan Stanley, in March of this year, Skadden conducted additional searches and supplemented its production with documents responsive to those requests. (Malloy Aff. ¶¶ 10-13) The parties have also expressed their intention to depose several of Skadden's partners, including two that reside in Europe, and a Skadden associate and are currently in the process of obtaining commissions or other process from the Florida Court to take those depositions. During this past summer, Skadden attempted

to arrange convenient times for the Skadden attorney depositions and even had those attorneys reserved time in their schedules. These depositions were abruptly cancelled because Coleman Parent apparently could not agree with Morgan Stanley on the dates for the depositions. (Malloy Aff. ¶ 14)

Despite Skadden's efforts to cooperate, shortly before the discovery deadline in the Florida Litigations (which has now been extended to the end of November) Coleman Parent insisted that it could not go forward with the Skadden attorney depositions until Skadden produced additional documents, including desk calendars and billing records for the Skadden attorneys to be deposed. (Malloy Aff. ¶ 15) Skadden was willing to produce such materials, to the extent not privileged. But Skadden was unwilling to provide clearly irrelevant and confidential material also requested by Coleman Parent, including personnel evaluations for Skadden attorneys referencing Sunbeam, records of billings by Skadden to Sunbeam for matters unrelated to the Coleman Transaction and records of billings by Skadden to companies, other than Sunbeam, that were affiliated with Sunbeam's former CEO, Mr. Dunlap. (Malloy Aff. ¶ 16)

In obvious retaliation for Skadden's refusal to agree to its unreasonable requests, Coleman Parent issued the Subpoena which vastly expands upon its previous informal requests and seeks totally irrelevant, confidential and potentially privileged materials. For example,

- In the Subpoena, Coleman Parent now seeks "all evaluations" of five Skadden partners and an associate for 1996 to 1999. (Malloy Aff. Ex. A at 3 ¶ 3)
- Although not previously requested, the Subpoena seeks "All documents sufficient to show Mr. Fogg's [a senior Skadden partner involved in Sunbeam

engagement] compensation and/or percentage ownership interest in Skadden in 1996, 1997, 1998, and 1999." (Id. at 3 ¶4)

- Although Coleman Parent previously agreed to limit its request for desk calendars to six attorneys at Skadden for the month of March 1998, the Subpoena requests "All documents constituting or relating to the February 1998, March 1998, and April 1998 calendars of Skadden attorneys who worked on Sunbeam matters during the relevant time period . . . ." (Id. at 3 ¶ 3) The "relevant time period" is defined as April 1997 to the present. (Id. at 6 ¶ 6)

On October 22, 2004, Skadden served objections to the Subpoena and, pursuant to CPLR 2304, requested Coleman Parent to withdraw or modify the Subpoena in accordance with the objections. (Malloy Aff. ¶ 21, Ex. I) On October 26, 2004, Coleman Parent's counsel flatly rejected that request. (Malloy Aff. ¶ 22, Ex. J)

ARGUMENT

CPLR 3102(e) permits parties to utilize the mechanism of the New York courts to obtain discovery necessary to an out of state proceeding, but it does not permit them to abuse that mechanism. In evaluating a discovery request under CPLR 3102(e), this Court should ensure (i) that the inquiry does not infringe on the witness's fundamental rights; (ii) that the requested discovery is limited to the issues in the pending out of state action; (iii) that the examination is fair. In re Kirkand & Ellis v. Chadbourne & Parke LLP, 176 Misc. 2d 73, 77 (Sup. Ct. N.Y. Co. 1998). This Court also has the authority under CPLR 3103(a) to quash the Subpoena. Among other things, the Court is "require[ed] . . . to exercise its discretion to review the subpoena for overbreadth and impact on privileged material." Id.; see In re Application of Dier, 297 A.D.2d 577, 578 (1st Dept. 2002) (IAS court correctly quashed most of subpoena on grounds that document requests were overbroad, burdensome, oppressive and sought materials beyond legitimate scope of issues in Maryland divorce proceeding).

I. The Subpoena Asks for Irrelevant, Private and Confidential Documents

Request Numbers 4, 6, and 7 are oppressive and harassing because they seek confidential and private information that has no legitimate bearing on the issues in the Florida Actions.

Request Number 4, requests "[a]ll documents sufficient to show Skadden's total billings, by matter, for engagements by Sunbeam, and engagements by all other entities for which Al Dunlap served as an officer." (Malloy Aff. Ex. A at 3) This request seeks information about Skadden's billings to Sunbeam for matters unrelated to the Coleman Transaction and to clients other than Sunbeam, which have absolutely no bearing on the Florida Actions. Information relating to Skadden's billings to its clients is confidential to Skadden and could also reveal confidential and privileged information regarding Skadden's clients.

Request Number 6 seeks "[a]ll evaluations of" five Skadden partners and an associate who worked on Sunbeam-related matters, including the Coleman Transaction, for 1996 through 1999. (Id.) Request No. 7 asks for information relating to the compensation and ownership interests in Skadden of Blaine Fogg, a Skadden partner involved in the Coleman Transaction. (Id.) These requests seek irrelevant personnel information regarding Skadden attorneys and production of such material would infringe upon their right to privacy.

Coleman Parent has not even attempted to explain why information regarding Skadden's billings, its evaluations of its attorneys, or the compensation of its partners is relevant to any issue in the Florida Actions. Instead, it has vaguely asserted that such information is relevant to show the "bias" of the Skadden attorneys.

It is patently improper for a party to use the mechanism of a subpoena to conduct a fishing expedition for impeachment evidence. See In the Matter of Ferro, Kuba, Bloom, Mangano, Gacovino & Lake, P.C., 8 A.D.3d 563, 564, 778 N.Y.S.2d 723, 724 (2d Dep't 2004) (quashing subpoena where request was "merely a fishing expedition . . . based only on speculation that some unspecified information will be found with which to impeach the complaining witness"); Valdez v. Sharaby, 258 A.D.2d 458, 458, 684 N.Y.S.2d 595, 595-96 (2d Dep't 1999) (subpoenas duces tecum should have been quashed where they sought records simply for the purpose of impeachment); In the Matter of Constantine, 157 A.D.2d 376, 379, 557 N.Y.S.2d 611, 614 (3d Dep't 1990) (subpoena should have been quashed where "obvious purpose [was] to 'fish for impeaching material'), aff'd 77 N.Y.2d 975 (1991).

Moreover, where private or personnel information is requested, "the party seeking the records must make a preliminary showing of materiality in order to defeat a motion to quash." People v. Weiss, 176 Misc. 2d 496, 499 (N.Y. Sup. Ct. N.Y. Cty. 1998) (discussing situation where confidential personnel records are subpoenaed). None of Skadden's attorneys are parties to the Florida Actions and none have yet testified at deposition or otherwise in those actions. Nor have they or Skadden been mentioned in the complaints in the Florida Actions. Thus, there is no reason to believe Skadden's "bias" in an issue in the case. It is apparent that Coleman Parent seeks the confidential and private documents in order to try to harass and embarrass Skadden witnesses if and when they testify. It should not be permitted to do so.

These documents are unquestionably private and confidential, and Coleman Parent has offered no legitimate reason for requesting them, let alone any preliminary showing of materiality. Accordingly, the Subpoena should be quashed.

II. The Subpoena Is Overly Broad and Seeks Irrelevant Documents

The Subpoena is also facially deficient because it fails to specify the documents or categories of documents requested with "reasonable particularity" and sweeps in plainly irrelevant materials. CPLR 3120(a)(2). A subpoena should be quashed in its entirety where it asks for overly broad categories of documents. A subpoenaed non-party should not be required to "cull the good from the bad." Grotallio v. Soft Drink Leasing Corp., 97 A.D.2d 383, 383 (1st Dep't 1983). Overbroad requests are of particular concern were a subpoena is directed to a law firm and demands potentially privileged materials. Such a subpoena should be quashed where, as here, it makes "no exception for privileged communications." Feig v. Lenox Hill Hosp., 167 Misc. 2d 42, 47 (N.Y. Sup. Ct. N.Y. Cty. 1995), appeal dismissed 236 A.D.2d 897 (1st Dep't 1997).

The overbreadth problems with Subpoena are two-fold. First, the requests are phrased in a way intended to maximize their scope rather than describe the documents with reasonable particularity. Second, there is no effort to limit the requests to the transaction at issue in the Florida Actions, i.e., the March 1998 Coleman Transaction.

By way of example, Request Number 1 demands the following:

> All documents constituting or relating to the February 1998, March 1998, and April 1998 calendars of Skadden attorneys who worked on Sunbeam matters during the relevant period.

(Malloy Aff. Exhibit A at 3). This request is overbroad because it seeks not only the attorneys' calendars but also "[a]ll documents" "relating to" the calendars. That intentionally overbroad language renders the request incomprehensible and unenforceable.

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See Grotallio, 97 A.D.2d at 383 ("Besides seeking matter which is clearly irrelevant, the subpoenas with their 'any and all' demands would require the production of materials which may well be privileged"); Feig, 167 Misc. 2d at 47 (subpoena improperly used catch-all words designed to be all-inclusive).

Request Number 1 is also not reasonably tailored to the issues in the Florida Actions, since it calls for the February, March and April 1998 calendars of all Skadden attorneys that did work for Sunbeam during the "relevant time period," which is defined as April 1997 to the present. The request would require Skadden to search the files of 411 of attorneys who worked on Sunbeam matters including corporate transactions and litigation matters unrelated to the Coleman Transaction at issue. (Malloy Aff. ¶ 29) The request would require Skadden to produce documents regardless whether they related to the Coleman Transaction. Request Number 2, which asks for "[a]ll documents constituting or relating to billing records, expense reports, and/or attorney timesheets for work performed for Sunbeam by Skadden during February 1998, March 1998, and April 1998" (Malloy Aff. Ex. A at 3), encompasses a similarly large number of irrelevant or potentially privileged documents. (Malloy Aff. ¶ 29)

Request Number 3 is similarly problematic and also seeks documents that do not exist. Request Number 3 asks for:

> All documents constituting or relating to March 1998 e-mail communications between or among Skadden, MS&Co., MSSF, Davis Polk, and Arthur Andersen, not previously produced to CPH in the course of litigation.

(Malloy Aff. Ex. A at 3 ¶ 3) Although seemingly limited to March 1998, this request is facially overbroad both because of the "relating to" language and because it is not limited to matters relating to the Coleman Transaction or even to Sunbeam. During 1998,

Skadden had substantial dealings, unrelated to Sunbeam, with Morgan Stanley, Davis Polk and, at the time, Arthur Andersen. In all events, Skadden informed Coleman Parent that Skadden's computer system does not maintain e-mails dating back to 1998. (Malloy Aff. ¶ 31) Accordingly, the subpoena seeks documents that Coleman Parent knows do not exist. See Liberty Mutual Ins. Co. v. City of New York Commission on Human Rights, 39 A.D.2d 860, 860 (1st Dep't) (subpoena may not be used to "compel the production of documents and records not in existence at the time of service of the subpoena"), aff'd 31 N.Y.2d 1044 (1972).

Request Number 5 seeks "[a]ll documents sufficient to show Skadden's total annual billings" to Morgan Stanley, which is a Skadden client, during 1993 to 1998. In addition to being overbroad, this request seeks information that Coleman Parent could and should obtain from Morgan Stanley, which is a party to the Florida Actions. It is inappropriate to burden a non-party with a request for discovery that could be obtained from a party. See In re New York County Data Entry Worker Product Liability Litig., 1994 WL 87529, at *8 (Sup. Ct. N.Y. Co. Jan. 31, 1994) (granting motion to quash subpoena where party issuing subpoena did not avail itself of all sources of obtaining the material prior to subpoenaing a non-party).

III. The Demand for a Deposition of a Document Custodians Should Be Quashed

The Subpoena also commands Skadden to produce for deposition its "custodian of records." The Subpoena attaches a four-page list of "Rule 1.310 topics," asking that the custodian of records testify as to the "authenticity, source, creation, use, maintenance, and business purpose" of numerous documents previously produced by Skadden. The reference to Rule 1.310 appears to be to Rule 1.310 of the Florida Rules of

Civil Procedure, which governs depositions in Florida. The Florida rule allows a party to notice the deposition of a corporation or partnership and requires such corporation or partnership to designate officers, directors, or other persons to testify to matters specified in the notice. There is no such provision under the CPLR. While CPLR 3102(e) allows a party to an out of state litigation to invoke the discovery provisions of the CPLR, it does provide for a New York court to enforce discovery devices of another state.

Moreover, Coleman Parent's deposition demand is unreasonably burdensome. The matters on which Coleman Parent seeks testimony do not appear to be issues that would be known to Skadden's "custodian of records." Even if such a person has knowledge about the maintenance of Skadden's documents, he or she is not unlikely to also have knowledge about the authenticity, source, creation, use, and business purpose of such documents. Further, the documents about which Coleman Parent seeks to inquire are predominantly documents exchanged with Morgan Stanley, a party to the Florida Actions. There is no indication that the authenticity of these documents is at issue in the Florida Actions. If it is, Coleman Parent can and should establish authenticity through party depositions of Morgan Stanley.

CONCLUSION

For all the reasons stated above, this Court should grant Skadden's motion to quash or modify the Subpoena, or, in the alternative, for a protective order and such other and further relief as this Court deems just and proper.

Dated: October 29, 2004
New York, New York

SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP

By: _____

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
et al.,
Defendants.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITIONS

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PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings Inc. will take the depositions upon oral examination of the following witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates and times set forth below:

DEPONENT	DATE AND TIME
Simon Rankin	November 16, 2004 at 9:30 a.m.
Johannes Groeller	November 17, 2004 at 9:30 a.m.

The deposition will be conducted at Barlow Lyde & Gilbert, Beaufort House, 15 St. Botolph Street, London EC3A 7NJ. The depositions will be recorded by videotape and stenographic means. The videographer will be European Video Deposition Agency. The depositions will be taken before a person authorized to administer oaths and will continue day to day until completed.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and federal express to all counsel on the attached Service List this 1st day of November 2004.

Dated: November 1, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
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COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,

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_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et a.,
Defendants.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S OPPOSITION TO MORGAN STANLEY & CO. INC.'S MOTION TO STRIKE EVIDENCE FROM CPH'S MOTION TO AMEND ITS COMPLAINT

In its effort to divert the Court's attention from the substance of CPH's factual proffer and the legal bases supporting CPH's motion to amend its complaint to seek punitive damages, Morgan Stanley separately filed a 47-page motion to strike nearly every single piece of documentary and testimonial support set forth in CPH's factual proffer. At the outset, Morgan Stanley's motion is procedurally improper because the plain language of the rule governing motions to strike demonstrates that Morgan Stanley is not entitled to the relief it seeks. Under Rule 1.140(f), a party may move to strike "redundant, immaterial, impertinent or scandalous matter from any pleading." Fla. R. Civ. P. 1.140(f). "The striking of pleadings is not favored and is a drastic action to be used sparingly by courts." *Bay Colony Office Bldg. Joint Venture v. Wachovia Mortgage Co.*, 342 So. 2d 1005, 1006 (Fla. 4th DCA 1977). Indeed, a motion to strike should not be granted unless "the material is wholly irrelevant [and] can have no bearing on the

equi ie ; and no influence on the decision." *McWhirter, Reeves, McGothlin, Davidson, Rief & Bak's, P.A. v. Weiss*, 704 So. 2d 214, 216 (Fla. 2d DCA 1998) (internal quotation and citation omi te t). The factual proffer in CPH's motion clearly is not susceptible to a motion to strike unde r hese standards.

Morgan Stanley's motion also ignores the legal standards governing CPH's request to add a :laim for punitive damages, insisting (at 2, emphasis added) that "CPH's factual proffer mus. l e limited to *admissible* evidence." Proceeding from this mistaken proposition, Morgan Star le r treats CPH's factual proffer as if it were actual trial testimony, lodging over 160 separate objc ct ons to almost every sentence in CPH's motion.

Morgan Stanley's position is not supported by the applicable law. All that is required is "a r ea :onable showing by evidence in the record or *proffered by the claimant*" to support the pun ti e damages claim. Fla. Stat. § 768.72(1) (2003) (emphasis added). The Florida Supreme Cou rt has held in another context that "[*p*]*roffered evidence is merely a representation of what evic er ce the [party] proposes to present and is not actual evidence.*" *Grim v. State*, 841 So. 2d 455 462 (Fla. 2003) (emphasis added) (citing *State v. Warner*, 721 So. 2d 767, 769 (Fla. 4th DC A .998), *approved on other grounds*, 762 So. 2d 507 (Fla. 2000)); *accord LaMarca v. State*, 785 S . 2d 1209, 1216 (Fla. 2001).

CPH's factual proffer more than satisfies this requirement. CPH did not just provide the Cou rt with a "representation of what evidence [CPH] proposes to present." CPH's proffer is sup po ted by a four-volume appendix, nearly seven inches thick, comprised of deposition test m ony and documentary evidence compiled over 14 months in discovery in this case. That is mo e han sufficient to comply with the requirements of Florida law, and thus, Morgan Stanley's mo io n to strike should be denied.

I. CPH Has Made A "Reasonable Showing" Of Evidence In Its Factual Proffer As Required Under Florida Law.

Section 768.72, Florida Statutes, requires only that CPH make "a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of [punitive] damages." Fla. Stat. § 768.72. Florida Rule of Civil Procedure 1.190(f) similarly provides that "[a] motion for leave to amend a pleading to assert a claim for punitive damages shall make a reasonable showing, by evidence in the record or evidence to be proffered by the claimant, that provides a reasonable basis for recovery of such damages." By their plain terms these provisions require only that CPH either point to "evidence in the record" or "proffer[]" evidence to support its punitive damages claim.

CPH's motion has done just that: it has proffered a substantial and detailed factual basis for punitive damages based on the discovery the parties have conducted to date. The case law applying Section 768.72 requires no more. *See, e.g.*, *Porter v. Ogden, Newell & Welch*, 241 F.3d 1334, 1341 (11th Cir. 2001) (sustaining punitive damages claim where claimant "pled and proffered evidence of specific acts committed by the Defendants"); *Domke v. McNeil-P.P.C., Inc.*, 939 F. Supp. 849, 852 (M.D. Fla. 1996) (sustaining punitive damages claim where claimant "proffer[ed] various allegations" to support the claim); *Water Int'l Network, U.S.A., Inc. v. East*, 892 F. Supp. 1477, 1483 (M.D. Fla. 1995) (sustaining punitive damages claim based on claimant's "allegations of a violation of Federal and Florida RICO statutes"); *cf., e.g.*, *WFTV, Inc. v Hinn*, 705 So. 2d 1010, 1011 (Fla. 5th DCA 1998) (contemplating that pleadings are sufficient to show a "reasonable basis" for punitive damages).

Tellingly, as discussed above, Morgan Stanley's interpretation of Section 768.72 reads out of that statute the statement that a punitive damages claim may be supported by evidence "proffered by the claimant." Fla. Stat. § 768.72(1) (2003). Indeed, Morgan Stanley's motion to

strikes studiously avoids addressing that language at all. By distinguishing "proffered evidence" from "record evidence" and "admissible evidence," however, the statute demonstrates that these terms are not synonymous. *Id.*

Morgan Stanley's reading of the term "proffer" to mean only "admissible evidence" (at 2), or "*evidence* in the record" (at 3, emphasis in original), thus conflicts with the Florida Supreme Court's interpretation of that term. A "proffer" is not itself evidence, *see, e.g.*, *Grim*, 841 So. 2d at 462, but may be, for example, an oral or written statement made by counsel summarizing what counsel expects the evidence to be, *see, e.g.*, *Porro v. State*, 656 So. 2d 587, 587 n. (Fla. 3d DCA 1995). A "proffer" thus permits the proponent "to present the evidence to the court for a review without formally introducing it and without the necessity of formal trial proceedings with all of its attendant technical rules of procedure." Thomas D. Sawaya, 6 Fla. Prac. § 15.9 (2005 ed.).

Had the legislature meant to require the onerous procedure advocated by Morgan Stanley of requiring the submission of evidence conclusively admissible at trial, the legislature would have made its intent express – and would not have stated instead that a "proffer" of evidence is sufficient. *See, e.g.*, *Farancz v. St. Mary's Hosp., Inc.*, 585 So. 2d 1151, 1152 (Fla. 4th DCA 1991) (nearby statutory provisions "show that the legislature knows how to say that the statute is tolled when it wants to say so. That it did not so state here is a positive demonstration that it did not intend any such tolling.).

II. Summary Judgment Standards Do Not Apply To A Motion To Amend For Leave To Add A Claim For Punitive Damages.

Morgan Stanley also argues (at 2) – without any support, and contrary to the clear language of the statute and accompanying rules – that the standard for summary judgment motions set forth in Fla. R. Civ. P. 1.510(e) should be engrafted onto the standard for a factual

proffer in support of a claim for punitive damages. If such a standard were applicable, it would completely undercut the "reasonable showing" standard mandated by the plain language of Section 768.72. Surely, had the legislature wanted the summary judgment rules and standards to apply to the process of amending a complaint to add a punitive damages claim, the legislature would have said so.

The legislature sensibly did not do so. A motion to amend does not seek an adjudication of a claim, as a summary judgment motion does. All that CPH now requests is for *leave to file a claim* for punitive damages – not *judgment* on that claim. Accordingly, Florida courts have flatly refused to evaluate the evidentiary requirements set forth in Section 768.72 pursuant to summary judgment standards. *See, e.g.*, *Porter*, 241 F.3d at 1340 ("The Florida courts do not require a fact-intensive investigation into the merits. Instead, the Florida courts entertain the punitive damages issue by way of a motion to dismiss or a motion to strike, not a summary judgment motion."); *Will v. Systems Engineering Consultants, Inc.*, 554 So. 2d 591, 592 (Fla. 3d DCA 1989) (stating that a challenge under Section 768.72 should proceed "by way of a motion to dismiss, or motion to strike, the punitive damage claim, rather than a motion for partial summary judgment"). Similarly, Florida courts repeatedly have held that a formal evidentiary hearing is not required to add a claim for punitive damages. *See, e.g.*, *Strasser v. Yalamanchi*, 677 So. 2d 22, 23 (Fla. 4th DCA 1996).

CPH's motion to amend – including the factual submission contained therein – is more than sufficient to satisfy Section 768.72's "reasonable basis" standard. The entire point of Section 768.72 is to distinguish between general allegations (which may not support a claim of punitive damages) and specific, fact-based allegations (which would support a punitive damages claim). *See, e.g.*, *Porter*, 241 F.3d at 1340-41 (contrasting "setting forth conclusory allegations" with "plead[ing] specific acts" and requiring the latter); *T.W.M. v. American Medical Sys.*, 886 F.

Supp. 142, 845 (N.D. Fla. 1995) (contrasting "conclusory allegation[s]" with "alleged factual matters" and requiring the latter). The point of Section 768.72 is *not*, however, to convert the motion to amend process into a mini-trial, in which the Court is required to assess the admissibility of every piece of evidence. Where, as here, the proffered evidence overwhelmingly supports a punitive damages claim, the motion to amend should be granted.

Conclusion

Because CPH's four-volume seven-inch-thick proffer complies with the requirements of Florida law in every respect, and because Morgan Stanley's motion to strike rests entirely on a manifestly erroneous view of the showing that is required to make a "proffer" in support of a punitive damages claim, Morgan Stanley's motion to strike should be denied without any inquiry into Morgan Stanley's myriad evidentiary objections and arguments.

Dated: November 1, 2004

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 1st day of NOV., 2004.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

CASE NO. CA 03-5165 AI

COLEMAN (PARENT) HOLDINGS INC.'S REPLY IN SUPPORT OF ITS MOTION TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES

At trial, CPH will prove that Sunbeam engaged in a massive fraud that caused billions of dollars of damages to the investing public, including CPH and the public shareholders of Coleman. At trial, CPH will prove that Sunbeam could not have accomplished that fraud without Morgan Stanley: it was Morgan Stanley that knowingly agreed with Sunbeam to issue a false and misleading press release on March 19, 1998; it was Morgan Stanley that knowingly agreed with Sunbeam to repeat those false statements in the offering documents for the debenture offering; and it was Morgan Stanley that knowingly agreed to raise the money to finance the fraudulent acquisition of Coleman. At trial, CPH also will prove that Morgan Stanley could have stopped the fraud dead in its tracks, but Morgan Stanley chose not to do so.

CPH's proffer sets forth ample evidence to support all of those facts. For example:

- **Did Sunbeam engage in a fraud?** Yes, in Morgan Stanley's desperate attempt to deny and object to everything, Morgan Stanley states (at 16) that "CPH has offered no evidence

to es.al lish that Sunbeam, the party that Morgan Stanley is alleged to have aided and abetted, enga ge l in fraud." In fact, the evidence is undisputed that Sunbeam engaged in a fraud. Indeed, in Mor gan Stanley's complaint against Arthur Andersen, which is pending before Judge Miller, Mor ga: Stanley itself directly alleges that Sunbeam engaged in fraud. Morgan Stanley's com ol: int contains an entire section entitled "Andersen and Sunbeam's Fraudulent Scheme" (CPH . \pp. Tab 15 at 10-12).

- **Did Morgan Stanley know that the March 19, 1998 press release was false and misleading?** Yes, Morgan Stanley knew the true facts concerning Sunbeam's turnaround stor / : nd financial performance. Arthur Andersen sent Morgan Stanley's lawyers a March 18 draf: comfort letter disclosing Sunbeam's financial freefall, and Arthur Andersen sent Morgan Stai le / a March 19 final version of the comfort letter (CPH App. Tab 45, CPH Ex. 24; Tab 16, CPH Ex. 17; *see also* CPH App. Tab 15, ¶ 97). In addition to the information received from Art ıu Andersen, Morgan Stanley also received from Sunbeam a schedule of financial results sho wi ıg even more details concerning Sunbeam's financial peril (CPH App. Tab 18, CPH Ex. 16) And before the Coleman transaction closed, Arthur Andersen sent Morgan Stanley, on Ma·c: 25, a "bring down" comfort letter showing that the situation had grown even worse (CPH Ap). Tab 39, CPH Ex. 112).

- **Did Morgan Stanley knowingly repeat those false statements in the debe ıture offering documents?** Yes, Lawrence Bornstein of Arthur Andersen has testified that he to d Morgan Stanley on March 19, 1998 that "I've done basic math, that they have done a mi li·n dollars in sales a day for the first 72 days and now they have to do — whatever it was, 12 to $15 million in sales for the next — . . . let's say 17 days, whatever the numbers were, and that I \/a very skeptical, that I remember saying to him that I don't think this company's turned ar ıu d." Bornstein then warned Morgan Stanley: "You better hope to God that they do, because

if not, you're all going to get sued" (CPH App. Tab 13, Bornstein Dep. 1/15/2004, at 80-81). Morgan Stanley knew the true facts, from Bornstein, and from the written disclosures supplied by Arthur Andersen and Sunbeam, but Morgan Stanley agreed to include the false information in the debenture offering documents.

- **Did Morgan Stanley provide the financing for the fraudulent acquisition of Coleman?** Yes, the proceeds of the $750 million debenture offering underwritten by Morgan Stanley were used to fund the acquisition of Coleman (CPH App. Tab 15, ¶ 1).

- **Could Morgan Stanley have stopped the fraud?** Yes, by refusing to finance the fraudulent acquisition of Coleman, Morgan Stanley could have stopped the fraud. Without the cash, which Morgan Stanley controlled, Sunbeam could not have closed the acquisition (CPH App. Tab 15, ¶ 1). Morgan Stanley also could have disclosed the true facts, which Morgan Stanley learned from Arthur Andersen and Sunbeam.

There is more, of course, but the simple point here is that CPH's case is not based upon unsupported allegations. The key parts of CPH's case are grounded upon specific facts, and those facts are sufficient to support a claim for punitive damages.

First, as we explain more fully below, for purposes of CPH's motion to add a claim for punitive damages, the issue is whether CPH has shown that there is a reasonable factual basis for those claims. *See* Fla. Stat. § 768.72(1) (2003). In undertaking that analysis, "Florida courts do not require a fact-intensive investigation into the merits. Instead, the Florida courts entertain the punitive damage issue by way of a motion to dismiss or a motion to strike, not a summary judgment motion." *Porter v. Ogden, Newell & Welch*, 241 F.3d 1334, 1340 (11th Cir. 2001) (citations omitted). And although Morgan Stanley apparently believes that it is entitled to an evidentiary hearing — at which the admissibility at trial of each page of CPH's factual proffer must be dissected in detail, and at which the facts advanced by CPH can be weighed against

those offered by Morgan Stanley — Florida law in fact holds that "[a] formal evidentiary hearing is not mandated." *Id.* at 1341 (quoting *Solis v. Calvo*, 689 So. 2d 366, 369 n.2 (Fla. 3d DCA 1997))(emphasis added); *accord Strasser v. Yalamanchi*, 677 So. 2d 22, 23 (Fla. 4th DCA 1996). *See* Part 1 below.

Second, despite Morgan Stanley's attempts to reargue its motion for judgment on the pleadings, this Court already has determined in its Order denying Morgan Stanley's motion for judgment on the pleadings that CPH's complaint states valid claims for fraud, aiding and abetting fraud, conspiracy to commit fraud, and negligent misrepresentation. CPH has an ample factual basis for each of its claims. *See* Part 2 below.

Third, Florida law controls on the issue of punitive damages, notwithstanding Morgan Stanley's assertion (at 1) that this Court "has held that New York law applies to this case, including CPH's claims for punitive damages." In fact, this Court held that New York law applies only to two issues associated with CPH's fraud and negligent misrepresentation claims, and further concluded that Florida law may well apply to CPH's aiding and abetting and conspiracy claims because "[t]he fraud alleged is largely Florida-based" (MS App. Tab 7 at 12). Because Morgan Stanley made no argument concerning the applicability of New York law to the punitive damages issue during choice of law briefing, Florida law governs that issue. Under Florida law, CPH is entitled to add a claim for punitive damages. *See* Part 3 below.

Fourth, even under New York law, CPH's factual proffer is sufficient to support a punitive damages claim because Morgan Stanley's conduct was gross, morally reprehensible, and directed at the public — including the public shareholders of Coleman. *See* Part 4 below.

Argument

1. CPH's Proffer Is Sufficient For This Court To Grant CPH's Request to Add A Punitive Damages Claim.

Section 768.72(1), Florida Statutes, provides that a claim for punitive damages should be permitted if "there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages." *See* Fla. Stat. § 768.72(1). Contrary to Morgan Stanley's assertion (at 2), this requirement does not mean that CPH's proffer must meet the same admissibility requirements that apply to a motion for summary judgment or at trial. Nor does this requirement mean, as Morgan Stanley apparently assumes (at 2-11), that CPH's request to add a punitive damages claim can be defeated by a counterstatement of largely irrelevant facts. Rather, courts expressly have held that the evidentiary standard set forth in Section 768.72 is not akin to a summary judgment standard. *See Porter*, 241 F.3d at 1340; *Will v. Sys. Eng'g Consultants, Inc.*, 554 So. 2d 591, 592 (Fla. 3d DCA 1989) That is why "[a] formal evidentiary hearing is not mandated" to add a claim for punitive damages. *See Porter*, 241 F.3d at 1341 (quoting *Solis*, 689 So.2d at 369 n.2); *Strasser*, 677 So. 2d at 43.

All that is required under Section 768.72 is a "proffer" of evidence, which as the Florida Supreme Court has determined in another context, "is merely a representation of what evidence the [party] proposes to present and is not actual evidence." *Grim v. State*, 841 So. 2d 455, 462 (Fla. 2003); *accord LaMarca v. State*, 785 So. 2d 1209, 1216 (Fla. 2001); *see also Porro v. State*, 650 So. 2d 587, 587 n.1 (Fla. 3d DCA 1995) (proffer can be in the form of an oral or written statement by counsel summarizing what counsel expects the evidence to show); Thomas D. Sawaya, 6 Fla. Prac. § 15.9 (2005 ed.) (proffer permits proponent "to present the evidence to the court for a review without formally introducing it and without the necessity of formal trial proceedings with all of its attendant technical results of procedure").

CPH has made, under applicable Florida law, a proper proffer demonstrating CPH's entitlement to add a claim for punitive damages. *See, e.g., Dibernardo v. Waste Mgmt., Inc.*, 838 F. Supp. 567, 571 (M.D. Fla. 1993) ("Defendants assert that there is no evidence in the record or proffered by plaintiff that would provide for a reasonable basis for recovery of such exemplary damages. This Court disagrees and finds that Plaintiff's complaint does allege facts and establishes record evidence, in Plaintiff's affidavit attached to the complaint, which potentially could lead to the imposition of punitive damages."); *McCarthy v. Barnett Bank*, 750 F. Supp. 1119, 1127 (M.D. Fla. 1990) ("Plaintiffs in this case have pled specific acts committed by Defendants which are adequate to support a claim for punitive damages. The motion to strike the request for punitive damages is therefore DENIED"). Indeed, given that CPH's proffer is comprised of concrete and admissible evidence taken from depositions and documents produced by Morgan Stanley itself, CPH's proffer provides much more than what is required for this Court to grant CPH's request to add a claim for punitive damages.

2. Morgan Stanley's Attacks On CPH's Underlying Claims Do Not Alter The Conclusion That CPH Is Entitled To Add A Claim For Punitive Damages.

Morgan Stanley devotes much of its opposition to a rehash of its unsuccessful motion for judgment on the pleadings: Morgan Stanley sets forth (at 2-11) a series of supposed "undisputed facts," and based on those facts, argues (at 11-17) that CPH's complaint fails to state a claim on which relief may be granted under New York law. Morgan Stanley's arguments lack merit. At the threshold, Morgan Stanley's arguments proceed from the erroneous assumption (at 1) that this Court held in its choice of law Order that New York law applies to all of CPH's claims. In fact, this Court held that New York law applies only to two issues relevant to CPH's fraud and negligent misrepresentation claims, and further concluded that Florida law would apply to CPH's aiding and abetting and conspiracy claims if CPH could prove Morgan Stanley's participation in

the Florida-based Sunbeam fraud (MS App. Tab 7 at 12). Moreover, even under the law as described by Morgan Stanley, there is a sufficient factual basis for each of CPH's claims.

A. Morgan Stanley's Attack On CPH's Fraud Claim Is Baseless.

Morgan Stanley contends (at 14-16) that CPH has failed to state a claim of fraud because CPH purportedly cannot show that it conducted due diligence in connection with the Sunbeam/Coleman transaction, and thus, cannot justifiably have relied on the false representations. Even assuming that New York law imposes a "due diligence" requirement on so-called "sophisticated" victims of fraud, and notwithstanding Morgan Stanley's assertions in its fact section about CPH's so-called sophistication and retention of advisers to assist in CPH's decision making (at 2-3), Morgan Stanley's argument is incorrect. New York law recognizes that questions of reliance and what diligence is due are context and fact specific inquiries that are not susceptible to resolution as a matter of law. *See, e.g., JPMorgan Chase Bank v. Winnick*, 2004 U.S. Dist. LEXIS 11565, at *42, *57 (S.D.N.Y. 2004) (denying summary judgment on fraud claim because court "cannot say as a matter of law that the Banks' reliance was unreasonable (or unjustified) because a sophisticated lender could have protected itself by making reasonable inquiries"; whether a sophisticated party's reliance is "reasonable or justifiable is a factual question inappropriate for summary adjudication" and "whether a duty to inquire is triggered is a context-specific and fact-based inquiry, rather than a bright-line rule"); *see also DIMON Inc. v. Folium, Inc.*, 48 F. Supp. 2d 359, 369, 372 (S.D.N.Y. 1999) (denying motion to dismiss plaintiff's fraud claim despite plaintiff's sophistication and "theoretical discoverability" of the alleged fraud). Morgan Stanley ignores these cases.

Morgan Stanley also ignores a key contract provision in the Merger Agreement that bears directly on what diligence was due from CPH — regardless of what the case law might address in other contexts. Indeed, although Morgan Stanley quotes numerous provisions in the Merger

Agreement and other written instruments at length in its factual recitation (at 5-11), Morgan Stanley studiously avoids any mention of the specific contract provision that placed on Sunbeam the responsibility for advising CPH of material adverse changes in circumstances (Ex. A, § 6-8):

> Advice of Changes. Upon obtaining knowledge of any such occurrence, Holdings or Laser [defined in the Recitals as Sunbeam] shall promptly advise the other party orally and in writing of (i) any representation or warranty made by it contained in this Agreement that is qualified as to materiality becoming untrue or inaccurate in any respect or any such representation or warranty that is not so qualified becoming untrue or inaccurate in any material respect, (ii) the failure by it to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it under this Agreement or (iii) any change or event . . . having [a] . . . Material Adverse Effect [defined at Page 3 of the Merger Agreement as a material adverse effect on the business, or results of operation or financial condition of Holdings and its subsidiaries, taken as a whole] . . . .

This provision disposes of Morgan Stanley's argument and shows why the law correctly recognizes that the issue of reasonable reliance, including the issue of the diligence that is due, is intensely fact specific. Here, the reasonableness of CPH's reliance and its diligence must be considered in light of the express provision of the Merger Agreement, which shifted to Sunbeam the duty to alert CPH to any material adverse change. Although CPH did, in fact, make inquiries about Sunbeam, CPH had no obligation to do so under the express terms of the Merger Agreement. Given the existence of this express contractual provision — and the failure of Sunbeam and Morgan Stanley to advise CPH of the clear and unmistakable adverse changes in circumstances that were occurring before the closing — Morgan Stanley's assertion that CPH has failed to state a claim of fraud does not withstand scrutiny.[1]

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[1] In this fact section, Morgan Stanley attempts to make much of the fact (at 5-9) that the Merger Agreement contains an integration claims whereby Sunbeam and CPH agreed that all of the terms of their agreement are set forth in the four corners of the written contract. Morgan Stanley ignores, however, that integration clauses do not immunize parties for claims of fraud or fraud in the inducement. *See, e.g., Mfrs. Hanover Trust Co. v. Yanakas*, 7 F.3d 310, 315 (2d Cir. 1993) (under New York law, "a general merger clause is ineffective . . . to preclude extrinsic evidence that a party was induced to enter into the contract by means of fraud"); 60A N.Y. Jur. 2d, *Fraud*

B. Morgan Stanley's Attack On CPH's Aiding And Abetting Claim Is Meritless.

Morgan Stanley attacks CPH's aiding and abetting claim by contending that (at 16):

> CPH has offered no evidence to establish that Sunbeam, the party that Morgan Stanley has alleged to have aided and abetted, engaged in fraud. Likewise, CPH does not identify a scintilla of evidence to prove that Morgan Stanley had actual knowledge of Sunbeam's fraud or that Morgan Stanley provided "substantial assistance."

In making that argument, Morgan Stanley misstates the law and contradicts the factual allegations from its own lawsuit against Arthur Andersen.

Morgan Stanley's arguments should be rejected at the threshold, however, because they are based on the assumption that New York law applies to CPH's aiding and abetting claim. In its choice-of-law Order, this Court held that Florida law may well apply to CPH's aiding and abetting claim (MS App. Tab 7 at 12). Morgan Stanley does not even address CPH's aiding and abetting claim under Florida law.

In any event, even accepting the legal standards advanced by Morgan Stanley at face value, Morgan Stanley's arguments have no substance. With respect to Morgan Stanley's argument that CPH has offered no evidence that Sunbeam engaged in fraud, CPH's factual proffer clearly debunks that contention. The proffer, among other matters, details the following aspects of the Sunbeam fraud:

- On February 23, 1998, Morgan Stanley personnel and Sunbeam executives held face-to-face discussions with representatives for CPH during which Sunbeam was portrayed as a turnaround success and an attractive business opportunity.

- Contrary to those rosy predictions, Sunbeam's outside auditors warned Morgan Stanley that Sunbeam was on a disaster course. Morgan Stanley learned, both orally and in writing, that Sunbeam was conducting aggressive bill-and-hold transactions and that certain sales were made with a 100 percent right of return. Morgan Stanley also learned that the statements made to CPH at the February 23, 1998 meeting were false.

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ala Deceit § 227 (2003) ("It is well settled that a general or "boiler plate" merger clause in a written contract is ineffective to preclude judicial inquiry into specific allegations or fraud").

- Sunbeam's outside auditors also wrote a letter to Morgan Stanley, which Morgan Stanley's law firm received no later than March 18, 1998, disclosing Sunbeam's financial freefall, including that Sunbeam had a shortfall from Wall Street expectations and prior results of $181 to $213 million. The letter disclosed that the reason for the shortfall was that an early buy program had accelerated sales that normally would have occurred in 1998 to the last quarter of 1997 — in other words, 1997 results were artificially inflated with 1998 sales.

- Written documentation in Morgan Stanley's hands confirmed that Sunbeam's fraudulent inflation of 1997 results with 1998 sales was so egregious that Sunbeam needed sales of $151.8 million over the 11 remaining days of the first quarter of 1998 simply to meet 1997 first quarter sales.

- Instead of disclosing the truth, Sunbeam and Morgan Stanley agreed that Sunbeam would issue a March 19, 1998 press release that falsely portrayed Sunbeam's performance and prospects. The press release, among other things, falsely portrayed Sunbeam's financial condition and lied about the reasons for the shortfall from analysts' estimates.

- During a road show presentation that took place after the issuance of the press release — a road show that Morgan Stanley organized to persuade investors to participate in the $750 million debenture offering to fund Sunbeam's acquisition of Coleman — Morgan Stanley stood with Sunbeam and told investors that the press release was no cause for alarm and that Sunbeam was on track to meet expectations. Several Wall Street analysts reacted to these reassuring statements by reiterating their "buy" or "strong buy" ratings by Sunbeam.

These facts, all of which are supported by the detailed evidence in CPH's proffer, debunk Morgan Stanley's contention that CPH has presented no evidence that Sunbeam engaged in fraud.

Indeed, Morgan Stanley's challenge to the existence of the Sunbeam fraud contradicts the very heart of Morgan Stanley's own litigation against Arthur Andersen pending before Judge Miller. In Morgan Stanley's complaint, Morgan Stanley directly alleges that Sunbeam engaged in fraud. For example, in a section of the complaint entitled "Andersen and Sunbeam's Fraudulent Scheme," Morgan Stanley alleges (CPH App. Tab 15 ¶ 30):

> Unbeknownst to the public and to Plaintiffs, Sunbeam's new senior management embarked upon a scheme designed to misrepresent Sunbeam's financial condition. Sunbeam's subsequent November 1998 restatement of its 1996 and 1997 financial statements revealed the plan that Sunbeam's management had adopted and Andersen facilitated. In 1996, Sunbeam's management, with

> Andersen's knowing assistance, caused Sunbeam to overstate its operating losses by at least $40 million, thereby establishing an overly bleak financial backdrop against which the company's performance in 1997 would be measured. In 1997, by contrast, management caused Sunbeam dramatically to overstate its earnings. When 1997 operating earnings were eventually corrected and restated, they were $95 million less than the earnings originally reported — and approximately half of the figure that Andersen had previously certified.

In the face of those judicial admissions, Morgan Stanley cannot in good faith dispute that Sunbeam engaged in fraud.

With respect to Morgan Stanley's contention that there is no evidence that Morgan Stanley had actual notice of Sunbeam's fraud or that Morgan Stanley provided substantial assistance, that contention likewise ignores CPH's factual proffer. Concerning Morgan Stanley's actual notice, the proffer shows that:

- Morgan Stanley knew of the fraud because Morgan Stanley had been involved in due diligence with Sunbeam since April 1997 and therefore knew that Sunbeam's turnaround story was an illusion. Morgan Stanley, at the very latest, knew about Sunbeam's fraud by mid-March 1998 — when it was advised by Sunbeam's own outside auditors that Sunbeam was on a disaster course.

- Indeed, sometime before March 19, 1998, Morgan Stanley had received written confirmation from Sunbeam and Sunbeam's auditors detailing the disastrous collapse in Sunbeam's performance and expressly identifying the cause.

Concerning substantial assistance, the proffer shows that Morgan Stanley provided the financing that Sunbeam required in order to close the Coleman acquisition (CPH App. Tab 7, Smith Dep. 2/24/2004, at 197-203; Tab 37, Hart Dep. 5/19/2004, at 222-25; Tab 38, CPH Ex. 76). By providing the cash necessary to accomplish the fraud, Morgan Stanley plainly provided substantial assistance. Although nothing more is necessary to demonstrate substantial assistance, CPH's proffer also shows the following:

- Morgan Stanley set out to find companies for Sunbeam to acquire with Sunbeam stock and found Coleman.

- On February 23, 1998, Morgan Stanley personnel held face-to-face discussions with representatives from CPH during which the false story of Sunbeam's turnaround was told.

- Morgan Stanley assisted Sunbeam in concealing the fraud in many ways, including by helping Sunbeam prepare and issue a false and misleading press release on March 19, 1998.

- Morgan Stanley agreed to incorporate and republish the false March 19, 1998 press release into the offering documents for the debentures.

- Morgan Stanley assisted in a series of road show presentations to attract investors for the debenture offering.

- Morgan Stanley assisted in the closing of the transactions.

Clearly, these acts and others set forth in CPH's factual proffer demonstrate Morgan Stanley's substantial assistance in the Sunbeam fraud.

C. Morgan Stanley's Attack On CPH's Conspiracy Claim Is Meritless.

Morgan Stanley attacks CPH's conspiracy claim by arguing (at 17) that CPH has not alleged an underlying fraud claim and has not offered "any evidence of an actual agreement between Morgan Stanley and Sunbeam toward a common tortious objective or Morgan Stanley's actual knowledge of Sunbeam's alleged fraud." Like its aiding and abetting arguments, Morgan Stanley's conspiracy arguments fail at the threshold because they are based on the assumption that New York law applies, even though this Court held that Florida law will govern CPH's conspiracy claim if CPH can show Morgan Stanley's involvement in the Florida-based Sunbeam fraud (MS App. Tab 7 at 12). In any event, Morgan Stanley's arguments are without merit on their own terms.

Contrary to Morgan Stanley's assertion, CPH has proffered evidence of an agreement between Morgan Stanley and Sunbeam to accomplish a common tortious objective. Among other things, CPH's proffer shows that: (a) Morgan Stanley and Sunbeam agreed to issue the false and misleading March 19, 1998 press release; (b) Morgan Stanley and Sunbeam agreed to incorporate and republish the false March 19, 1998 press release into the offering documents for

the d bentures; (c) Morgan Stanley and Sunbeam agreed to participate in a road show pre: er tation for the debentures during which false information was provided to investors and ana ys s; and (d) Morgan Stanley and Sunbeam agreed that Morgan Stanley would provide the fina c ng required to close the Coleman transaction. This evidence in CPH's proffer constitutes stro g evidence of an agreement between Morgan Stanley and Sunbeam to accomplish a con m on tortious objective.

D. Morgan Stanley's Attack On CPH's Negligent Misrepresentation Claim Is Irrelevant To The Instant Motion.

Morgan Stanley attacks CPH's negligent misrepresentation claim by arguing (at 13-14) that C PH cannot satisfy the "special relationship" requirement imposed by New York law. The sho t a nswer to Morgan Stanley's argument is that it is irrelevant to CPH's motion to add a claim for u itive damages. CPH is not seeking to base its claim for punitive damages on CPH's claim of n g igent misrepresentation. CPH is seeking punitive damages based on its claims for fraud, aidi g and abetting, and conspiracy. *See Rappaport v. Jimmy Brian Toyota of Fort Lauderdale*, 522 S . 2d 1005, 1006 (Fla. 4th DCA 1988) (claim of fraud is sufficient to support a claim for pun ti e damages); *see also* Section 3 below. Thus, although we are prepared to show (and, indeed, we already have shown in our opposition to Morgan Stanley's motion for judgment on the pl adings) that CPH's negligent misrepresentation claim does in fact satisfy the "special rela io ship" requirement of New York law, Morgan Stanley's argument is a red herring because CPH's negligent misrepresentation claim is irrelevant to the instant motion.

3. Under Florida Law, CPH's Proffer Is Sufficient To Add A Claim For Punitive Damages.

A. Florida Law Governs CPH's Punitive Damages Claim.

Not only does Florida procedural law apply to CPH's request to add a claim for punitive damages, as Morgan Stanley has acknowledged (at 11), but Florida substantive law applies as well because Morgan Stanley neither has argued nor shown that New York law applies to that claim. Although Morgan Stanley asserts (at 1) that this Court has held that "New York law applies to this case, including CPH's claims for punitive damages," as stated above, this Court's choice of law Order did not so hold. The Order held only that New York law applies to two issues relevant to two of CPH's four claims (MS App. Tab 7 at 12):

> As to Counts I and IV of CPH's Complaint and MSSF's claims against MAFCO and CPH, the Court determines that New York substantive law applies (i) to engraft a requirement that the recipient of a negligent misrepresentation be in a special relationship to its publisher for the misrepresentation to be actionable, and (ii) to engraft a requirement that a party perform reasonable due diligence as to available information in order to prove that its reliance on a misrepresentation was reasonable.

Indeed, in another portion of the Order, this Court recognized that Florida law might apply to CPH claims of aiding abetting and conspiracy (*id.*, citation omitted):

> The fraud alleged is largely Florida based and the location of its ultimate victim incidental. Florida has a strong public policy in favor of protecting the recipients of fraudulent misrepresentations. That policy is more clearly implicated if CPH is able to prove that MS&Co. was an actor in a Florida-based fraud. The allegations of conspiracy are disputed, precluding summary judgment at this juncture on the choice of law issue.

The two issues just cited as to which New York law has been found to govern are the only two issues identified in Morgan Stanley's choice-of-law motion — which is fatal to Morgan Stanley's present contention that New York law applies to CPH's punitive damage claim. It was Morgan Stanley's burden during choice of law briefing to identify, on an issue-by-issue basis, the areas in which New York and Florida law differ and to demonstrate why New York law

applie . Morgan Stanley's failure to do so with respect to the issue of punitive damages compels the conclusion that Florida law governs. *See, e.g., Collins v. Collins*, 36 So. 2d 417, 417 (Fla. 1948) ("when the contrary [law] has not been alleged, we have assumed the law of the other state to be the same as our own"); *Gustafson v. Jensen*, 515 So. 2d 1298, 1300 (Fla. 3d DCA 1987) ("where a party seeking to rely upon foreign law fails to demonstrate that the foreign law is different from the law of Florida, the law is the same as Florida"); *Aetna Cas. & Sur. Co. v. Ciarrochi*, 573 So. 2d 990, 990 (Fla. 3d DCA 1991) (same); *Watson v. First Nat'l Bank of Chicago*, 367 So. 2d 732, 733 (Fla. 4th DCA 1979) ("Upon the failure to plead any applicable foreign law, it is presumed that any such law is the same as Florida law"); *Owens-Corning Fiberglas Corp. v. Engler*, 704 So. 2d 594, 594 (Fla. 4th DCA 1997) ("Where the law of a foreign forum is claimed to be dispositional, yet no foreign law is pleaded to the trial court, the matter is to be determined by the law of this forum").

B. CPH's Factual Proffer Is Sufficient To Support A Claim For Punitive Damages Under Florida Law.

Under Florida substantive law, it is clear that CPH's factual proffer is more than sufficient to support a claim of punitive damages. Under Florida law, as Morgan Stanley concedes (at 17), "a claim of fraud sufficient to justify a compensatory damage award is also sufficient to support a claim for punitive damages." *Rappaport*, 522 So. 2d at 1006; *accord Lou Bachrodt Chevrolet, Inc. v. Savage*, 570 So. 2d 306, 308 (Fla. 4th DCA 1990); *Solis*, 689 So. 2d at 369 n.3. As shown above in Part 2, CPH's factual proffer provides more than ample support for CPH's claims of fraud, aiding and abetting, and conspiracy. Under Florida law, therefore, CPH should be allowed to ask the jury for punitive damages.

4. **Under New York Law, CPH's Proffer Is Sufficient To Add A Claim For Punitive Damages.**

Even if New York law were to apply to CPH's claim for punitive damages, which is not the case, the result would be the same because CPH's factual proffer is more than sufficient to support a claim for punitive damages. Under New York law, punitive damages are available where a fact-finder reasonably could characterize the challenged conduct as "gross" or "morally reprehensible." The conduct of Morgan Stanley as set forth in CPH's proffer clearly meets this standard.

The district court's decision in *Merrill Lynch & Co. v. Allegheny Energy, Inc.*, 2003 WL 22750 (S.D.N.Y. 2003), which Morgan Stanley discusses at length (at 22-23), confirms this conclusion. In *Merrill Lynch*, plaintiff Allegheny Energy sought to acquire a commodities trading business and retained Merrill Lynch for consultation. Merrill Lynch recommended that Allegheny acquire Merrill Lynch's own energy commodities business. Although Merrill Lynch subsequently withdrew as Allegheny's advisor, Merrill Lynch nonetheless made representations regarding the transaction, and continued to make fraudulent representations when Merrill Lynch and Allegheny began negotiating. In addressing the issue of punitive damages — after stating that punitive damages are available under New York law only when the conduct may be characterized as "gross," "morally reprehensible," and involving "such wanton dishonesty as to imply a criminal indifference to civil obligations" — the district court concluded that "[i]f Merrill Lynch sold a business that it knew was in significantly different condition than it represented and failed to disclose certain facts when it had a duty to do so, such conduct may be said to be gross or morally reprehensible." *Id.* at *8 n.10.

Here, Morgan Stanley's false representations and Morgan Stanley's participation in Sunbeam's false representations about Sunbeam's condition are very similar in kind to those

addressed in *Merrill Lynch*. They therefore are sufficient to support a claim for punitive damages under New York law.

Morgan Stanley nonetheless argues (at 21-22) that punitive damages are not available because New York law requires a "public wrong" and "CPH [supposedly] has not pled that Morgan Stanley engaged in a fraud on the public." CPH's factual proffer, however, demonstrates otherwise. The proffer shows that Morgan Stanley participated, aided and abetted, and conspired in the Sunbeam fraud — a fraud that injured not only CPH, but also the public shareholders of Coleman. Further, the March 19, 1998 Sunbeam press release that Morgan Stanley helped prepare — indisputably, one of the key pieces of the fraud at issue in this case — constitutes additional conclusive proof that Morgan Stanley's fraud on CPH was part of a larger pattern of fraud on the public. And, after the March 19 press release was issued, Morgan Stanley included it in the offering documents for the debentures. Morgan Stanley included the press release over the objections of Lawrence Bornstein, one of Sunbeam's outside audit managers, who warned Morgan Stanley that foisting the fraudulent press release on investors would result in Morgan Stanley being sued. Finally, the public nature of the fraud is demonstrated by the 30 lawsuits arising from the Sunbeam fraud that have been filed by the investing public here in Florida.

Conclusion

Because CPH's extensive factual proffer — comprised of four volumes of deposition testimony and deposition evidence — reveals a fraud participated in by Morgan Stanley that is both egregious and aimed at the general public, CPH's proffer is more than sufficient to support a punitive damages claim under any arguably applicable law. Consequently, CPH requests that this Court grant CPH leave to file the amendment to its complaint adding a claim of punitive damages that is attached as Exhibit A to CPH's motion.

Dated: November 1, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

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I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 1st day of NOV, 2004.

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November 1, 2004

Honorable Elizabeth T. Maass
Palm Beach County Courthouse
Room #11.1208
205 North Dixie Highway
West Palm Beach, FL 33401

Re: Coleman (Parent) Holdings, Inc. vs. Morgan Stanley & Company Inc.
Case No.: CA 03-5045 AI

Dear Judge Maass:

Pursuant to your directive, enclosed please find a binder containing copies of all the motions (plaintiff and defendant), including the motions filed under seal, to be heard on Friday, November 5, 2004 in this matter along with the supporting case law. Because some of the exhibits in support of these pleadings are too voluminous to be included in the binder, they are being provided again separately.

The enclosed binder does not contain the parties' joint submission. It will be necessary to file same under separate cover. A draft was provided to Morgan Stanley's counsel on the morning of October 28, 2004. After repeated requests, at 3:00 p.m. today, counsel finally provided to us a substantially changed version of the joint submission. Given the changes that were made are substantial, it is impossible for CPH to review those changes, and propose appropriate clarifying changes today. Consequently, once the parties have worked out an appropriate Joint Statement of the Case, we will promptly provide it to the court.

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Since the binder does contain motions filed under seal, we ask that Your Honor return the copies of those motions to plaintiff's counsel at the conclusion of the hearing on November 5, 2004.

Respectfully,

D ctated But Not Signed By
J: ck Scarola To Expedite Delivery

JACK SCAROLA
JS/mep
Enclosures

cc: Joseph Ianno, Esq.
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Total Number of Pages Being Transmitted, Including Cover Sheet:91

Message:

Coleman v. Morgan Stanley & Co., Inc.

To follow please find a copy of Morgan Stanley's Objections to CPH's Seventh Request for Production of Documents.

☐ ***Original to follow Via Regular Mail*** ☐ ***Original will Not be Sent*** ☐ ***Original will follow via Overnight Courier***

****

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****

IF THERE ARE ANY PROBLEMS OR COMPLICATIONS, PLEASE NOTIFY US IMMEDIATELY AT:
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TELECOPIER OPERATOR: _____

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO. INC.,
Defendant.
_____/

CASE NO: CA 03-5045 AI

MORGAN STANLEY'S OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC.'S SEVENTH REQUEST FOR PRODUCTION OF DOCUMENTS

Defendant, Morgan Stanley & Co. Inc. ("Morgan Stanley"), pursuant to Fla. R. Civ. P. Rules 1.280 and 1.350, provides the following Responses and Objections to Plaintiff Coleman (Parent) Holdings Inc.'s Seventh Request for Production of Documents to Morgan Stanley & Co. Inc. ("Document Request") served via facsimile on Morgan Stanley on September 30, 2004. As grounds therefore, Morgan Stanley states as follows:

GENERAL OBJECTIONS

The following General Objections apply to the Document Request in its entirety and apply to each and every Document Request as if fully set forth with respect to each Request:

1. Morgan Stanley objects to the Document Request in its entirety to the extent that it seeks materials protected from disclosure by the attorney-client privilege, the attorney-work-product doctrine, the common-interest doctrine, or any other applicable constitutional, statutory, or common-law privilege, doctrine, immunity, or rule. Pursuant to the Agreed Order Regarding Enlargement of Time to Prepare Privilege Log dated September 4, 2003, Morgan Stanley will

discovery immunity within 30 days after Morgan Stanley's production of the documents from which the documents have been withheld on grounds of privilege or discovery immunity.

2. Morgan Stanley objects to the Document Request because it seeks materials that are neither relevant nor likely to lead to the discovery of evidence related to Morgan Stanley's current net worth and to the subject matter of the pending action as framed by the pleadings in the above-captioned consolidated actions.

3. Morgan Stanley objects to the Document Request in its entirety to the extent that it seeks to impose obligations, including a continuing duty of supplementation, different from, or in addition to, those provided in the Florida Rules of Civil Procedure, discovery guidelines of this Court, and applicable case law.

4. Morgan Stanley objects to the Document Request in its entirety to the extent that it seeks the production of documents in the possession of third parties and not within Morgan Stanley's possession, custody, or control.

5. Morgan Stanley objects to the Document Request in its entirety to the extent that it seeks the production of documents that are publicly available or otherwise equally accessible to both parties, including deposition transcripts and court records.

6. It should not be inferred from the form or substance of any objection or response contained herein that documents responsive to any particular Request exist.

7. Morgan Stanley's responses to CPH's Document Requests shall not be construed in any way as an admission that any definition provided by CPH is either factually correct or legally binding upon Morgan Stanley, or as a waiver of any of Morgan Stanley's objections, including, but not limited to, objections regarding discoverability and admissibility of documents.

8. Morgan Stanley's objections are based on its good-faith investigations and discovery to date. Morgan Stanley expressly reserves the right to modify and supplement these objections.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

OBJECTIONS: Morgan Stanley incorporates by reference its objections to the definitions as set forth in Morgan Stanley's Objections to CPH's First, Second, Third, Fourth, Fifth, and Sixth Request for Production of Documents. In addition, Morgan Stanley has the following specific objections:

SPECIFIC OBJECTIONS AND RESPONSES

DOCUMENT REQUEST NO. 1: All MS&Co.'s balance sheets and income statements for MS&Co.'s most recent fiscal year and for each of MS&Co.'s last six quarters.

RESPONSE: In addition to the general objections stated above, Morgan Stanley objects to the production of these documents until CPH is permitted to seek the recovery of punitive damages from Morgan Stanley pursuant to Section 768.72, Florida Statutes. Further, Morgan Stanley objects to this Request to the extent that it is overbroad and seeks documents that are not relevant to a determination of Morgan Stanley's current net worth. *Zuckerman v. Robinson*, 846 So.2d 1257, 1260 (4th DCA 2003) (holding that an award of punitive damages is "limited by the *current* financial resources" of the party being charged) (emphasis added) *rev. denied*, 868 So.2d 524 (Fla. 2004). Here, Plaintiff improperly seeks financial information from Morgan Stanley's "last six quarters." These documents are not determinative of Morgan Stanley's *current* net worth.

Morgan Stanley will not produce documents responsive to this Request.

DOCUMENT REQUEST NO. 2: Documents sufficient to show MS&Co.'s net worth, income, revenue, profits, losses, and global holdings for each fiscal year between and including 1998-2004.

RESPONSE: In addition to the general objections stated above, Morgan Stanley objects to the production of these documents until CPH is permitted to seek the recovery of punitive damages from Morgan Stanley pursuant to Section 768.72, Florida Statutes.

Further, Morgan Stanley objects to this Request on the ground that it seeks information that is neither relevant nor likely to lead to the discovery of evidence related to Morgan Stanley's current net worth. Morgan Stanley's financial information for a seven year span is completely irrelevant to its *current* net worth. *Zuckerman*, 846 So.2d at 1260. Morgan Stanley further objects to this Request to the extent that it seeks information covered by the attorney-client privilege and the attorney-work-product doctrine. Additionally, Morgan Stanley objects to this Request on the grounds that it is vague and overbroad because it does not provide Morgan Stanley with any guidance as to what documents are "sufficient" to demonstrate the items listed in the Request. Finally, Morgan Stanley objects to the production of any documents related to its "global holdings" because "global holdings" is not defined and is therefore vague and ambiguous. Under these circumstances, it is impossible for Morgan Stanley to determine which, if any, documents are responsive to Plaintiff's Request.

Assuming that Plaintiff intends "global holdings" to mean any entity owned or held by Morgan Stanley which exists outside the state of Florida, documents sufficient to demonstrate Morgan Stanley's "global holdings" are irrelevant to any award of punitive damages. Any punitive damages that might theoretically be awarded by this Court "must be limited to unlawful conduct that has a nexus to the 'specific harm suffered by the plaintiff'" *State Farm Mut. Ins.*

Co. v. Campbell, 538 U.S. 408, 422-23 (2003) (holding punitive damage award violated due process where defendant's unrelated, lawful, out-of-state conduct was used to determine amount of punitive damages); *see also Liggett Group Inc. v. Engle*, 853 So.2d 434, 456 (Fla. 3d DCA 2003) (reversing punitive damage award where award was not based on underlying claim). Lawful out-of-state conduct may not be used as evidence to punish a defendant where that conduct has no relation to the underlying claim and is lawful where it occurred. *Campbell*, 538 U.S. at 422-23. Morgan Stanley's global holdings have no relevance to the issues framed by the pleadings in the instant case, which assert unlawful actions in Florida. Plaintiff has not asserted any nexus between Morgan Stanley's global holdings and the harm allegedly suffered by Plaintiff in Florida. Even if such a nexus existed, and it does not, Plaintiff has failed to assert that any *conduct* in connection with Morgan Stanley's global holdings was either unlawful or bore any relation to the harm allegedly suffered by Plaintiff. Therefore, any information relevant to Morgan Stanley's global holdings to determine a potential award of punitive damages is irrelevant, and not likely to lead to the discovery of admissible evidence. *Id.*; *Engle*, 853 So.2d at 456.

Morgan Stanley will not produce documents responsive to this Request.

DOCUMENT REQUEST NO. 3: All MS&Co.'s balance sheets, income statements, and any other financial statements relating to MS&Co.'s net worth, revenues, profits, losses, and global holdings that are created or edited during the time period between today's date through the date of trial in this matter. Documents responsive to this request must be tendered by MS&Co. on the first day of trial.

RESPONSE: In addition to the general objections stated above, Morgan Stanley objects to the production of these until CPH is permitted to seek the recovery of punitive damages from Morgan Stanley documents pursuant to Section 768.72, Florida Statutes. Further, Morgan Stanley objects to this Request on the ground that it seeks information that is neither relevant nor likely to lead to the discovery of evidence related to Morgan Stanley's current net worth. *Zuckerman*, 846 So.2d at 1260. Morgan Stanley further objects to this Request to the extent that it seeks information covered by the attorney-client privilege and the attorney-work-product doctrine. Additionally, Morgan Stanley objects to this Request on the grounds that it is vague and overbroad because it does not provide Morgan Stanley with any guidance as to what constitutes "any other financial statements."

Finally, Morgan Stanley objects to the production of any documents related to its "global holdings" because "global holdings" is not defined and is therefore vague and ambiguous. Under these circumstances, it is impossible for Morgan Stanley to determine which, if any, documents are responsive to Plaintiff's Request.

Assuming that Plaintiff intends "global holdings" to mean any entity owned or held by Morgan Stanley which exists outside the state of Florida, documents sufficient to demonstrate Morgan Stanley's "global holdings" are irrelevant to any award of punitive damages. Any punitive damages that might theoretically be awarded by this Court "must be limited to unlawful conduct that has a nexus to the 'specific harm suffered by the plaintiff'" *State Farm Mut. Ins. Co. v. Campbell*, 538 U.S. 408, 422-23 (2003) (holding punitive damage award was excessive and violated due process where defendant's unrelated, lawful, out-of-state conduct was used to determine amount of punitive damages); *see also Liggett Group Inc. v. Engle*, 853 So.2d 434, 456 (Fla. 3d DCA 2003) (reversing punitive damage award where award was not based on

underlying claim). Lawful out-of-state conduct may not be used as evidence to punish a defendant where that conduct has no relation to the underlying claim and is lawful where it occurred. *Campbell*, 538 U.S. at 422-23. Morgan Stanley's global holdings have no relevance to the issues framed by the pleadings in the instant case, which assert unlawful actions in Florida. Plaintiff has not asserted any nexus between Morgan Stanley's global holdings and the harm allegedly suffered by Plaintiff in Florida. Even if such a nexus existed, and it does not, Plaintiff has failed to assert that any *conduct* in connection with Morgan Stanley's global holdings was either unlawful or bore any relation to the harm allegedly suffered by Plaintiff. Therefore, any information relevant to Morgan Stanley's global holdings to determine a potential award of punitive damages is irrelevant, and not likely to lead to the discovery of admissible evidence. *Id.*; *Engle*, 853 So.2d at 456.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 1st day of November, 2004.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MOTION FOR PROTECTIVE ORDER CONCERNING DISCOVERY SERVED BY COLEMAN (PARENT) HOLDINGS, INC. AFTER OCTOBER 14, 2004 AND TO EXTEND PRETRIAL DEADLINES

Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") requests that this Court enter a Protective Order pursuant to Fla. R. Civ. P. 1.280(c) limiting discovery served by Coleman (Parent) Holdings Inc. ("CPH") following the October 14, 2004 Case Management Conference to matters that (1) were noticed by CPH prior to October 14, 2004, or (2) were the subject of a request by CPH for deposition prior to October 14, 2204. In addition, Morgan Stanley requests that the Court grant an extension of the previously imposed Pretrial Deadlines. In support of this Motion, Morgan Stanley states as follows:

1. At the Case Management Conference on October 14, 2004, counsel for CPH argued to this Court that it was important to adopt a discovery cutoff date of November 1, 2004. (October 14, 2004 *Transcript of Proceedings* ("*Transcript*"), at 81, 4-5, attached hereto as Exhibit "A.") Counsel for CPH further argued that "the number of depositions that need to be taken have been exaggerated" and that due to the parties' substantial resources the parties "can and will accomplish" any necessary discovery in the time frame allocated by the Court *Id.* at 83.

2. During the course of the October 14, 2004 Case Management Conference, counsel for CPH proposed a discovery cutoff date of November 1, 2004; Morgan Stanley proposed December 16, 2004, which was based on the Court setting the trial date as February 22, 2005.

3. After the parties could not agree on a discovery cut-off date, the Court entered a discovery cut-off of November 24, 2004. The Court also entered a pre-trial schedule when the parties could not agree on dates for the schedule. Since then, the following events have transpired that justify the relief sought in this Motion:

New Discovery Served By CPH Since October 14, 2004

On October 14, 2004, counsel for CPH represented to the Court that all discovery could be completed by November 1, 2004. Just days after making this representation to the Court, CPH has served Morgan Stanley's with a barrage of last-minute discovery requests, summarized in a table below. Since the last case management conference CPH has served at least *seven* additional interrogatories, notices of deposition for corporate representative witnesses on at least *nine* topics, plus new requests for *four* very senior Morgan Stanley executives. In addition, CPH has issued a minimum of *five* additional requests for production and *eight* requests for admission, that have approximately ***2500*** subparts. Moreover, CPH, without consulting Morgan Stanley in advance, has issued numerous deposition notices to third-parties such as Skadden Arps, AHI, and Arthur Andersen.

Date	Discovery Served by CPH Since October 14, 2004
October 18, 2004	Second Set of Interrogatories to MSSF
October 20, 2004	Rule 1.310 Deposition Notice to MSSF
October 20, 2004	Rule 1.310 Deposition Notice to Morgan Stanley

October 21, 2004	Eighth Request for Production To Morgan Stanley
October 21, 2004	Seventh Set of Interrogatories to Morgan Stanley
October 21, 2004	Rule 1.310 Deposition Notice to Morgan Stanley
October 21, 2004	Subpoena To AHI for Documents
October 22, 2004	Subpoena to AHI for Deposition
October 22, 2004	Rule 1.310 Deposition Notice to Morgan Stanley
October 22, 2004	Rule 1.310 Deposition Notice to MSSF
October 22, 2004	Ninth Request for Production to Morgan Stanley
October 22, 2004	Subpoena to Arthur Andersen for Deposition
October 22, 2004	Sixth Set of Requests for Admission to Morgan Stanley
October 22, 2004	Eighth Set of Interrogatories to Morgan Stanley
October 26, 2004	Deposition Notice for Tarek Abdel-Meguid
October 26, 2004	Deposition Notice for Joseph Perrella
October 26, 2004	Deposition Notice for Robert Scott
October 26, 2004	Deposition Notice for Bruce Fidorek

The Establishment of a New Trial Date and CPH's Interference With Discovery

As counsel advised the Court on October 14, 2004, for there to be any possibility of completing discovery by November 24, 2004, the parties would have to cooperate in the scheduling depositions. As predicted, rather than cooperating, counsel for CPH has done the exact opposite. Taking advantage of this Court's vacation, counsel for CPH has refused to agree to deposition dates, issuance of commissions and conduct of depositions. The effect of this

interference has been that Morgan Stanley has been able to conduct only a single deposition between October 14, 2004 and November 1, 2004. These days are irretrievably lost.

CPH Interferes with Morgan Stanley Third Party Discovery

Morgan Stanley worked with counsel for American Household, Inc. ("AHI") to schedule a two-day deposition of AHI Chief Executive Officer Jerry W. Levin, also the former CEO of Coleman. After Morgan Stanley issued its Notice of Deposition, and subpoena CPH insisted for the first time that it also intended to depose Mr. Levin. CPH further demanded that it receive one-half of whatever time Mr. Levin made available for deposition. CPH's continued insistence eventually resulted in AHI filing a motion for a protective order, which was granted *ex parte* by Judge Crow. Morgan Stanley not only lost the critical days of discovery, but also the time that it has subsequently spent in negotiations to reschedule the deposition.

CPH has interfered with Morgan Stanley's efforts to depose other third-parties as well. For instance, on October 20, 2004 Morgan Stanley requested CPH to consent to Morgan Stanley's motions for commission for two third-party witnesses, Allison Amorison and Blaine Fogg, both attorneys at Skadden Arps. Again in this instance, Morgan Stanley had arranged deposition dates in July and August with the third-parties. CPH refused those dates as inconvenient and stated that it would arrange alternative dates. CPH never did so. When Morgan Stanley sought commissions for subpoenas, CPH again insisted that it be permitted one-half of whatever time the witnesses allotted for deposition and refused to consent to the commissions when Morgan Stanley refused CPH's request CPH. When requested, CPH refused to provide any other objection to issuance of the commissions.

CPH has done exactly the same in response to Morgan Stanley's motion for a commission for another third-party witness, Donald Uzzi. Morgan Stanley first requested a commission for Mr. Uzzi in January of 2004. CPH did not oppose that request for commission.

Throughout the summer and fall of 2004 Morgan Stanley has been attempting to complete service upon Mr. Uzzi in Texas. Morgan Stanley recently learned that Mr. Uzzi may have left Texas for Massachusetts. Morgan Stanley therefore seeks a commission in order to allow Morgan Stanley to serve Mr. Uzzi in Massachusetts. Unlike before, however, CPH has now indicated that it opposes Morgan Stanley's motion for commission until Morgan Stanley agrees to give CPH one-half of whatever time Mr. Uzzi is made available for deposition. CPH's dilatory motive is self-evident. CPH's tactics are preventing Morgan Stanley from achieving service. Morgan Stanley requests that CPH provide whatever contact information it may have for Mr. Uzzi and that the Court grant the motion for commission.

CPH Prevents the Depositions of its Corporate Officers

CPH has also thwarted Morgan Stanley's efforts to schedule the depositions of CPH's own witnesses. On September 30, 2004 — after Morgan Stanley's request for depositions of Mr. Perelman and Mr. Gittis had been pending for more than three months — Morgan Stanley issued deposition notices for these witnesses for September 25 and 26, and November 1 and 2, respectively, in Florida at counsel's office. CPH moved for protective orders. On October 28, 2004, CPH finally offered another deposition date (partial days) for Mr. Perelman, in New York and has not yet offered another deposition date for Mr. Gittis. Since both of these witnesses are principals of CPH, Morgan Stanley is entitled to conduct these depositions in Florida. To date, CPH has refused to provide dates for Mr. Perelman's deposition in Florida and has attempted to limit Morgan Stanley's deposition to one and a half days.

WHEREFORE, Morgan Stanley respectfully requests that this Court enter a Protective Order

(a) Limiting the scope of the discovery by CPH to matters that were noticed by CPH prior to October 14, 2004;

(b) Extends discovery until December 17, 2004 to account for the CPH's interference with discovery;

(c) Adjusts the pretrial dates to account for the interference with discovery; and

(d) Award such other and further relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 1st day of November, 2004.

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Morgan Stanley & Co. Incorporated

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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC..

Plaintiff,

CASE NO.: CA 03-5045 AI
JUDGE: ELIZABETH T. MAASS

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

CASE NO.: CA 03-5165 AI
JUDGE: ELIZABETH T. MAASS

vs.

MACANDREWS & FORBES HOLDINGS, INC.

Defendant.
_____/

NON-PARTY WACHOVIA BANK, N.A.'S
EMERGENCY MOTION FOR PROTECTIVE ORDER

Non-Party, WACHOVIA BANK, N.A., ("Wachovia"), moves on an emergency basis for entry of a protective order relative to the hearing scheduled on its Motion to Quash Subpoena or, in the Alternative, Motion for Protective Order (the "Motion"), currently scheduled for Friday, November 5, 2004 at 8:00 a.m., and in support states:

1. On or about July 12, 2004, Wachovia was served with a Subpoena Duces Tecum for Deposition (the "Subpoena") by Coleman (Parent) Holdings, Inc. ("CPH") and MacAndrews & Forbes Holdings, Inc. "(MFH").

2. On July 29, 2004, Wachovia served the Motion.

3. Several months after Wachovia filed the Motion, the undersigned was contacted by counsel for MFH and CHP, who sought to resolve the issues underlying the Motion for Protective Order.

4. Although MFH and CHP's counsel confirmed items 1 through 11 are moot and no longer relevant, the parties could not reach agreement on items 12 and 13. Thus, MFH and CHP noticed the hearing on the Motion. Counsel for MFH and CHP noticed the hearing in violation of the Palm Beach County Bar Association Standards of Professional Conduct by failing to contact Wachovia's counsel to determine if the date was mutually agreeable.

5. The undersigned is scheduled to be out of town on November 5, 2004 and thus, has contacted MFH and CHP's counsel to attempt to reschedule the matter. MFH and CHP's counsel has refused to reschedule the hearing.

6. Under the circumstances, the hearing on November 5, 2004 should be cancelled. Indeed, since Morgan Stanley has withdrawn its claims against MFH and CHP, there appears to be no basis for the Subpoena to Wachovia.

WHEREFORE, Wachovia respectfully requests entry of a protective order canceling and rescheduling the November 5, 2004 hearing on its Motion to Quash Subpoena or, in the Alternative, Motion for Protective Order to a mutually agreeable time, and such other and further relief as is just and proper.

Dated: November 1st, 2004.

RUDEN, McCLOSKY, SMITH,
SCHUSTER & RUSSELL, P.A.
222 Lakeview Avenue, Suite 800
West Palm Beach, Florida 33401
Telephone: 561-838-4537
Facsimile: 561-514-3437

By: _____
Jon L. Swergold
Fla. Bar No.: 108510

Attorneys for Wachovia Bank, N.A.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via ☑ U.S. Mail, ☐ Facsimile, ☐ Hand Delivery to all attorneys on the attached Service List on this 1st day of November, 2004.

_____
Attorney

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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

CASE NO.: CA 03-5045 AI
JUDGE: ELIZABETH T. MAASS

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

CASE NO.: CA 03-5165 AI
JUDGE: ELIZABETH T. MAASS

vs.

MACANDREWS & FORBES HOLDINGS, INC.

Defendant.
_____/

NOTICE OF HEARING
(Uniform Motion Calendar)

TO: All parties on the attached Certificate of Service

PLEASE TAKE NOTICE that the undersigned attorney has called up the following motion for hearing:

DATE: **Thursday, November 4, 2004**

TIME: **8:45 a.m.**

JUDGE: **Honorable Elizabeth T. Maass**

PLACE: **Main Palm Beach County Courthouse**
205 N. Dixie Highway, Room 11-A
West Palm Beach, FL 33401

COLEMAN (PARENT) HOLDINGS INC.
v. MORGAN STANLEY & CO., INC.
CASE NO.: CA 03-5045 AI /
MORGAN STANLEY SENIOR FUNDING,
INC. v. MACANDREWS & FORBES HOLDINGS,
CASE NO.: CA 03-5165 AI

MATTER TO BE HEARD: Non-Party, Wachovia Bank, N.A.'s Emergency Motion for Protective Order

Dated: November 1st, 2004.

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Telephone: 561-838-4537
Facsimile: 561-514-3437

By: _____
Jon L. Swergold
Fla. Bar No.: 108510

Attorneys for Wachovia Bank, N.A.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via ☑ U.S. Mail, ☑ Facsimile, ☐ Hand Delivery to all attorneys on the attached Service List on this 1st day of November, 2004.

_____
Attorney

In accordance with the American with Disabilities Act of 1990 (ADA), disabled persons who, because of their disabilities, need special accommodation to participate in this proceeding should contact ADA Coordinator at 205 North Dixie Highway, West Palm Beach, FL 33401, 561/355-4380 not later than five (5) business days prior to such proceeding via Florida Relay Service.

WPB:191146:1

COLEMAN (PARENT) HOLDINGS INC.
v. MORGAN STANLEY & CO., INC.
CASE NO.: CA 03-5045 AI /
MORGAN STANLEY SENIOR FUNDING,
INC. v. MACANDREWS & FORBES HOLDINGS,
CASE NO.: CA 03-5165 AI

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FAX COVER SHEET

		Phone Number	Fax Number
Date:	November 1, 2004		
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	Jerold Solovy/Michael Brody	(312) 222-9350	(312) 840-7711
	Thomas Clare	(202) 879-5993	(202) 879-5200
	Rebecca Beynon/Mark Hansen	(202) 326-7900	(202) 326-7999
From:	Joyce Dillard, CLA	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 48

Message:

Coleman v. Morgan Stanley & Co., Inc.

To follow please find a copy of Morgan Stanley's Motion for Protective Order Concerning Morgan Stanley's Coleman Escrow Notes.

☐ ***Original to follow Via Regular Mail*** ☐ ***Original will Not be Sent*** ☐ ***Original will follow via Overnight Courier***

****
The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (if long distance, please call collect) and return the original message to us at the above address via the U.S. Postal Service. Thank you.
****

IF THERE ARE ANY PROBLEMS OR COMPLICATIONS, PLEASE NOTIFY US IMMEDIATELY AT:
(561) 659-7070

TELECOPIER OPERATOR: _____

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16div-007950

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INC.,
Defendant.
_____/

MOTION FOR PROTECTIVE ORDER
CONCERNING MORGAN STANLEY'S COLEMAN ESCROW NOTES

Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") requests that this Court enter a protective order pursuant to Fla. R. Civ. P. 1.280(c) that excuses Morgan Stanley from responding to Coleman (Parent) Holdings Inc.'s ("CPH") Seventh Set of Interrogatories, Eighth Request for Production of Documents, and Notice of Taking Videotaped Deposition dated October 21, 2004. These requests, which were never the subject of the multiple hearings to set a trial date, seek discovery of Morgan Stanley's research concerning, and purchase or sale of Coleman Escrow Corporation Notes. This discovery is not relevant to the single case pending before this Court — CPH's claims that Morgan Stanley made false representations to CPH about Sunbeam. In support of this Motion, Morgan Stanley states as follows:

UNDISPUTED FACTS

1. This case arises out of the March 1998 acquisition transaction in which CPH sold its 82% interest in The Coleman Company, Inc. ("Coleman") to Sunbeam Corporation. Morgan Stanley served as financial advisor to Sunbeam for parts of the acquisition transaction and served as lead underwriter for a $750,000,000 debenture offering that Sunbeam used to finance the acquisition. Morgan Stanley Senior Funding, Inc. ("MSSF") and other lenders provided senior

secured financing to Sunbeam in connection with Sunbeam's acquisition of Coleman and two smaller companies.

2. CPH filed this action on May 8, 2003. CPH's complaint alleges claims against Morgan Stanley for fraudulent misrepresentation, negligent misrepresentation, aiding and abetting fraud, and conspiracy. (May 8, 2003 Compl., Counts I - IV.) [1] Specifically, CPH's claims are all based on representations allegedly made by Morgan Stanley during the course of "face-to-face discussions" that occurred over a period of four months, between December 1997 and March 1998. (*Id.* ¶ 39.)

3. MSSF filed a second action (Civil Action No. CA 03-5165 AI) on May 12, 2003. MSSF's complaint, which was in the nature of a counterclaim, alleged claims against CPH and its parent company MacAndrews & Forbes Holdings Inc. ("MAFCO") for fraudulent misrepresentation and negligent misrepresentation. In particular, MSSF alleged that CPH had misrepresented Coleman's financial condition and the "synergies" that could be accomplished through a transaction with Sunbeam.

4. The two actions were consolidated on February 20, 2004, and proceeded as such until October 22, 2004.

5. On October 22, 2004, MSSF filed a Notice of Voluntary Dismissal Without Prejudice dismissing its action against CPH and MAFCO. Morgan Stanley — the only defendant in the remaining action — is not asserting any claim for relief against CPH.

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[1] Based on this Court's Order determining that New York law applies to the fraud and negligent misrepresentation claims, the legal sufficiency of these counts to state a cause of action is extremely doubtful.

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6. Between Coleman and its ultimate corporate parent, Mafco Holdings Inc., were a number of corporate holding companies, each of which was owned 100 percent by the parent holding company:

- The Coleman Company, Inc.
- Coleman Worldwide Corporation (owned 82% of The Coleman Company, Inc.)
- Coleman Escrow Corporation, *renamed* CLN Holding Inc. (owned 100% of Coleman Worldwide Corporation)
- Coleman (Parent) Holdings Inc. (owned 100% of Coleman Worldwide Corporation)
- "MAFCO" (owned 100% of Coleman (Parent) Holding Company Inc.)
- Mafco Holdings Inc. (owned 100% of MAFCO)
- Ronald O. Perelman (owns 100% of Mafco Holdings Inc.)

7. In approximately May 1997, Coleman Escrow issued debt instruments — 1st and 2nd Priority Discount Notes ("Escrow Notes") — through various underwriters. The Escrow Notes had a maturity date of 2001.

8. On October 9, 1997 and January 26, 1998, Karen Eltrich, an associate at Morgan Stanley Dean Witter, published research reports addressing the Escrow Notes (Oct. 9, 1997 Global High Yield Investment Research, CPH 272 (Ex. 1); Jan. 26, 1998 High Yield Industry Review, CPH 275 (Ex. 2).) Because the Escrow Notes were secured with Coleman stock, the research reports looked closely at the historical and projected performance of Coleman, the industry in which Coleman operated, and comparable company transactions.

9. During her deposition on October 15, 2004, Ms. Eltrich testified that Morgan Stanley had made a market in the Escrow Notes and had also taken a long position in the Notes.

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She further testified that eventually the High Yield Group had made a profit on the Escrow Notes.

10. On October 21, 2004, before MSSF dismissed its lawsuit, CPH served three sets of discovery requests addressing the Escrow Notes. In particular, CPH sought:

a. All documents related to the two research reports Karen Eltrich authored concerning the Escrow Notes (*see* Oct. 21, 2004 CPH 8th Req. for Prod., Reqs. 3-4 (Ex. 3));

b. The reasons for Morgan Stanley's sale or purchase of Escrow Notes (*see* Oct. 21, 2004 CPH Notice of Video. Dep., Topic 2 (Ex. 4); Oct. 21, 2004 CPH 7th Set of Interrogs., Interog. 3 (Ex. 5));

c. Documents and information concerning any purchase or sale by Morgan Stanley of the Escrow Notes, and the associated prices, costs, gains or losses (*see* CPH 8th Req. for Prod., Reqs. 1-2; CPH Notice of Video. Dep., Topics 1 & 3; CPH 7th Set of Interrogs., Interrogs. 1 & 2).

11. CPH did not disclose this intended discovery at any of the hearings before the Court to schedule a trial date, the most recent of which was October 14, 2004. During these hearings, there was extended argument by counsel on the volume of remaining discovery and the time the parties would require to complete that discovery. CPH represented to the Court that all remaining discovery could be completed by November 1, 2004.

ARGUMENT

CPH's discovery is irrelevant and — with the discovery cutoff looming in just over three weeks — harassing. Ms. Eltrich's late 1997 and early 1998 research reports discuss extensively the financial history of Coleman and the return of Mr. Jerry W. Levin to Coleman to bring the company back to profitability. The reports provide detailed discussions of the "turnaround"

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alleged to be occurring at Coleman. Morgan Stanley's reasons for buying or selling the Escrow Notes may have related to Morgan Stanley's knowledge or expectation of Coleman's performance. While the MSSF action was pending, CPH could have argued that its discovery requests related either to Morgan Stanley's own knowledge of Coleman's finances or the probability of certain synergies in the Sunbeam/Coleman Transaction.

But that argument is gone. With the filing of its Notice of Voluntary Dismissal Without Prejudice, MSSF has dismissed all of its claims against CPH and MAFCO. The representations that CPH and MAFCO made to Sunbeam and MSSF concerning Coleman are no longer at issue. MSSF's ability to reasonably rely on CPH and MAFCO's representations and Morgan Stanley's or MSSF's knowledge concerning Coleman are no longer an issue.

CPH's requests are neither relevant, nor likely to lead to the discovery of admissible evidence. Fla. R. Civ. P. 1.280. The Morgan Stanley High Yield Group's research concerning, or purchase or sale of, Coleman Escrow Notes is not relevant to the representations that the Morgan Stanley Investment Banking Division made to CPH concerning Sunbeam.

CONCLUSION

CPH's action has been pending since May 2003 — nearly eighteen months. Over Morgan Stanley's objection, the Court ordered that fact discovery close November 24, 2004. This is not the time to explore new theories through a fishing expedition. Morgan Stanley respectfully requests that the Court issue a protective order that Morgan Stanley does not need to respond to CPH's Seventh Set of Interrogatories, Eighth Request for Production of Documents, and Notice of Taking Videotaped Deposition dated October 21, 2004.

006 CARLTON FIELDS-WPB 01/11 2004 16:53 FAX 15616508022 16div-007955

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 1st day of November, 2004.

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16div-007957

EXHIBIT "1"

16div-007958

EXHIBIT "3"

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

CASE NO. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC. and
COLEMAN (PARENT) HOLDINGS INC.,
Defendants.

CASE NO. CA 03-5165 AI

**COLEMAN (PARENT) HOLDINGS INC.'S
EIGHTH REQUEST FOR PRODUCTION OF DOCUMENTS
TO MORGAN STANLEY & CO., INC.**

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys Searcy Denney Scarola Barnhart & Shipley P.A. and Jenner & Block LLP, hereby serves its Eighth Request for Production of Documents upon Morgan Stanley & Co., Inc. ("MS&Co."), and requests responses and the production of documents at the office of Searcy Denney Scarola Barnhart & Shipley P.A., 2139 Palm Beach Lakes Blvd., West Palm Beach, Florida, within fourteen (14) days from the date of service pursuant to the Court's October 14, 2004 Order.

DEFINITIONS AND INSTRUCTIONS

CPH incorporates by reference its Definitions and Instructions set forth in CPH's First Request for Production of Documents, served on MS&Co. on May 9, 2003. In addition, the following definitions apply:

1. "MS&Co." means Morgan Stanley & Co., Inc. or any of its affiliates, subsidiaries, divisions, predecessors, and successors.

2. "Coleman Escrow Notes" means the Coleman Escrow Corp. Senior Secured First and Second Priority Discount Notes due 2001 that are described in CPH 0473148-CPH 0473165 and Morgan Stanley Confidential 0001575-0001579.

3. "Security" has the same meaning as provided in 15 U.S.C. 77b(a)(1).

DOCUMENTS REQUESTED

1. For the time period January 1, 1996 to the present, all documents referring or relating to MS&Co.'s purchase or sale of Coleman Escrow Notes and any other Security, or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc.

2. For the time period January 1, 1996 to the present, documents sufficient to show MS&Co.'s purchase price, other costs in connection with the purchase, sales price, other costs in connection with the sale, gains, losses, and amount or rate of return on each purchase or sale of Coleman Escrow Notes and any other Security, or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc.

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3. All documents referring or relating to the October 9, 1997 "Global High Yield Investment Research" report on The Coleman Company, Inc. and the Coleman Escrow Notes, including all documents used in creating that report.

4. All documents referring or relating to the January 26, 1998 "High Yield Industry Review" report on The Coleman Company, Inc. and the Coleman Escrow Notes, including all documents used in creating that report.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to all counsel on the attached Service List, this 21st day of October, 2004.

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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16div-007962

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16div-007963

EXHIBIT "4"

CARLTON FIELDS-WPB
JUL 11 2004 17:01 FAX 15616508022
039

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,
vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,
vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITION

To: Thomas A. Clare, Esq.
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Washington, D.C. 20005

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PLEASE TAKE NOTICE that Coleman (Parent) Holdings, Inc. will take the deposition upon oral examination of the following parties and witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co., Inc. on topics identified on Exhibit A.	November 5, 2004, at 9:30 a.m.

The deposition will be conducted at Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017. The deposition will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until completed.

Please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to all counsel on the attached Service List this 21st day of October 2004.

Dated: October 21, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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16div-007967

Exhibit A

CORPORATE DEPOSITION TOPICS

1. For the time period January 1, 1996 to the present, any purchase or sale by MS&Co. (or any of its affiliates, subsidiaries, divisions, predecessors, and successors) of Coleman Escrow Corp. Senior Secured First and Second Priority Discount Notes due 2001, which are described in CPH 0473148-CPH 0473165 and Morgan Stanley Confidential 0001575-0001579, and any other Security (as defined in 15 U.S.C. 77b(a)(1)), or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc.

2. For the time period January 1, 1996 to the present, all reasons why MS&Co. (or any of its affiliates, subsidiaries, divisions, predecessors, and successors) purchased or sold the Coleman Escrow Notes described in Topic No. 1, and any other Security (as defined in 15 U.S.C. 77b(a)(1)), or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc., and the identity of the person(s) and/or committee(s) that made the decision to purchase or sell the Coleman Escrow Notes and the Securities.

3. For the time period January 1, 1996 to the present, MS&Co.'s (or any of its affiliates', subsidiaries', divisions', predecessors', and successors') purchase price, other costs in connection with the purchase, sales price, other costs in connection with the sale, gains, losses, and amount or rate of return on any purchase or sale of Coleman Escrow Corp. Notes described in Topic No. 1, and any other Security (as defined in 15 U.S.C. 77b(a)(1)), or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc.

16div-007968

EXHIBIT "5"

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

CASE NO. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.

CASE NO. CA 03-5165 AI

COLEMAN (PARENT) HOLDINGS INC.'S SEVENTH SET OF INTERROGATORIES TO MORGAN STANLEY & CO., INC.

Pursuant to Florida Rules of Civil Procedure 1.280 and 1.340 and the Court's October 14, 2004 Order, Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, hereby requests that Morgan Stanley & Co., Inc. answer the following Interrogatories within fourteen (14) days from the date of service.

DEFINITION

1. "MS&Co." means Morgan Stanley & Co., Inc. or any of its affiliates, subsidiaries, divisions, predecessors, and successors.

2. "Coleman Escrow Notes" means the Coleman Escrow Corp. Senior Secured First and Second Priority Discount Notes due 2001 that are described in CPH 0473148-CPH 0473165 and Morgan Stanley Confidential 0001575-0001579.

3. "Security" has the same meaning as provided in 15 U.S.C. 77b(a)(1).

INSTRUCTIONS

1. MS&Co.'s obligation to undertake a reasonable investigation in responding these interrogatories includes making inquiry of its current personnel and any former personnel to the extent that those former personnel are under Morgan Stanley's control or being represented or advised by Morgan Stanley's counsel in this litigation.

2. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of each Interrogatory all responses that might otherwise be construed to be outside the scope.

3. The use of the singular form of any word includes the plural and vice versa.

INTERROGATORIES

INTERROGATORY NO. 1: For the time period January 1, 1996 to the present, identify each purchase or sale by MS&Co. of Coleman Escrow Notes and any other Security, or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc., and for each purchase or sale identify the MS&Co. entity, fund, or affiliate that made the purchase or sale.

RESPONSE:

INTERROGATORY NO. 2: For each purchase or sale identified in response to Interrogatory No. 1, state the purchase price, other costs in connection with the purchase, sales price, other revenue in connection with the sale, gains, losses, and the amount or rate of return on each such purchase or sale.

RESPONSE:

INTERROGATORY NO. 3: For each purchase or sale identified in response to Interrogatory No. 1, identify all reasons why MS&Co. purchased or sold the Security and the person(s) and/or committee(s) that made the decision to purchase or sell the Security.

RESPONSE:

Dated: October 21, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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Ronald L. Marmer
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One IBM Plaza
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(561) 686-6300

Counsel for Plaintiff Coleman (Parent) Holdings Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to counsel listed below on this 21st day of October, 2004:

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By: _____
Michael T. Brody

Medivation-007973

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff, Case No. CA 03-5045 AI

vs.
MORGAN STANLEY & CO., INC.,
Defendant,
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff, Case No. CA 03-5165 AI

vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant,
_____/

ORDER ACKNOWLEDGING STIPULATION

THIS MATTER was before the Court upon the attached stipulation of the parties which stipulation is hereby acknowledged and recorded.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this _____ day of _____, 2004.

SIGNED & DATED
NOV 02 2004
JUDGE ELIZABETH T. MAASS

_____
ELIZABETH T. MAASS
CIRCUIT COURT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

COUNSEL LIST

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.
MORGAN STANLEY & CO., INC.,
Defendant.
/

CASE NO. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,
vs.
MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
/

CASE NO. CA 03-5165 AI

STIPULATION CONCERNING DAVIS POLK & WARDWELL TIME RECORD

Subject to its objection on relevance grounds, Morgan Stanley & Co. stipulates to the admission in evidence of the Davis Polk & Wardwell time entry record attached hereto as Exhibit A. Morgan Stanley & Co. hereby waives any other objections to the admission of Exhibit A in evidence, including but not limited to objections to authenticity, hearsay, and foundation.

The parties hereto further stipulate that Exhibit A is not subject to Morgan Stanley's attorney-client privilege and that Morgan Stanley is not waiving any of its privileges by stipulating to the production of Exhibit A.

The parties hereto further stipulate that Exhibit A will be treated as confidential under the terms of the Court's protective order.

MORGAN STANLEY & CO.

By: Thomas A. Clare

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COLEMAN (PARENT) HOLDINGS INC.

By: _____

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(312) 222-9350

Dated: October 27, 2004

#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC., Case No. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

MORGAN STANLEY SENIOR FUNDING, INC., Case No. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

_____/

ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO ALLOW CPH IN EXCESS OF 30 INTERROGATORIES

THIS CAUSE having come to be considered upon the Coleman (Parent) Holdings Inc.'s Motion to Allow CPH in Excess of 30 Interrogatories, and the Court having reviewed the file and being fully advised in the premises, it is hereby,

ORDERED and ADJUDGED: The Motion is Granted. Plaintiff's 6th & 7th sets of Interrogatories are hereby deemed properly served. Defendant shall serve any objections thereto within 10 days. Answers shall be served by the later of 14 days from the date hereof or the date for response established by the Fla. R.C.N.P.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this 2nd day of Nov., 2004.

ELIZABETH T. MAASS
CIRCUIT COURT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

16div-007977

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

ORDER ON NON-PARTY SUNBEAM'S MOTION FOR PROTECTIVE ORDER AND DEFENDANT MORGAN STANLEY'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS

THIS CAUSE came before the Court, in Chambers, on Non-Party Sunbeam's filing pursuant to the Court's October 14, 2004 Order on Non-Party Sunbeam's Motion for Protective Order and Morgan Stanley's Motion to Compel Production of Documents. Based on a review of Non-Party Sunbeam's filing and the proceedings before the Court October 14, 2004, it is

ORDERED AND ADJUDGED that Non-Party Sunbeam's Motion for Protective Order is Granted. The Court has resealed the filing and placed it in the Court file. The sealed envelope shall not be unsealed or removed from the Court file without

further order of this or an appellate court. It is further

ORDERED AND ADJUDGED that Morgan Stanley's Motion to Compel Production of Documents is Denied.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 1 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

AGREED ORDER GRANTING MORGAN STANLEY'S
MOTION FOR LEAVE TO AMEND PLEADINGS DATED SEPTEMBER 21, 2004

THIS CAUSE having come before the Court on November 3, 2004 upon Morgan Stanley's Motion for Leave to Amend Pleadings dated September 21, 2004, and the Court having been advised of the agreement between the parties, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that:

1. Morgan Stanley's Motion for Leave to Amend Pleadings dated September 21, 2004 is GRANTED.

2. Morgan Stanley's Amended Answer and Amended Affirmative Defenses, attached to its Motion for Leave to Amend Pleadings dated September 21, 2004, is hereby deemed filed as of the date of this Order.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this ____ day of November, 2004.

SIGNED & DATED
NOV 03 2004
JUDGE ELIZABETH T. MAASS

_____
ELIZABETH T. MAASS
Circuit Court Judge

WPB#585997.2

16div-007981

Copies furnished to:

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TELECOMMUNICATION TRANSMITTAL

DATE:	November 3, 2004		
TO:	**Thomas A. Clare, Esq.** KIRKLAND & ELLIS, LLP	**VOICE:** **FAX:**	(202) 879-5993 (202) 879-5200
	Joseph Ianno, Jr., Esq. CARLTON FIELDS, P.A.	**VOICE:** **FAX:**	(561) 659-7070 (561) 659-7368
	Mark C. Hansen Esq. KELLOGG, HUBER, HANSEN, TODD & EVANS, P .L.L.C.	**VOICE:** **FAX:**	(202) 326-7900 (202) 326-7999
FROM:	Deirdre E. Connell	**SECY. EXT.:**	6486
EMP. NO.:	035666	**CLIENT NO.:**	41198-10003

IMPORTANT: THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS ATTORNEY WORK PRODUCT, PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA POSTAL SERVICE. THANK YOU.

MESSAGE: **Please see attached.**

Total number of pages including this cover sheet: 4

DATE SENT: 11/3/04 TIME SENT: 3:30pm SENT BY: S. EDDINGTON

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL (312) 222-9350, EXT: 6486
OR (312) 222-9350, EXT. 6120, 6121

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,
vs.

MORGAN STANLEY & CO., INC.,
Defendant.

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,
vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITION

To:

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Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings, Inc. ("CPH") will take the deposition upon oral examination of the following party pursuant to Florida Rule of Civil Procedure 1.310 on the date set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co., Inc. on the topic identified on Exhibit A.	November 12, 2004, at 9:30 a.m.

The deposition will be conducted at Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017. The deposition will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until completed.

Please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to all counsel on the attached Service List this 3rd day of November 2004.

Dated: November 3, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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(312) 222-9350

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Exhibit A

CORPORATE DEPOSITION TOPIC

1. All transactions involving Subordinated Debentures (as defined in the Definitions and Instructions set forth in CPH's First Request for Production of Documents served on May 9, 2003), including but not limited to: (i) all transactions in which Morgan Stanley bought or sold any Subordinated Debentures or any interest therein; (ii) all communications with any Morgan Stanley customer or counter-party to any trade involving Morgan Stanley as a broker or principal relating to the Subordinated Debentures; (iii) any market for the Subordinated Debentures; and (iv) the purchase price, other costs in connection with the purchase, sales price, other costs in connection with the sale, gains, losses, and amount or rate of return on any purchase or sale of Subordinated Debentures or any interest therein.

2. Morgan Stanley's gains, losses, and amount or rate of return in connection with the purchase or sale of Subordinated Debentures or any interest therein.

3. The documents produced by Morgan Stanley at Morgan Stanley Confidential 0096879 to 0096972 and Morgan Stanley Confidential 0102880 to 0103433, including but not limited to: (1) the authenticity, source, creation, use, maintenance and business purpose of the documents; and (2) the explanation of the documents and the information contained therein.

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLO IDA

COL EMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,

vs.

MOF GAN STANLEY & CO., INC.,
Defendant.
_____/

MOF GAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,

vs.

MAC ANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE IN OPPOSITION TO MORGAN STANLEY'S MOTION FOR LEAVE TO AMEND PLEADINGS

Morgan Stanley's motion for leave to amend pleadings should be denied because it is the product of two material misstatements: (1) Morgan Stanley's representation that its new counsel from Kellogg Huber could not finalize the Seventh Affirmative Defense until it had been granted leave to appear *pro hac vice* and had obtained access to confidential documents; and (2) Morgan Stanley's assertion that it could not have filed its motion for leave to amend sooner because a conflict supposedly precluded Kirkland & Ellis and Carlton Fields from filing any pleadings taking positions adverse to Arthur Andersen.

1. **Morgan Stanley Misrepresented That Kellogg Huber Could Not Finalize The Seventh Affirmative Defense Until It Had Been Granted Leave To Appear *Pro Hac Vice* And Reviewed Confidential Documents.**

Morgan Stanley directly represented to this Court that it could not finalize its Seventh Affirmative Defense until attorneys from Kellogg Huber had been granted leave to appear *pro hac vice* and had received and reviewed confidential documents. Morgan Stanley's counsel so

represented at the October 7, 2004 hearing during which Morgan Stanley was seeking an extension of time to file its Seventh Affirmative Defense. At the hearing, CPH's counsel asserted that there was no reason why the text of the Seventh Affirmative Defense could not be provided to CPH immediately, even though the Kellogg Huber attorneys' *pro hac vice* application had not been resolved. Morgan Stanley's counsel responded by representing that the Seventh Affirmative Defense had not been finalized and could not be finalized until Kellogg Huber attorneys had been granted leave to appear and had reviewed confidential documents (Ex. A, 10/7/04 Tr. 11-14):

> MR. IANNO: . . . This last affirmative defense deals with issues that neither Carlton, Fields nor Kirkland & Ellis can deal with. It requires the assistance of counsel from Kellogg Huber. Until they are admitted, it can't be filed. It can't even be finally prepared. Mr. Scarola and I have discussed this, and the objection was —
>
> THE COURT: Well, can't be finally prepared?
>
> MR. IANNO: No.
>
> THE COURT: Why not?
>
> . . .
>
> MR. IANNO: They can't review the documents, Your Honor, because Mr. Scarola has taken the position, the plaintiffs have taken the position that they aren't even allowed to see the confidential documents. That's the problem. They can't — they started to prepare for this case. They can't appear in court, and theoretically under the plaintiff's position they can't even look at confidential documents.
>
> . . .
>
> That's the problem, Judge. The last statement Mr. Scarola made. I can't give them a copy of the affirmative defense. I can tell them what it is. I told The Court, it deals with Arthur Andersen.
>
> . . .
>
> But I can't give them a copy of it because we can't finally prepare it because Kellogg Huber can't get access to all the confidential documents. If they want to say Kellogg Huber can look at any document they want, they could prepare this

affirmative defense but not file it, and they won't claim that that's any violation of a court order and object to the *pro hac vice* admission.

These representations by Morgan Stanley's counsel turned out to be untrue. This Court signed the Order granting Kellogg Huber attorneys leave to appear *pro hac vice* on October 14, and at 4:30 p.m. the next day, CPH was allowed to send a runner to Court to pick up a copy of the Order. That was the earliest the Order was available to CPH, and presumably, that also was the earliest the Order was available to Morgan Stanley. And yet, despite counsel for Morgan Stanley's insistence that Kellogg Huber attorneys could not finalize the Seventh Affirmative Defense until they could obtain and review confidential documents, attorneys from Kellogg Huber served the Seventh Affirmative Defense along with a motion for leave to file it the very same day. *See* Ex. B (facsimile cover sheet reflecting that Kellogg Huber sent the Seventh Affirmative Defense along with the motion for leave to file it to Mr. Scarola's office at 5:13 p.m. on October 15, the same afternoon the *pro hac vice* Order became available).

Given the fact that the Kellogg Huber attorneys served the Seventh Affirmative Defense almost immediately after learning of the Court's *pro hac vice* Order, obviously, the Kellogg Huber attorneys did not need to receive and review any confidential documents before finalizing that affirmative defense. It likely was sitting in a drawer waiting to be served and filed once this Court ruled. Thus, contrary to the representations of Morgan Stanley's counsel on October 7, Morgan Stanley could in fact have provided CPH with a copy of the Seventh Affirmative Defense long before Kellogg Huber was granted leave to appear *pro hac vice* in this case.

2. Morgan Stanley's Contention That A Conflict Precluded Morgan Stanley's Attorneys From Filing The Seventh Affirmative Defense Until Kellogg Huber Appeared In The Case Is Pretextual.

Another material misstatement often repeated by Morgan Stanley — one that is referenced in the instant motion in the statement that the Seventh Affirmative Defense "could not be filed until this Court ruled upon certain *pro hac vice* motions" (Motion ¶ 2) -- is that the Seventh Affirmative Defense could not have been filed sooner because Morgan Stanley's attorneys at Kirkland & Ellis and Carlton Fields had a conflict precluding them from taking positions adverse to Andersen. This contention is wholly pretextual.

First, Morgan Stanley did not need Kellogg Huber attorneys admitted *pro hac vice* to address Andersen-related issues, because its Carlton Fields attorneys had no conflict precluding them from doing so. They admitted as much in prior proceedings before this Court. At a July 23 hearing, for example, Mr. Ianno argued that portions of pleadings that referenced the Andersen settlement agreement should be made public and stressed that he could make that argument because he had no conflict precluding him from doing so (Ex. C, 7/23/04 Tr. 19-20, emphasis added)

> I think that Coleman is selectively using this confidentiality order to protect interests they feel is in their best interest against Morgan Stanley. And I don't represent Arthur Andersen, so I can be here arguing with total bona fides, as Mr. Scarola points out, that none of this should remain confidential, that what Mr. Scarola is doing is trying to gain an unfair advantage for Coleman in this case by designating certain portions as confidential and protecting other portions that are in their best interest. And I think that's what The Court should encompass.

Mr. Ianno changed direction in a subsequent hearing, claiming that he could not sign the Seventh Affirmative Defense. See Ex. D, 9/15/04 Tr. 13-14. But Morgan Stanley never has explained why, all of a sudden, Mr. Ianno and the other attorneys from Carlton Fields found themselves unable to perform Andersen-related functions.

Second, the similar concern articulated by Morgan Stanley's counsel over and over about

Kirkland & Ellis attorneys not being able to take positions adverse to Andersen is baseless, because Kirkland & Ellis attorneys have taken positions adverse to Andersen on numerous occasions. In six separate depositions taken in this case, Kirkland & Ellis attorneys already have cross-examined Arthur Andersen witnesses adversely: Vance Kistler on October 29, 2003; Donald Denkhaus on November 6, 2003; Lawrence Bornstein on January 15, 2004, Mark Brockelman on January 6, 2004; Dennis Pastrana on January 12, 2004; and William Pruitt on January 13, 2004. Those cross-examinations obviously were adverse to Andersen's interests. Indeed Morgan Stanley named two of the Andersen witnesses that Kirkland & Ellis has cross-examined — Donald Denkhaus and William Pruitt — as defendants in the New Morgan Stanley Litigation filed on March 1, 2004.[1]

Third, Morgan Stanley's contention that its attorneys at Kirkland & Ellis and Carlton Fields could not sign a pleading taking positions adverse to Andersen also is pretextual because those very same attorneys have been taking such positions from the beginning of this case, as Morgan Stanley's June 23, 2003 answer amply demonstrates. *See* Ex. G, MS&Co. Answer to CPH's Complaint, ¶ 32 ("MS&Co. further admits that it assembled marketing materials based on financial documentation and audited financial statements provided to MS&Co. by Sunbeam and Arthur Andersen"); *id.* ¶ 43 (MS&Co's "fairness opinion" regarding the acquisition price of Coleman "was based on financial information provided to MS&Co. by Sunbeam, Coleman, and Arthur Andersen, and on synergy analyses which MS&Co. received from CPH"); *id.* ¶ 54

[1] Mr. Bemis previously has attempted to distinguish between cross-examining current clients during discovery and cross-examining them during trial (Ex. E, 4/30/04 Tr. 107-09), but as a matter of legal ethics, there is no difference. That is confirmed by the very ABA Formal Opinion that Mr. Bemis apparently has referred to from time to time (*see, e.g.*, *id.* at 62:14-64:12) which provides that "[a] lawyer who in the course of representing a client examines another client as an adverse witness in a matter unrelated to the lawyer's representation of the other client, or conducts third party discovery of the client in such a matter, will likely face a conflict that is disqualifying in the absence of appropriate client consent. Any such disqualification also will be imputed to other lawyers in the lawyer's firm." *See* Ex. F, ABA Formal Opinion 92-367 (emphasis added).

("MS&Co. denies that Strong or any other MS&Co. employee was accurately apprised of Sunbeam's financial condition because MS&Co. at all times relied on information provided by Sunbeam management and Arthur Andersen, including Sunbeam's audited financial statements"); *id.* ¶ 55 ("any information communicated by MS&Co. is based on financial data and information provided to it by Sunbeam and Arthur Andersen"); *id.* ¶ 91 ("MS&Co. denies that it performed an independent financial analysis of Sunbeam; to the contrary, MS&Co. informed CPH that it was relying solely on financial data and information provided to it by Sunbeam and Arthur Andersen"); *id.* ¶ 94 ("MS&Co. informed CPH that it was relying solely on financial data and information provided to it by Sunbeam and Arthur Andersen").

Morgan Stanley's attorneys at Kirkland & Ellis and Carlton Fields also have taken positions directly adverse to Arthur Andersen in other pleadings. For example, in the opposition to CPH's rule to show cause motion that was signed by Morgan Stanley's present attorneys, Morgan Stanley asserted that Morgan Stanley "lost hundreds of millions of dollars" as a result of Andersen's wrongdoing. *See* Ex. H at 10).

Finally, the pretextual nature of Morgan Stanley's stated concerns about its Kirkland & Ellis and Carlton Fields attorneys taking positions adverse to Andersen was confirmed yet again at the hearing before this Court on August 27, 2004, during which this Court entertained argument on whether the Andersen settlement agreement should be kept confidential. Months before that hearing, Arthur Andersen's attorneys wrote to Kirkland & Ellis objecting to its attempts on behalf of Morgan Stanley to remove the confidential designation from the Andersen settlement agreement and stating that "[i]t goes without saying that any action to remove the Confidential Designation would be adverse to Andersen's interests and we formally advise you of this fact." *See* Ex. I, Letter from E. Lauer to T. Clare. At the August 27 hearing, Andersen's Florida counsel (Steven L. Schwarzberg) appeared before this Court and argued that the

settlement agreement should be kept confidential. Nonetheless, despite Andersen's stated position at the hearing and Andersen's clear admonition to Kirkland & Ellis in its earlier letter, Mr. Bennis successfully argued that the settlement agreement should not be kept confidential. *See* Ex. J, 8/27/04 Tr. 65-74.

Thus, because Morgan Stanley's attorneys at Kirkland & Ellis and Carlton Fields repeatedly have taken positions adverse to Arthur Andersen in this litigation, the assertion that Kellogg Huber attorneys needed to be admitted *pro hac vice* before Morgan Stanley could file its Seventh Affirmative Defense implicating Andersen is simply not correct.

Conclusion

This Court enjoys "wide discretion" in determining whether to allow amendments to pleadings. *See* Fla. R. Civ. P. 1.190, Author's Comment ("In spite of the fact that the policy is liberal to grant amendments freely when justice so requires, the courts have consistently recognized that the trial judge has wide discretion on procedural matters including requests to amend pleadings"). Here, as shown above, it is clear that the circumstances surrounding the preparation of the Seventh Affirmative Defense and the delay in filing it and providing a copy to CPH have been misrepresented to this Court. Denying Morgan Stanley leave to add its Seventh Affirmative Defense therefore would be a sound exercise of this Court's discretion.

Dated: November 3, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 3rd day of NOV., 2004.

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE IN OPPOSITION TO MORGAN STANLEY'S MOTION FOR PROTECTIVE ORDER CONCERNING DISCOVERY SERVED BY CPH AFTER OCTOBER 14, 2004 AND TO EXTEND PRETRIAL DEADLINES

Morgan Stanley has sought to bar any discovery served by CPH (but, unsurprisingly, not by Morgan Stanley) after October 14, 2004, and to extend the discovery cutoff to December 17, 2004 — which is the identical deadline that Morgan Stanley advocated and this Court rejected at the October 14 case management conference. The grounds for Morgan Stanley's motion fall into two basic categories: (1) Morgan Stanley contends that following the case management conference on October 14, CPH served a wave of new discovery, discovery that Morgan Stanley (which now is represented by three law firms) apparently believes it would be unfair to have to answer; and (2) Morgan Stanley contends that, at the same time, CPH began a campaign of

refusing to agree to deposition dates, the issuance of commissions, and the procedures for conducting depositions. The grounds for Morgan Stanley's motion are baseless. [1]

Last-minute discovery of the type complained of by Morgan Stanley is both proper and common. Moreover, in this case, the primary causes for CPH's recent discovery efforts and the other conduct addressed in Morgan Stanley's motion are decisions made by Morgan Stanley itself: (1) MSSF has voluntarily dismissed its lawsuit, requiring us to re-serve discovery in this case; (2) Morgan Stanley has refused so far to stipulate to the authenticity of documents, requiring us to take additional discovery on this issue; and (3) Morgan Stanley has refused to share time equitably in the conduct of third party depositions, compelling us to object to those depositions, although this Court recently resolved this dispute by establishing a protocol to ensure that both sides have sufficient time to examine witnesses. Because the recent discovery and other conduct of CPH not only is proper, but the product of Morgan Stanley's own litigation decisions, Morgan Stanley's motion should be denied.

1. The So-Called "New" Discovery Served By CPH Is Both Authorized And Legitimate.

Morgan Stanley accuses CPH of acting unfairly by serving new discovery after October 14 even though fact discovery does not close until November 24. Morgan Stanley's argument is without merit.

First, the discovery that CPH has served is timely and in full compliance with the Florida Rules of Civil Procedure. Morgan Stanley does not suggest otherwise.

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[1] Morgan Stanley filed, but did not schedule, its motion for a hearing. In the meantime, Morgan Stanley has advised CPH that depositions noticed for next week will not go forward pending the resolution of this motion. Morgan Stanley has made a practice of filing protective order motions to avoid discovery — without scheduling the motions to be resolved by this Court. *See e.g.*, Morgan Stanley's 10/19/04 Motion for Protective Order; Morgan Stanley's 10/22/04 Motion for Protective Order Concerning the CPH Deposition Notice of 10/18/04; Morgan Stanley's 10/22/04 Motion for Protective Order Concerning the MAFCO Deposition Notice of 10/18/04; Morgan Stanley's 11/1/04 Motion for Protective Order Concerning Morgan Stanley's Coleman Escrow Notes.

Second, CPH's recent discovery is in accordance with the Orders of this Court. This Court's October 14, 2004 Order establishing the pretrial schedule expressly contemplates that the parties will continue to serve additional discovery. In the Order, the Court shortened the time for the parties to serve objections to discovery to 14 days. Indeed, the service of discovery near the discovery deadline is common and often necessary in litigation of this sort, as this Court's Order recognizes.

Third, each of the specific discovery requests complained of in Morgan Stanley's motion is proper, as the following chart confirms:

DATE SERVED	DESCRIPTION
October 18, 2004	*Second Set of Interrogatories to MSSF* These interrogatories seek information regarding the money disbursed and received by MSSF on its loan. With the dismissal of MSSF's case, Morgan Stanley has advised us that it does not intend to respond. If Morgan Stanley agrees to stipulate that it will not attempt at trial to raise the purported fact that MSSF lost money on the loan or to disclose the amount of the alleged loss, the interrogatories may not need to be answered.
October 20, 2004	*Rule 1.310 Deposition Notice to Morgan Stanley* *Rule 1.310 Deposition Notice to MSSF* These identical notices request a corporate representative of Morgan Stanley and MSSF to testify about the money disbursed and received by MSSF on the loan to Sunbeam. If Morgan Stanley agrees to stipulate that it will not attempt at trial to raise the purported fact that MSSF lost money on the loan or to disclose the amount of the alleged loss, the deposition may not need to go forward.

October 21, 2004	*Eighth Requests for Production to Morgan Stanley* *Seventh Set of Interrogatories to Morgan Stanley* *Rule 1.310 Deposition Notice to Morgan Stanley* These requests ask Morgan Stanley to provide information concerning Morgan Stanley's investment in securities issued by an affiliate of Coleman. Morgan Stanley has separately moved for a protective order as to these requests.
October 21, 2004	*Subpoena to AHI for Documents* Several months ago, we sought documents from AHI pursuant to an informal letter request. Morgan Stanley did the same. With the discovery cutoff fast approaching, we decided to serve a subpoena — which seeks exactly the same documents we had previously requested by letter — so that there would be no dispute as to the form of our request. The subpoena poses no significant burden on Morgan Stanley because the subpoena is directed to a third party.
October 22, 2004	*Subpoena to AHI for Deposition* This request seeks testimony from AHI as to the foundation of various documents. We hope to resolve this matter by stipulation. But even if we do not, there is no significant burden on Morgan Stanley, because this discovery is directed to a third party and concerns routine matters of foundation.
October 22, 2004	*Rule 1.310 Deposition Notice to Morgan Stanley* This request seeks testimony from Morgan Stanley to establish the foundation of various documents. Morgan Stanley has served a similar deposition notice on CPH. We hope to resolve this issue by stipulation. But even if we do not, there is no significant burden on Morgan Stanley because this deposition concerns routine matters of foundation.
October 22, 2004	*Rule 1.310 Deposition Notice to MSSF* On October 22, we served a notice of deposition, which requests no new information; it only changes the location of the depositions of witnesses (Messrs. Rankin and Petrick) we requested long ago. Morgan Stanley since has confirmed dates for the witnesses we have requested.

October 22, 2004	*Ninth Request for Production to Morgan Stanley* *Eight Set of Interrogatories to Morgan Stanley* These requests seek no new information. When MSSF suddenly dismissed its case after the last case management conference, we served these discovery requests, asking Morgan Stanley to provide the responses called for by our prior requests upon MSSF.
October 22, 2004	*Subpoena to Arthur Andersen for Deposition* This request seeks testimony to support the foundation of various Andersen documents. We hope to resolve this matter by stipulation. But even if we do not, there is no significant burden on Morgan Stanley, because this discovery is directed to a third party and concerns routine matters of foundation.
October 22, 2004	*Sixth Set of Requests for Admission to Morgan Stanley* These requests seek admissions as to the foundation of various documents. Morgan Stanley has served similar requests upon CPH. We hope to resolve this matter by stipulation.
October 26, 2004	*Deposition Notices for Tarek Abdel-Meguid, Joseph Perrella, Robert Scott, Bruce Fidorek* These four individuals provided various personnel evaluations that we intend to present at trial. Morgan Stanley has objected to the introduction of the written evaluations as hearsay.

Fourth, in accusing CPH of improperly serving discovery after October 14, Morgan Stanley avoids mentioning that it served a considerable amount of discovery after that date. For example, on October 26, Morgan Stanley served a notice for a two-day deposition of Phillip Harlow, a third party witness. And, the day before, on October 25, Morgan Stanley served a new set of document requests, a new set of interrogatories, and new deposition notice with five topics, and a new set of requests for admission. Many of these discovery requests are onerous. One of the interrogatories asks us to explain the denials made in three separate sets of responses to requests for admission. And the new requests for admission that Morgan Stanley served seek

admissions concerning literally thousands of pages of documents. Thus, Morgan Stanley's complaint that we filed too much discovery too late is disingenuous, to say the least.

In sum, Morgan Stanley's challenge to the discovery served by CPH after October 14 is baseless because: (1) that discovery is authorized by the Florida Rules of Civil Procedure; (2) the discovery is permitted by the Orders of this Court and is common in this type of litigation; (3) the discovery is proper in every respect; and (4) Morgan Stanley itself has served an abundance of discovery requests since October 14.

2. CPH Has Cooperated Reasonably To Schedule The Six Depositions Addressed In Morgan Stanley's Motion.

Morgan Stanley's other argument for the relief it seeks (at 3-4) is that, following the last case management conference, counsel for CPH supposedly threw all of the previously agreed protocols out the window and began "refus[ing] to agree to deposition dates, issuance of commissions and conduct of depositions" — with the effect being that "Morgan Stanley has been able to conduct only a single deposition between October 14, 2004 and November 1, 2004." In fact, at the October 14 case management conference, it was Morgan Stanley's counsel who announced that all protocols were off. *See* 10/14/04 Tr. 96:13-99:13.

Following the October 14 hearing, Morgan Stanley refused CPH's request that Morgan Stanley split the examination time at depositions of third party witnesses. This Court resolved that dispute at a November 2 hearing on a motion for out-of-state deposition commissions. At the hearing, the Court granted Morgan Stanley's request for commissions, but also ruled that: (1) the parties are to cooperate in the completion of the third party depositions; (2) it will be Morgan Stanley's responsibility to secure additional deposition time with the witnesses if both sides have not completed their examinations; and (3) Morgan Stanley will be barred from using the third party depositions at trial unless it succeeds in securing enough time to complete the depositions.

This Court's resolution of the dispute concerning the depositions of third parties disposes of most of Morgan Stanley's complaints, which relate to the purported difficulties supposedly associated with the scheduling of six depositions: the deposition of Jerry Levin, the former CEO of Coleman and the current CEO of AHI (Sunbeam's successor); the depositions of Allison Amorison and Blaine Fogg, two Skadden Arps attorneys; the deposition of Donald Uzzi, another third party; and the depositions of Ronald Perelman and Howard Gittis, two corporate officers of CPH. Moreover, as is shown below, Morgan Stanley's contentions about these six witnesses have no basis in any event.

Mr. Levin. Morgan Stanley complains that we have interfered with the scheduling of Mr. Levin's deposition. That is incorrect. We advised Morgan Stanley and Mr. Levin's counsel that we were willing to agree to any reasonable schedule, with the sole condition that we be granted one-half of the deposition time to cross-examine Mr. Levin. Mr. Levin agreed to our request but Morgan Stanley refused to split the time. Mr. Levin filed a motion for protective order as a result of Morgan Stanley's refusal, and while this Court was out of town, that motion was granted by Judge Crow. Morgan Stanley now apparently is blaming CPH because Judge Crow ruled Mr. Levin's motion to be well-founded. In any event, this Court's November 2 ruling concerning third party depositions has put this issue to rest.

Ms. Amorison and Mr. Fogg. Morgan Stanley complains that we supposedly have interfered with the depositions of Skadden Arps attorneys Allison Amorison and Blaine Fogg. We have not. We have made only two requests relating to these depositions. First, we have sought documents from Skadden, which we believe should be produced prior to the depositions. Skadden has opposed our document requests, and as a result, we have filed a motion in New York to compel production of the documents. Second, we have requested that the time available for deposing the witnesses be divided equally. Given the Court's commission ruling earlier this

week, which related to these very depositions, an appropriate rule of fairness now has been set for the conduct of the depositions.

Mr. Uzzi. Morgan Stanley complains that we have somehow interfered with the deposition of Mr. Uzzi and has requested that we provide any contact information we have for him. We have no idea where Mr. Uzzi is — as we have advised Morgan Stanley previously. Nor have we interfered with Morgan Stanley's efforts to take Mr. Uzzi's deposition. The only thing we have done with regard to this deposition is ask Morgan Stanley if it has served Mr. Uzzi yet. As for Morgan Stanley's attempt to issue a new commission for Mr. Uzzi, as indicated above, the Court has adopted a protocol for the parties to follow.

Mr. Perelman and Mr. Gittis. Morgan Stanley last asserts that we have interfered with the depositions of Mr. Perelman and Mr. Gittis. What Morgan Stanley does not disclose, however, is that we have offered multiple alternative dates for these individuals on the assumption that the depositions would go forward in New York — where Kirkland & Ellis has an office and where Kirkland & Ellis has taken many depositions. Morgan Stanley has advised us that many of the dates we have offered are acceptable. Morgan Stanley, however, recently has announced that it will not go forward with the depositions on the dates we have proposed unless Mr. Perelman and Mr. Gittis travel to Florida to be deposed. Mr. Perelman and Mr. Gittis, however, cannot be in Florida on the dates previously offered.

Because of Morgan Stanley's new insistence on taking depositions in Florida, we have offered dates when Mr. Perelman can be here for his deposition, and we will be proposing dates for Mr. Gittis' deposition in Florida shortly. Morgan Stanley has not yet responded to our offer of dates for Mr. Perelman.

In sum, each of Morgan Stanley's complaints about the six witnesses just discussed is unfounded. CPH has acted reasonably in attempting to schedule the depositions of parties and

nonparties alike. In contrast, Morgan Stanley has refused to provide dates for depositions requested by CPH, and has filed motions for protective orders without noticing them for hearings — thereby further obstructing and delaying the discovery process. By its conduct, Morgan Stanley obviously is attempting to prevent CPH from meeting the discovery cutoff, and to force CPH to ask for an extension — which CPH has no intention of doing. Morgan Stanley has thrown up every obstacle it can think of to prevent discovery from being completed, and has looked for any excuse to jeopardize the pretrial schedule set by this Court. This Court should not reward Morgan Stanley's improper tactics by limiting CPH's timely discovery requests.

Conclusion

Morgan Stanley's motion for a protective order concerning discovery served by CPH after October 14, 2004, and to extend the pretrial deadlines, should be denied.

Dated: November 3, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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#1173737

CERTIFICATE OF SERVICE

HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this _____ day of ___ _____, 2004.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

CASE NO. CA 03-5165 AI

AMENDED NOTICE OF TAKING VIDEOTAPED DEPOSITIONS

TO: Thomas A. Clare, Esq.
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Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following parties and witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates, times, and locations set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co., Inc. on the topics identified on Exhibit A.	November 11, 2004 at 9:30 a.m.

All of the deposition will be conducted at Esquire Deposition Services, 216 East 45th Street, New York, NY 10017. The deposition will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The deposition will be taken before a person authorized to administer oaths and will continue day to day until completed.

Please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and federal express to all counsel on the attached Service List this 3rd day of November 2004.

Dated: November 3, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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Exhibit A

CORPORATE DEPOSITION TOPICS

1. All fees, expenses, other compensation, or assets billed by or otherwise due to Morgan Stanley & Co., Inc. ("MS"), Morgan Stanley Senior Funding, Inc. ("MSSF"), or any of their affiliates concerning or on behalf of Sunbeam Corp. (including American Household, Inc.) and all fees, expenses, other compensation, or assets paid or provided by or on behalf of Sunbeam Corp. (including American Household, Inc.) to MS, MSSF, or any of their affiliates.

CARLTON FIELDS, P.A.

ATTORNEYS AT LAW

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From:	Joyce Dillard, CLA	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 6

Message:

Coleman v. Morgan Stanley & Co., Inc.

To follow please find a copy of Joe Ianno's letter of today's to Judge Maass with enclosure.

☐ *Original to follow Via Regular Mail* ☐ *Original will Not be Sent* ☐ *Original will follow via Overnight Courier*

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (if long distance, please call collect) and return the original message to us at the above address via the U.S. Postal Service. Thank you.

IF THERE ARE ANY PROBLEMS OR COMPLICATIONS, PLEASE NOTIFY US IMMEDIATELY AT:
(561) 659-7070

TELECOPIER OPERATOR: _____

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November 3, 2004

The Honorable Elizabeth Maass
Palm Beach County Courthouse
205 North Dixie Highway, Room 11.1208
West Palm Beach, Florida 33401

VIA FACSIMILE

Re: *Coleman (Parent) Holdings Co. v. Morgan Stanley & Co.*, Case No: CA 03-5045 AI

Dear Judge Maass:

Enclosed please find a copy of Morgan Stanley's Opposition to Coleman (Parent) Holding Inc.'s Motion to Compel Compliance with this Court's September 30, 2004 Order. A copy of the Coleman's motion is located under tab 13 to the November 5, 2004 Case Management Conference binder which was provided to you earlier this week by Attorney Jack Scarola. Pursuant to Your Honor's request at today's hearing, a hearing has been scheduled for tomorrow at 2:00 p.m. to cover numerous motions previously set to be heard at the November 5, 2004 Case Management Conference. The parties have agreed to have this motion, along with numerous other motions, heard tomorrow.

Respectfully,

Joseph Ianno, Jr.

/jed

Enclosure

cc: Jack Scarola (by facsimile w/encl.)
Jerold Solovy (by facsimile w/encl.)
Thomas Clare (by facsimile w/encl.)
Rebecca Beynon (by facsimile w/encl.)

WPB#566751.39

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY'S OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL COMPLIANCE WITH THIS COURT'S SEPTEMBER 30, 2004 ORDER

Defendant Morgan Stanley & Co. Inc. ("Morgan Stanley") hereby serves its opposition to Coleman (Parent) Holdings Inc.'s ("CPH") Motion to Compel Compliance With This Court's September 30, 2004 Order ("Motion to Compel") because it seeks to improperly impose discovery obligations on non-parties. Accordingly, the Motion to Compel should be denied.

BACKGROUND

1. This case was formerly consolidated with a companion case, *Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc.*, Case No. CA 03-5165-AI.

2. On September 30, 2004, this Court entered an Order ("September 30 Order") compelling the plaintiff in the companion case, Morgan Stanley Senior Funding, Inc. ("MSSF"), to provide amended responses to two interrogatories previously propounded by CPH and MacAndrews & Forbes Holdings Inc. ("MAFCO"). The deadline for responding to these Interrogatories was October 20, 2004. By agreement of the parties, this deadline was extended to October 22, 2004.

3. On October 22, 2004, pursuant to Fla. R. Civ. P. 1.420, and before it was required to respond to the September 30 Order, MSSF voluntarily dismissed Case No. CA 03-5165-AI. By voluntarily dismissing the case, MSSF removed itself as a party to litigation.

4. CPH now improperly seeks this Court's enforcement of its September 30 Order upon an entity that is no longer a party to litigation before this Court.

ARGUMENT

The effect of voluntarily dismissing a lawsuit "is to terminate the litigation instantaneously . . ." *Randle-Eastern Ambulance Service, Inc. v. Vasta*, 360 So.2d 68, 68 (Fla. 1978) (quashing a trial court's order setting aside a voluntary dismissal). A plaintiff's right to voluntary dismissal endows "plaintiff with unilateral authority to block action favorable to a defendant . . . [and] remove completely from the court's consideration the power to enter an order, equivalent in all respects to a deprivation of 'jurisdiction.'" *Id.* at 69. The right of a plaintiff to voluntarily dismiss its action is absolute. *Fears v. Lunsford*, 314 So.2d 578, 579 (Fla.. 1975); *Tobkin v. State*, 777 So.2d 1160, 1163-64 (Fla. 4th DCA 2001). A trial court is without jurisdiction to enter an order for discovery violation sanctions following plaintiff's voluntary dismissal. *U.S. Porcelain, Inc. v. Breton*, 502 So.2d 1379, 1380 (Fla. 4th DCA 1987). Furthermore, a court unlawfully orders parties to produce documents or appear for deposition when it does not have jurisdiction over them. *Seminole Enterprises of Bonifay, Florida, Inc. v. Manuel*, 464 So.2d 1301, 1302 (Fla. 1st DCA 1985); *Ward v. Gibson*, 340 So.2d 481, 482 (Fla. 3d DCA 1976).

MSSF ended Case No CA 03-5165-AI instantaneously when it served its October 22, 2004 Notice of Voluntary Dismissal. *Vasta*, 360 So.2d at 68. MSSF's absolute right to dismiss the case under Fla. R. Civ. P. 1.420 allowed MSSF to remove itself from the Court's jurisdiction

and, coincidentally, the Court's September 30 Order. *Id.* at 69. Without jurisdiction over MSSF, this Court may not order MSSF to produce documents. *Manuel*, 464 So.2d 1301.

CONCLUSION

For the foregoing reasons, CPH's Motion to Compel should be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 3rd day of November, 2004.

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FAX COVER SHEET

		Phone Number	Fax Number
Date:	November 3, 2004		
To:	Jack Scarola	(561) 686-6300	(561) 684-5816
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	Thomas Clare	(202) 879-5993	(202) 879-5200
	Rebecca Beynon/Mark Hansen	(202) 326-7900	(202) 326-7999
From:	Joyce Dillard, CLA	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 26 8

Message:

Coleman v. Morgan Stanley & Co., Inc.

To follow please find a copy of Joe Ianno's letter of today's to Judge Maass without enclosure and a copy of Morgan Stanley's Motion to Compel Deposition of Jerry Levin..

☐ *Original to follow Via Regular Mail* ☐ *Original will Not be Sent* ☑ *Original will follow via Overnight Courier* as indicated

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (if long distance, please call collect) and return the original message to us at the above address via the U.S. Postal Service. Thank you.

IF THERE ARE ANY PROBLEMS OR COMPLICATIONS, PLEASE NOTIFY US IMMEDIATELY AT:
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November 3, 2004

The Honorable Elizabeth Maass
Palm Beach County Courthouse
205 North Dixie Highway, Room 11.1208
West Palm Beach, Florida 33401

VIA FACSIMILE

Re: *Coleman (Parent) Holdings Co. v. Morgan Stanley & Co.*, Case No: CA 03-5045 AI

Dear Judge Maass:

The following is a list of the Motions we intend to present to the Court on November 4, 2004 during the hearing the Court graciously provided to us today.

Motion	**Tab in Binder**
Morgan Stanley's Motion to Amend dated October 15, 2004	n/a
Coleman's Motion for Protective Order concerning Mr. Perelman	14
Coleman's Motion for Protective Order concerning Mr. Gittis	15
Morgan Stanley's Motion for Protective Order concerning CPH October 18, 2004 Deposition Notices	21
Morgan Stanley's Motion for Protective Order concerning MAFCO's October 18, 2004 Deposition Notices	23
Coleman's Motion to Compel Compliance with Court Order	13

Also, enclosed is Morgan Stanley's Motion for Protective Order dated November 1, 2004 which counsel agreed to have heard tomorrow.

WPB#566751.39

Finally, Mr. Scarola is attempting to confirm hearing Wachovia's Motion for Protective Order (Tab 25) and Coleman (Parent) Holdings Inc.'s Motion to Compel (Tab 8) tomorrow. If we are able to confirm these motions, we will advise the Court promptly. We recently received Coleman (Parent) Holdings Inc.'s Opposition to this Motion which is also enclosed with this correspondence.

If there are any questions, please contact our office.

Respectfully,

Joseph Ianno, Jr.

/jed

Enclosures

cc: Jack Scarola (by facsimile w/out encl.)
Jerold Solovy (by facsimile w/out encl.)
Thomas Clare (by facsimile w/out encl.)
Rebecca Beynon (by facsimile w/out encl.)

WPB#566751.39

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INC.,

Defendant.
_____/

MORGAN STANLEY'S & CO. INC'S
MOTION TO COMPEL DEPOSITION OF JERRY LEVIN

Defendant, Morgan Stanley & Co. Inc. ("Morgan Stanley"), by its attorneys, pursuant to Fla. R. Civ. P. 1.380, respectfully requests that the Court enter an order compelling the appearance of Jerry Levin ("Levin") for videotaped deposition. In support of this Motion, Morgan Stanley states as follows:

1. On September 23, 2004, Morgan Stanley noticed filed its Notice of Taking Videotaped Deposition of Jerry Levin ("Notice"), and issued a Subpoena for Deposition ("Subpoena") to Levin. Mr. Levin is the Chief Executive Officer of American Household, Inc. f/k/a as Sunbeam.

2. On October 14, 2004, Levin was served with the Notice and Subpoena.

3. On October 15, 2004, Levin's attorneys filed a Motion for Protective Order seeking to prevent the taking of Levin's deposition.

4. On October 18, 2004, while this Court was on vacation, Judge Crow issued an *ex parte* Protective Order, preventing Morgan Stanley from taking Levin's videotaped deposition. A copy of Judge Crow's Order is attached hereto as Exhibit "A."

5. Since the issuance of the Protective Order, the parties have attempted to resolve their differences with respect to the taking of Levin's deposition but have been unable to do so.

WHEREFORE, Morgan Stanley requests the Court to enter an order compelling Levin's appearance for videotaped deposition together with such other and further relief as is just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 3rd day of November, 2004.

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER ON NON-PARTY JERRY W. LEVIN'S MOTION FOR PROTECTIVE ORDER

THIS CAUSE came before the Court, in Chambers, on Non-Party Jerry W. Levin's Motion for Protective Order. Based on a review of the Motion, it is

ORDERED AND ADJUDGED that Non-Party Jerry W. Levin's Motion for Protective Order is Granted. If the parties cannot agree as to the date, time, place, and length of the deposition, the parties shall set the appropriate motion upon the Court's regular calendar for a determination.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 18th day of October, 2004.

DAVID F. CROW
Circuit Court Judge, for
ELIZABETH T. MAASS
Circuit Court Judge

EXHIBIT
A

16:18

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

CASE NO: CA 03-5045 AI

vs.

MORGAN STANLEY & CO. INC.,

Defendant.

_____/

AMENDED NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") will take the deposition of Coleman (Parent) Holdings, Inc. ("CPH") through a CPH representative or representatives with knowledge on the following topics, pursuant to Florida Rules of Civil Procedure 1.280 and 1.310, on the dates and times set forth below. The oral examination will take place at Kirkland & Ellis LLP, Citigroup Center, 153 East 53rd Street, New York, NY 10022-4611. The deposition will be taken before a person authorized to administer oaths and recorded by stenographic and videographic means. The video operator will be Esquire Deposition Services of 216 E. 45th Street in New York, New York.

Topic	Representative	Date & Time
The value of the warrants and other consideration that CPH received from Sunbeam pursuant to the August 12, 1998 Settlement Agreement between CPH and Sunbeam.	Lawrence Winoker	November 18, 2004, at 1:30 pm
All gains and/or losses experienced by CPH as a result of CPH's investment in The Coleman Company, including the value of all payments, consideration, and other financial benefits received by CPH, directly or indirectly, as a result of that investment.		November 10, 2004, at 9:30 am
CPH's decision not to hedge its position in the Sunbeam stock that CPH received from Sunbeam in connection with the February 27, 1998.	Glenn Dickes	November 18, 2004, at 9:30 am

Topic	Representative	Date & Time
The authenticity, source, creation, use, maintenance, and business purpose of documents produced and/or authored by CPH and/or MacAndrews & Forbes bearing the bates numbers identified in Attachment A.		November 10, 2004, at 9:30 am
The balances due and available under any Mafco Finance Corp. (or Marvel IV Holdings Inc.) Credit Agreement or Mafco Holdings Inc. Guaranty (including any Amendments or Restatements) in the first and second quarters of 1998.		November 10, 2004, at 9:30 am

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 3d day of November, 2004.

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Attachment A

MS	Ex. No.	Bates
MS	2	CPH 2000000-20000007
MS	5	CPH 2000039-20000040
MS	6	CPH 2000044
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MS	14	CPH 0090040-0090045
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MS	138	CPH 1327714-1327721

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MS	361	CPH 1192456-1192488
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MS	395	
MS	402	DPW 0013767-0013768
MS	403	CPH 0637558-0637570

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER AND NOTICE OF HEARING

This cause having come before the Court, it is

ORDERED AND ADJUDGED that a case management conference and hearing on outstanding Motions is hereby set for

November 4, 2004, at 2:00 p.m., 1 1/2 hours reserved

at the West Palm Beach Courthouse, Room 11A, 205 N Dixie Hwy, WPB, FL.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 3 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

16div-008033

copies furnished:
Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci
655 15th Street, NW, Suite 1200
Washington DC 20005

John Scarola, Esq.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy, Esq.
One IBM Plaza, Suite 4400
Chicago, Il 60611

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-4380 within two (2) working days of your receipt of this [describe notice]; if you are hearing or voice impaired, call 1-800-955-8771.

SPANISH

Si Ud. es una persona incapacitada que necesita de un servicio especial para participar en este proceso, Ud. tiene derecho a que le provean cierta ayuda sin costo alguno. Por favor pongase en contacto con el Coordinador de la Oficina Administrativa de la Corte ADA, situada en el 205 North Dixie Highway, Oficina 5.2500, West Palm Beach, Florida, 33401, teléfono (561) 355-4380, dentro de los dos (2) próximos días hábiles después de recibir esta [describa la notificación]; si tiene incapacidad de oir ó hablar llame al 1-800-955-8771.

CREOLE

Si ou sé yon moun ki Infim, ki bézwen ninpôt akomodasyon pou ka patisipé nan pwosè sa-a, ou gen dwa, san'l pa kouté'w anyin, pou yo ba'w kèk sèvis. Tanpri kontakté koôdinatè ADA ya nan Biro Administratif Tribinal nan cité Palm Beach la, ki nan 205 North Dixie Highway, Cham 5.2500, West Palm Beach, Florida 33401, niméro téléfonn-nan sé (561) 355-4380, rélé dé (2) jou dé lè ou résévwa [notis sa-a]; si ou bèbè ou byen soud rélé 1-800-955-8771.

FRENCH

Si vous êtes infirme, et en besoin de n'importe accommodation pour pouvoir participer á ces procédures, vous pouvez gratuitement recevoir, certains services. S'il-vous-plait contactez le coordinateur du Bureau Administratif du Tribunal de Palm Beach, située à 205 North Dixie Highway, Chambre 5.2500, West Palm Beach, Florida 33401, numéro de téléphone (561) 355-4380 durant deux (2) jours suivant la réception de [cette note]; si vous êtes muets ou sourds, appelez 1-800-955-8771.

#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC., Case No. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

MORGAN STANLEY SENIOR FUNDING, INC., Case No. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

_____/

ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO UNSEAL MATERIAL PREVIOUSLY REDACTED FROM COURT RECORDS

THIS CAUSE having come to be considered upon the Coleman (Parent) Holdings, Inc.'s Motion to Unseal Material Previously Redacted from Court Records, and the Court having reviewed the file and being fully advised in the premises, it is hereby,

ORDERED and ADJUDGED: the Motion is Granted. The Clerk is directed to unseal the Oct. 22, 2004 Motion in a Determination of the Admissibility of Morgan Stanley Performance Evaluations and its attachments.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this 3rd day of Nov., 2004.

ELIZABETH T. MAASS
CIRCUIT COURT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

COUNSEL LIST

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Searcy Denney Scarola Barnhart & Shipley
P.O. Drawer 3626
West Palm Beach, FL 33402

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC., et al.,
Defendants.

AMENDED NOTICE OF TAKING VIDEOTAPED DEPOSITION

To:

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following witness pursuant to Florida Rule of Civil Procedure 1.310 on the date, time, and location set forth below, which previously has been agreed to by the parties:

DEPONENT	DATE AND TIME	LOCATION
Dwight Sipprelle	November 10, 2004, at 2:30 p.m.	Esquire Deposition Services 216 E. 45th St., 8th Floor New York, NY 10017

The deposition will be recorded by stenographic and audio-visual means and will be taken before a person authorized to administer oaths and will continue day to day until completed. The videographer will be Esquire Deposition Services in New York.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to all counsel on the attached Service List, this 4th day of November, 2004.

Dated: November 4, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Michael T. Brody
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
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SERVICE LIST

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#23)5 30/sas

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

CO[E MAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MO RGAN STANLEY & CO., INC.,

Defendant,

_____/

Case No. CA 03-5045 AI

MO RGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs.

MA[NDREWS & FORBES HOLDINGS, INC.,

Defendant,

_____/

Case No. CA 03-5165 AI

SUPPLEMENT TO COLEMAN (PARENT) HOLDINGS INC.'S MEMORANDUM IN OPPOSITION TO MORGAN STANLEY'S MOTION TO AMEND TO ADD SEVENTH AFFIRMATIVE DEFENSE

As the United States Supreme Court said in the leading decision concerning amendments pursuant to Fed. R. Civ. P. 15 (on which Fla. R. Civ. P. 1.190 is modeled), "undue delay," "bad faith," 'dilatory motive," as well as "prejudice," are among the factors that the Court should consider in deciding whether to allow an amendment. *Forman v. Davis*, 371 U.S. 178, 182 (196[illegible]); *See also Gleneagle Ship Management Co. v. Leondakos*, 602 So.2d 1282, 1283-84 (Fla. 1992) ("Florida court should "look to the federal rules and decisions for guidance in interpreting Florida's civil procedure rules"); *Gregory v. Mitchell*, 634 F.2d 199, 203 (5th Cir. 1981) ("At

some ɔoint in time delay on the part of a plaintiff can be procedurally fatal. In that situation the plai ıti f must meet the burden of showing that the delay was 'due to oversight, inadvertence, or excı ısa ble neglect.'"); *Rhodes v. Amarillo Hospital Dist.*, 654 F.2d 1148, 1153 (5th Cir. 1981) (aff rn ing denial of amendment to assert claim for "exemplary damages").

Even if the Court does not find that prejudice will necessarily follow from permitting an ame nc ment purposefully filed beyond the clearly established deadline for the amendment of plea di ıgs, the Court would be well within its discretion to deny the requested amendment. As the ?o ırth District Court of Appeal has held,

> While the policy in Florida is to liberally allow amendments to pleadings where justice so requires a trial judge in the exercise of sound discretion may deny further amendments where a case has progressed to a point that liberality ordinarily to be indulged has diminished

Alv re z v. DeAguirre, 395 So. 2d 213, 216 (Fla. 4th DCA 1981) (citations omitted) (affirming trial c ɔurt's refusal to allow amendment). Relying on the same legal principles, the Third Dist rı ct Court of Appeals affirmed an order denying a plaintiff's request to amend her complaint by a dc ing a new claim shortly before the scheduled trial. *Ruden v. Medalie*, 294 So. 2d 403, 405 (Fla 3d DCA 1974). The court held that was not an abuse of discretion

WHEREFORE, the described motion should be denied.

Cole ma n (Parent) Holdings Inc. vs Morgan Stanley & Company
Case N .: 2003 CA 005045 AI
Supp le ment to CPH's Memorandum in Opposition to
Mor ar Stanley's Motion to Amend to Add Seventh
Affir ma tive Defense

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by fax to all Counsel on the attached list, this 4th day of Nov., 2004.

JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 684-5816
Attorney for CPH and MAFCO

Cole na 1 (Parent) Holdings Inc. vs Morgan Stanley & Company
Case N .: 2003 CA 005045 AI
Supp le ient to CPH's Memorandum in Opposition to
Mor ar Stanley's Motion to Amend to Add Seventh
Affir na ive Defense

COUNSEL LIST

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Wash in gton, D.C. 20036-3206

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the matter of the application of COLEMAN (PARENT) HOLDINGS INC.,	Index No. 115510/04
Petitioner,	**EMERGENCY AFFIDAVIT PURSUANT TO CPLR § 3102(e)**
for an order for the taking of the deposition of TODD FREED,	
Respondent,	
pursuant to a commission issued in an action pending in the Circuit Court of the Fifteenth Judicial District of the State of Florida, Palm Beach County, entitled Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co. Inc., Case No. 2003 CA 005045 AI.	

STATE OF NEW YORK :
ss.:
COUNTY OF NEW YORK :

GARY I. LERNER, being duly sworn, deposes and says:

1. I am an attorney at law duly licensed to practice in the courts of the State of New York and am associated with the firm of Cohen Lans LLP.

2. I respectfully submit this emergency affidavit pursuant to CPLR 3102(e) in support of the application of petitioner, Coleman (Parent) Holdings Inc. ("CPH"), pursuant to a commission from the Circuit Court of the Fifteenth Judicial District of the State of Florida, Palm Beach County (the "Commission"), for an order to command the deposition of respondent, Todd Freed.

3. The deposition requested is material and necessary to an action now pending in the Circuit Court of the Fifteenth Judicial District of the State of Florida, entitled Coleman (Parent) Holdings Inc., v. Morgan Stanley & Co., Inc., Case No. 2003 CA 005045 AI (Palm

Beach County) (the "Florida Action"). CPH alleges in the Florida Action that Morgan Stanley & Co., Inc. ("Morgan Stanley") participated in a massive fraud by, inter alia, misrepresenting the financial condition of Sunbeam Corporation ("Sunbeam") and concealing Sunbeam's true financial condition from CPH so that Sunbeam could complete the Morgan Stanley-brokered purchase of The Coleman Company, Inc. from CPH on March 30, 1998 using artificially inflated Sunbeam stock as consideration. The law firm of Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden Arps") served as counsel to Sunbeam during the relevant time period and in that role had numerous dealings with Morgan Stanley. In its responses to CPH's discovery demands, Morgan Stanley has listed numerous Skadden Arps attorneys, including respondent, as possessing relevant information. The requested discovery is directed to Skadden Arps's role in the transactions at issue in the Florida Action, Skadden Arps's dealings with Morgan Stanley, and the potential biases of Skadden Arps witnesses. In particular, the respondent is believed to possess knowledge concerning, inter alia, events that transpired on the evening of March 19, 1998, as Morgan Stanley and others debated what information to disclose to the public concerning the sales crisis at Sunbeam.

4. Prior to making this application, CPH requested to Skadden Arps that respondent be produced for deposition. Skadden has given no indication that respondent will appear voluntarily.

5. The Commission from the Circuit Court of the State of Florida is annexed hereto as Exhibit A. In the Commission, the Florida Court authorized CPH to pursue depositions and documents from certain named witnesses "and other witnesses whose discovery is sought in the commissions' jurisdictions" (including New York). (See Exhibit A at 2, emphasis added.)

Although Mr. Freed is not one of the witnesses specifically named in the Commission, he is a witness in this jurisdiction in possession of information relevant to the Florida Action and therefore within the scope of the broad Commission issued by the Florida court.

6. The emergency nature of this application arises from the fact that the Florida court has set a firm discovery cutoff date of November 24, 2004. Therefore, in order to obtain the requested deposition of Mr. Freed, CPH must respectfully request that the Court permit a subpoena to be issued which sets a deposition date of November 22, 2004 (less than the twenty day notice period normally required by the CPLR). The reason why CPH did not bring the instant proceeding earlier is because it had been negotiating with Skadden Arps to obtain voluntary compliance with the Commission issued by the court in the Florida Action. Although Skadden Arps has produced some documents to CPH, Skadden Arps has not indicated that Mr. Freed will be produced at deposition voluntarily and CPH now finds it necessary to seek an order in aid of the Commission from this Court in order to obtain Mr. Freed's deposition.

7. The business address of the witness is Todd Freed, Esq., Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, New York 10036.

8. Under the rules and practice of the Florida state courts and CPLR § 3102(e), the Circuit Court of the State of Florida's Commission authorizes the issuance of a subpoena from this Court.

9. The Commissioner named in the Commission, Michael I. Allen, has exercised the power granted to him by the Commission to authorize Wendy Boskind, C.S.R. of Esquire Deposition Services, 216 East 45th Street, 8th Floor, New York, New York 10017-3004, or in her absence any other court reporter employed by Esquire Deposition Services, to take the

testimony of respondent.

10. The Commission has been served on all parties to the Florida Action.

11. A copy of this Court's order authorizing the taking of Mr. Freed's deposition will be served on the deponent together with the subpoena on or before such time as this Court shall direct.

12. No prior application has been made for the relief requested herein.

Gary I. Lerner

Sworn to before me this
3rd day of November, 2004

Notary Public

MICHELLE ROSENTHAL
Notary Public, State of New York
No. 01RO4726496
Qualified in Bronx County
Commission Expires Nov. 30, 200_

At the Ex Parte Motion Office of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse, located at 60 Centre Street, New York, New York, 10007 on the 3rd day of November, 2004

PRESENT: WILLIAM P. McCOOE

HON. _____ Justice.

In the matter of the application of COLEMAN (PARENT) HOLDINGS INC.,

Petitioner,

for an order for the taking of the deposition of TODD FREED,

Respondent,

pursuant to a commission issued in an action pending in the Circuit Court of the Fifteenth Judicial District of the State of Florida, Palm Beach County, entitled Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co. Inc., Case No. 2003 CA 005045 AI

Index No. 115510/04

ORDER PURSUANT TO CPLR § 3102(c) DIRECTING THE TAKING OF TESTIMONY

FILED

NOV - 3 2004

COUNTY CLERK'S OFFICE

An application having been made by petitioner, COLEMAN (PARENT) HOLDINGS INC., pursuant to CPLR § 3102(c) for the taking of the deposition of respondent, TODD FREED, pursuant to a Commission issued in connection with an action pending in the Circuit Court of the Fifteenth Judicial District of the State of Florida, Palm Beach County; and

Upon reading the emergency affidavit of Gary I. Lerner, Esq., sworn to on the 3rd day of November, 2004, together with the Commission, and it appearing that the issuance of a subpoena is necessary and proper, it is hereby:

[redacted]

ORDERED, that pursuant to CPLR § 3102(e), Respondent, TODD FREED, is directed to appear for deposition on November 22, 2004, at 9:30 a.m., at the offices of Esquire Deposition Services, 216 East 45th Street, 8th Floor, New York, New York 10017-3004, before Wendy Boskind, C.S.R., who has been duly authorized by Michael I. Allen (as set forth in the Commission issued by the Circuit Court of the State of Florida) and is able to administer oaths pursuant to the laws of the State of New York (or before any other individual court reporter employed by Esquire Deposition Services as has also been duly authorized by Michael I. Allen), and it is further;

ORDERED, that personal service of a copy of this order and an appropriate New York subpoena shall be made upon Respondent, TODD FREED, on or before the 4th day of November, 2004; and it is further;

ORDERED, that a copy of this order and the subpoena be mailed or faxed to all attorneys in the out-of-state action on or before the above date.

ENTER,

J.S.C.

FILED

NOV - 3 2004

COUNTY CLERK'S OFFICE

Cohen Lans LLP
Attorneys for Petitioner
Coleman (Parent) Holdings Inc.

By: _____
Gary I. Lerner

885 Third Avenue, 32nd Floor
New York, New York 10022
(212) 326-1707

[redacted]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the matter of the application of COLEMAN (PARENT) HOLDINGS INC.,	Index No. 115510/04
Petitioner,	SUBPOENA
for an order for the taking of the deposition of TODD FREED,	
Respondent,	
pursuant to a commission issued in an action pending in the Circuit Court of the Fifteenth Judicial District of the State of Florida, Palm Beach County, entitled Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co. Inc., Case No. 2003 CA 005045 AI.	

THE PEOPLE OF THE STATE OF NEW YORK

TO: **TODD FREED**
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036

GREETINGS:

We Command You, that all business and excuses being laid aside, you appear and attend at the offices of Esquire Deposition Services, 216 East 45th Street, 8th Floor, New York, New York 10017-3004, on the 22nd day of November, 2004 at 9:30 a.m., and at any recessed or adjourned date, to give testimony at deposition in this action.

The reasons or circumstances for seeking or requiring such disclosure from you are as follows: You are believed to have material and relevant information and knowledge concerning the liability issues in this action.

Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

Cohen Lans LLP
Attorneys for Petitioner
Coleman (Parent) Holdings Inc.

By: Gary I. Lerner
Gary I. Lerner

885 Third Avenue
New York, New York 10022
(212) 980-4500

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

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.
_____/

MORGAN STANLEY & CO. INCORPORATED'S NOTICE OF SERVING OBJECTIONS TO COLEMAN (PARENT) HOLDING INC.'S SEVENTH SET OF INTERROGATORIES

Defendant Morgan Stanley & Co. Incorporated, by its attorneys, hereby gives notice that Defendant served objections to Coleman (Parent) Holdings Inc.'s Seventh Set of Interrogatories.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 4th day of November, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (Fla. Bar No. 618349)
Thomas A. Clare
Zhonette M. Brown
Michael C. Occhuizzo
KIRKLAND & ELLIS LLP
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16div-008052

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BY:
Michael C. Occhuizzo

Mark C. Hansen
James M. Webster, III
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KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
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Counsel for Morgan Stanley & Co. Incorporated

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Chicago, IL 60611

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY & CO. INCORPORATED'S OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC.'S SEVENTH SET OF INTERROGATORIES

Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley"), by its attorneys and pursuant to Florida Rule of Civil Procedure 1.370, hereby objects to Coleman (Parent) Holdings Inc.'s ("CPH") Seventh Set of Interrogatories.

INITIAL OBJECTIONS

1. Morgan Stanley objects to CPH's Seventh Set of Interrogatories, including all Definitions, to the extent that they purport to impose upon Morgan Stanley any requirements that exceed or are otherwise inconsistent with the Florida Rules of Civil Procedure or any other applicable rule or court order.

2. Morgan Stanley objects to CPH's Seventh Set of Interrogatories to the extent that they seek information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable privilege, doctrine, immunity or rule.

3. Morgan Stanley objects to the definition of "Morgan Stanley" to the extent that it includes Morgan Stanley's counsel in this litigation and entities not a party to this action. Specifically, Morgan Stanley interprets these definitions to exclude Kirkland & Ellis LLP,

Carlton Fields, P.A., Kellogg Huber, Hansen, Todd & Evans, PLLC and affiliates, parents, and others not a party to this action.

4. Morgan Stanley objects to the Seventh Set of Interrogatories as unduly burdensome, abusive, and vexatious.

5. Morgan Stanley incorporates, as though fully set forth therein, these Initial Objections into each of the Specific Objections set forth below.

SPECIFIC OBJECTIONS

INTERROGATORY NO. 1: For the time period January 1, 1996 to the present, identify each purchase or sale by MS&Co. of Coleman Escrow Notes and any other Security, or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc., and for each purchase or sale identify the MS&Co. entity, fund, or affiliate that made the purchase or sale.

OBJECTION: When CPH served this discovery request on October 21, 2004, Morgan Stanley Senior Funding's claim against CPH and Mafco remained pending. On October 22, 2004 Morgan Stanley Senior Funding dismissed its claims against CPH. At best CPH's Interrogatory No. 1 tangentially related to MSSF's claim that CPH and Mafco defrauded CPH, to Morgan Stanley's knowledge concerning the representations made by CPH and Mafco, or to MSSF's damages. This Interrogatory is, however, completely unrelated and irrelevant to the issues now before the Court — Morgan Stanley's representations to CPH concerning Sunbeam. Nor is the requested discovery likely to lead to the discovery of admissible evidence. Morgan Stanley objects to this Interrogatory as irrelevant and harassing.

INTERROGATORY NO. 2: For each purchase or sale identified in response to Interrogatory No. 1, state the purchase price, other costs in connection with the purchase, sales

price, other revenue in connection with the sale, gains, losses, and the amount or rate of return on each such purchases or sale.

OBJECTION: When CPH served this discovery request on October 21, 2004, Morgan Stanley Senior Funding's claim against CPH and Mafco remained pending. On October 22, 2004 Morgan Stanley Senior Funding dismissed its claims against CPH. At best CPH's Interrogatory No. 2 tangentially related to MSSF's claim that CPH and Mafco defrauded CPH, to Morgan Stanley's knowledge concerning the representations made by CPH and Mafco, or to MSSF's damages. This Interrogatory is, however, completely unrelated and irrelevant to the issues now before the Court — Morgan Stanley's representations to CPH concerning Sunbeam. Nor is the requested discovery likely to lead to the discovery of admissible evidence. Morgan Stanley objects to this Interrogatory as irrelevant and harassing.

INTERROGATORY NO. 3: For each purchase or sale identified in response to Interrogatory No. 1, identify all reasons why MS&Co. purchase or sold the Security and the person(s) that made the decision to purchase or sell the Security.

OBJECTION: When CPH served this discovery request on October 21, 2004, Morgan Stanley Senior Funding's claim against CPH and Mafco remained pending. On October 22, 2004 Morgan Stanley Senior Funding dismissed its claims against CPH. At best CPH's Interrogatory No. 1 tangentially related to MSSF's claim that CPH and Mafco defrauded CPH, to Morgan Stanley's knowledge concerning the representations made by CPH and Mafco, or to MSSF's damages. This Interrogatory is, however, completely unrelated and irrelevant to the issues now before the Court — Morgan Stanley's representations to CPH concerning Sunbeam. Nor is the requested discovery likely to lead to the discovery of admissible evidence. Morgan Stanley objects to this Interrogatory as irrelevant and harassing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 4th day of November, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (Fla. Bar No. 618349)
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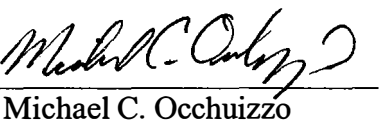
BY: 
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IN THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY & CO. INCORPORATED'S OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC.'S EIGHTH REQUEST FOR PRODUCTION OF DOCUMENTS

Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley"), by its attorneys and pursuant to Florida Rule of Civil Procedure 1.370, hereby objects to Coleman (Parent) Holdings Inc.'s ("CPH") Eighth Request for Production of Documents.

INITIAL OBJECTIONS

1. Morgan Stanley objects to CPH's Eighth Request for Production of Documents, including all Definitions, to the extent that they purport to impose upon Morgan Stanley any requirements that exceed or are otherwise inconsistent with the Florida Rules of Civil Procedure or any other applicable rule or court order.

2. Morgan Stanley objects to CPH's Eighth Request for Production of Documents to the extent that they seek information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable privilege, doctrine, immunity or rule.

3. Morgan Stanley objects to the definition of "Morgan Stanley" to the extent that it includes Morgan Stanley's counsel in this litigation and entities not a party to this action. Specifically, Morgan Stanley interprets these definitions to exclude Kirkland & Ellis LLP,

Carlton Fields, P.A., Kellogg Huber, Hansen, Todd & Evans, PLLC and affiliates, parents, and others not a party to this action.

4. Morgan Stanley incorporates, as though fully set forth therein, these Initial Objections into each of the Responses set forth below.

SPECIFIC OBJECTIONS

REQUEST NO. 1: For the time period January 1, 1996 to the present, all documents referring or relating to MS&Co.'s purchase or sale of Coleman Escrow Notes and any other Security, or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings, Inc.

OBJECTION: When CPH served this discovery request on October 21, 2004, Morgan Stanley Senior Funding's claim against CPH and Mafco remained pending. On October 22, 2004 Morgan Stanley Senior Funding dismissed its claims against CPH. At best CPH's Request related tangentially to MSSF's claim that CPH and Mafco defrauded CPH, to Morgan Stanley's knowledge concerning the representations made by CPH and Mafco, or to MSSF's damages. This Request is, however, completely unrelated and irrelevant to the issues now before the Court — Morgan Stanley's representations to CPH concerning Sunbeam. Nor is the requested discovery likely to lead to the discovery of admissible evidence. Morgan Stanley objects to this Request as irrelevant and harassing.

REQUEST NO. 2: For the time period January 1, 1996 to the present, documents sufficient to show MS&Co.'s purchase price, other costs in connection with the purchase, sales price, other costs in connection with the sale, gains, losses, and amount or rate of return on each purchase or sale of Coleman Escrow Notes and any Security, or any interests therein, issued by

or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc.

OBJECTION: When CPH served this discovery request on October 21, 2004, Morgan Stanley Senior Funding's claim against CPH and Mafco remained pending. On October 22, 2004 Morgan Stanley Senior Funding dismissed its claims against CPH. At best CPH's Request related tangentially to MSSF's claim that CPH and Mafco defrauded CPH, to Morgan Stanley's knowledge concerning the representations made by CPH and Mafco, or to MSSF's damages. This Request is, however, completely unrelated and irrelevant to the issues now before the Court — Morgan Stanley's representations to CPH concerning Sunbeam. Nor is the requested discovery likely to lead to the discovery of admissible evidence. Morgan Stanley objects to this Request as irrelevant and harassing.

REQUEST NO. 3: All documents referring or relating to the October 9, 1997 "Global High Yield Investment Research" report on The Coleman Company, Inc. and the Coleman Escrow Notes, including all documents used in creating that report.

OBJECTION: When CPH served this discovery request on October 21, 2004, Morgan Stanley Senior Funding's claim against CPH and Mafco remained pending. On October 22, 2004 Morgan Stanley Senior Funding dismissed its claims against CPH. At best CPH's Request related tangentially to MSSF's claim that CPH and Mafco defrauded CPH or to Morgan Stanley's knowledge concerning the representations made by CPH and Mafco. This Request is, however, completely unrelated and irrelevant to the issues now before the Court — Morgan Stanley's representations to CPH concerning Sunbeam. Nor is the requested discovery likely to lead to the discovery of admissible evidence. Morgan Stanley objects to this Request as irrelevant and harassing.

REQUEST NO. 4: All documents referring to the January 26, 1998 "High Yield Industry Review" report on The Coleman Company, Inc. and the Coleman Escrow Notes, including all documents used in creating that report.

OBJECTION: When CPH served this discovery request on October 21, 2004, Morgan Stanley Senior Funding's claim against CPH and Mafco remained pending. On October 22, 2004 Morgan Stanley Senior Funding dismissed its claims against CPH. At best CPH's Request related tangentially to MSSF's claim that CPH and Mafco defrauded CPH or to Morgan Stanley's knowledge concerning the representations made by CPH and Mafco. This Request is, however, completely unrelated and irrelevant to the issues now before the Court — Morgan Stanley's representations to CPH concerning Sunbeam. Nor is the requested discovery likely to lead to the discovery of admissible evidence. Morgan Stanley objects to this Request as irrelevant and harassing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 4th day of November, 2004.

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FAX COVER SHEET

		Phone Number	Fax Number
Date:	November 4, 2004		
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From:	Joyce Dillard, CLA	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 6

Message:

Coleman v. Morgan Stanley & Co., Inc.

To follow please find a copy of Morgan Stanley's Objections to CPH's Eighth Set of Interrogatories.

☐ ***Original to follow Via Regular Mail*** ☐ ***Original will Not be Sent*** ☐ ***Original will follow via Overnight Courier***

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IF THERE ARE ANY PROBLEMS OR COMPLICATIONS, PLEASE NOTIFY US IMMEDIATELY AT:
(561) 659-7070

TELECOPIER OPERATOR: _____

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY'S OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC.'S EIGHTH SET OF INTERROGATORIES TO MORGAN STANLEY & CO., INC.

Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley"), by and through its undersigned attorneys, pursuant to Florida Rules of Civil Procedure 1.280 and 1.340, provides the following objections to Coleman (Parent) Holdings Inc.'s ("CPH") Eighth Set of Interrogatories to Morgan Stanley & Co., Inc. Interrogatories dated October 22, 2004.

GENERAL OBJECTIONS

1. Morgan Stanley objects to the Interrogatories to the extent that they seek information protected from disclosure by the attorney-client privilege, the attorney-work-product doctrine, the common-interest privilege, or any other applicable constitutional, statutory, or common-law privilege, doctrine, immunity, or rule.

2. Morgan Stanley objects to the Interrogatories to the extent that they seek information that is neither relevant nor likely to lead to the discovery of evidence related to a matter at issue among the parties.

3. Morgan Stanley's answers and objections are based on a good-faith investigation. Morgan Stanley reserves the right to amend and/or modify its answers and objections.

4. Morgan Stanley incorporates each of these General Objections into each of the Answers and Specific Objections set forth below, as though each General Objection is fully set forth therein.

5. Subject only to Morgan Stanley Senior Funding, Inc.'s ("MSSF") objections, and this Court's prior rulings on discovery, all materials required to be produced by MSSF prior to October 22, 2004, the date of MSSF's voluntary dismissal of the companion case of *Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc.*, Case No. CA 03-5165-AI, have been produced.

ANSWERS AND SPECIFIC OBJECTIONS

INTERROGATORY NO. 1: Do you possess, or have custody of or control over, any information responsive to interrogatories served upon MSSF in this case? if the answer to the foregoing is anything other than an unqualified negative, please provide that information.

RESPONSE: In addition to the objections noted above, Morgan Stanley objects to this interrogatory on the grounds that it is irrelevant, harassing, unduly burdensome, and seeks information that is neither protected by the work product and attorney client privileges nor reasonably calculated to lead to the discovery of admissible evidence. A "party may obtain discovery regarding any matter, not privileged, *that is relevant to the subject matter* of the pending action . . . reasonably calculated to lead to the discovery of admissible evidence." Fla. R. Civ. P. 1.280(b)(1). "To allow discovery that is overly burdensome and that harasses, embarrasses, and annoys one's adversary would lead to a lack of public confidence in the credibility of the civil court process." *Elkins v. Syken*, 672 So.2d 517, 522 (Fla. 1997) (affirming district court's finding that extensive and overbroad discovery from experts has a

chilling effect on the court process). Questions seeking answers immaterial to the issue of the case are "unduly and improperly burdensome." *Wooten, Honeywell & Kest, P.A. v. Posner*, 556 So.2d 1245, 1247 (Fla. 5th DCA 1990) (quashing document discovery requiring information from parties unrelated to the case).

Here, CPH seeks information related to Morgan Stanley Senior Funding, Inc. ("MSSF"). That portion of the consolidated case involving MSSF was voluntarily dismissed by MSSF on October 22, 2004. MSSF is no longer a party, therefore any discovery relating to MSSF is burdensome, harassing, irrelevant to any of the issues as framed by the pleadings in this matter, and unlikely to lead to the discovery of admissible evidence. *Elkins*, 672 So.2d at 522; *Posner*, 556 So.2d at1247. Additionally, a significant portion of the documents requested by CPH are protected by the work product doctrine and attorney-client privilege. Finally, given the other legitimate and ongoing discovery requirements already underway in this matter, to require Morgan Stanley to produce information relating to MSSF is particularly harassing and burdensome. Since MSSF is no longer a party to litigation before this Court, any interrogatories to MSSF would necessarily seek information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 4th day of November, 2004.

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY & CO. INCORPORATED'S OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC.'S NOTICE OF VIDEOTAPED DEPOSITION

Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley"), by its attorneys and pursuant to Florida Rule of Civil Procedure 1.370, hereby objects to Coleman (Parent) Holdings Inc.'s ("CPH") Notice of Videotaped Deposition dated October 21, 2004. Based upon these Objections Morgan Stanley will not be presenting a Rule 1.130 witness on November 5, 2004.

SPECIFIC OBJECTIONS

REQUEST NO. 1: For the time period January 1, 1996 to the present, any purchase or sale by MS&Co. (or any of its affiliates, subsidiaries, divisions, predecessors, and successors) of Coleman Escrow Corp. Senior Secured First and Second Priority Discount Notes due 2001, which are described in CPH 0473148-CPH 0473165 and Morgan Stanley Confidential 0001575-0001579, and any other Security (as defined in 15 U.S.C. 77b(a)(1)), or any interest therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporations, and/or CLN Holdings, Inc.

RESPONSE: When CPH served this discovery request on October 21, 2004, Morgan Stanley Senior Funding's claim against CPH and Mafco remained pending. On October 22,

2004 Morgan Stanley Senior Funding dismissed its claims against CPH. At best CPH's Request related tangentially to MSSF's claim that CPH and Mafco defrauded CPH, to Morgan Stanley's knowledge concerning the representations made by CPH and Mafco, or to MSSF's damages. This Request is, however, completely unrelated and irrelevant to the issues now before the Court — Morgan Stanley's representations to CPH concerning Sunbeam. Nor is the requested discovery likely to lead to the discovery of admissible evidence. Morgan Stanley objects to this Request as irrelevant and harassing and will not produce a witness to address this topic.

REQUEST NO. 2: For the time period January 1, 1996 to the present, all reasons why MS&Co. (or any of its affiliates, subsidiaries, divisions, predecessors, and successors) purchased or sold the Coleman Escrow Notes described in Topic No. 1, and any other Security (as defined in 15 U.S.C. 77b(a)(1)), or any interestes therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc., and the identity of person(s) and/or committee(s) that made the decision to purchase or sell the Coelman Escrow Notes and the Securities.

RESPONSE: When CPH served this discovery request on October 21, 2004, Morgan Stanley Senior Funding's claim against CPH and Mafco remained pending. On October 22, 2004 Morgan Stanley Senior Funding dismissed its claims against CPH. At best CPH's Request related tangentially to MSSF's claim that CPH and Mafco defrauded CPH, to Morgan Stanley's knowledge concerning the representations made by CPH and Mafco, or to MSSF's damages. This Request is, however, completely unrelated and irrelevant to the issues now before the Court — Morgan Stanley's representations to CPH concerning Sunbeam. Nor is the requested discovery likely to lead to the discovery of admissible evidence. Morgan Stanley objects to this Request as irrelevant and harassing and will not produce a witness to address this topic.

REQUEST NO. 3: .For the time period January 1, 1996 to the present, MS&Co.'s (or any of its affiliates', subsidiaries', divisions', predecessors', and successors') purchase price, other costs in connection with the purchase, sales price, other costs in connection with the sale, gains, losses, and amount or rate of return on any purchase or sale of Coleman Escrow Corp. Notes described in Topic No. 1, and any other Security (as defined in 15 U.S.C. 77b(a)(1)), or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc.

RESPONSE: When CPH served this discovery request on October 21, 2004, Morgan Stanley Senior Funding's claim against CPH and Mafco remained pending. On October 22, 2004 Morgan Stanley Senior Funding dismissed its claims against CPH. At best CPH's Request related tangentially to MSSF's claim that CPH and Mafco defrauded CPH, to Morgan Stanley's knowledge concerning the representations made by CPH and Mafco, or to MSSF's damages. This Request is, however, completely unrelated and irrelevant to the issues now before the Court — Morgan Stanley's representations to CPH concerning Sunbeam. Nor is the requested discovery likely to lead to the discovery of admissible evidence. Morgan Stanley objects to this Request as irrelevant and harassing and will not produce a witness to address this topic.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 4th day of November, 2004.

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

ORDER GRANTING MORGAN STANLEY'S
MOTION FOR LEAVE TO AMEND PLEADINGS DATED OCTOBER 15, 2004

THIS CAUSE having come before the Court on November 3, 2004 upon Morgan Stanley's Motion for Leave to Amend Pleadings dated October 15, 2004, and the Court having heard argument of counsel and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that:

1. Morgan Stanley's Motion for Leave to Amend Pleadings is GRANTED.

2. Morgan Stanley's Seventh Affirmative Defense, attached to it's Motion for Leave to Amend Pleadings dated October 15, 2004, is hereby deemed filed as of the date of this Order.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 4 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

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

COLEMAN (PARENT) HOLDINGS INC., Case No. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

MORGAN STANLEY SENIOR FUNDING, INC., Case No. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

ORDER ON MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY SENIOR FUNDING, INC.'S MOTION FOR ISSUANCE OF COMMISSIONS

THIS CAUSE having come to be considered upon Morgan Stanley & Co., Inc. and Morgan Stanley Senior Funding, Inc.'s Motion for Issuance of Commission, and the Court having reviewed the file and being fully advised in the premises, it is hereby,

ORDERED and ADJUDGED: granted. Esquire Deposition Services in New York and Wilmington and Nantucket, or any person duly authorized by it to administer oaths in New Jersey and Delaware and Mass. are appointed to

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this 2 day of Nov., 2004.

* 20 commissions for the witnesses listed in the Motion. The parties are charged with the good faith cooperation in completing the depositions in the * allotted time. If a deposition is not completed, it shall be the responsibility of the party setting the deposition to enforce the subpoena or otherwise obtain the deponent's attendance so that the deposition may be timely concluded.

ELIZABETH T. MAASS
CIRCUIT COURT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

16div-008079

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Case No.:2003 CA 005045 AI
Order

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

COLEMAN (PARENT) HOLDINGS INC., Case No. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

MORGAN STANLEY SENIOR FUNDING, INC., Case No. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

ORDER ON MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY SENIOR FUNDING, INC.'S MOTION FOR ISSUANCE OF COMMISSIONS

THIS CAUSE having come to be considered upon Morgan Stanley & Co., Inc. and Morgan Stanley Senior Funding, Inc.'s Motion for Issuance of Commission, and the Court having reviewed the file and being fully advised in the premises, it is hereby,

ORDERED and ADJUDGED: granted. Esquire Deposition Services in New York and Wilmington and Nantucket, or any person duly authorized by it to administer oaths in New Jersey and Delaware and Mass. are appointed to

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this 2 day of Nov., 2004.

ELIZABETH T. MAASS
CIRCUIT COURT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

* 20 commissions for the witnesses listed in the motion. The parties are charged with the good faith cooperation in completing the depositions in the allotted time. If a deposition is not completed, it shall be the responsibility of the party noticing the deposition to enforce the subpoena or otherwise obtain the deponent's attendance so that the deposition may be timely concluded.

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Case No.:2003 CA 005045 AI
Order

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON COLEMAN (PARENT) HOLDINGS, INC.'S EMERGENCY MOTION TO ENFORCE COURT'S ORDER REGARDING PRETRIAL EXHIBITS

THIS CAUSE came before the Court February 4, 2005 on Coleman (Parent) Holdings, Inc.'s Emergency Motion to Enforce Court's Order Regarding Pretrial Exhibits, with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Coleman (Parent) Holdings, Inc.'s Emergency Motion to Enforce Court's Order Regarding Pretrial Exhibits is Granted. Plaintiff shall use the exhibit numbering system previously disclosed to MS & Co.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 8 day of February, 2005.

ELIZABETH T. MAASS
Circuit Court Judge

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1615 M Street, NW, Suite 400
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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON COLEMAN (PARENT) HOLDINGS, INC.'S EMERGENCY MOTION TO ENFORCE COURT'S ORDER REGARDING PRETRIAL EXHIBITS

THIS CAUSE came before the Court February 4, 2005 on Coleman (Parent) Holdings, Inc.'s Emergency Motion to Enforce Court's Order Regarding Pretrial Exhibits, with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Coleman (Parent) Holdings, Inc.'s Emergency Motion to Enforce Court's Order Regarding Pretrial Exhibits is Granted. Plaintiff shall use the exhibit numbering system previously disclosed to MS & Co.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 8 day of February, 2005.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

ORDER ON MOTION FOR PROTECTIVE ORDER CONCERNING DISCOVERY SERVED BY COLEMAN (PARENT) HOLDINGS, INC. AFTER OCTOBER 14, 2004 AND TO EXTEND PRETRIAL DEADLINES

THIS CAUSE came before the Court November 4, 2004 on Morgan Stanley & Co. Incorporated's Motion for Protective Order Concerning Discovery Served by Coleman (Parent) Holdings, Inc. After October 14, 2004 and to Extend Pretrial Deadlines, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Morgan Stanley & Co. Incorporated's Motion for Protective Order Concerning Discovery Served by Coleman (Parent) Holdings, Inc. After October 14, 2004 and to Extend Pretrial Deadlines is Denied.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 4 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

16div-008087

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& ASSOCIATES
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F A C S I M I L E

TO:	**Thomas D. Yannucci, Esq.** **Lawrence P. Bemis, Esq.** **Thomas A. Clare, Esq.** **Zhonette M. Brown, Esq.** 202 879 5000	**FAX:**	202 879 5200
FROM:	Steven L. Schwarzberg, Esq.	**PAGES:**	
RE:	Coleman (Parent) Holdings, Inc. v. Morgan Stanley	**DATE:**	November 5, 2004

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply**

Please see attached Motion for Protective Order and Notice of Hearing.

Thank you,
Steven L. Schwarzberg, Esq.

SCHWARZBERG & ASSOCIATES--CONFIDENTIAL INFORMATION

This fax and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to whom it is addressed. This communication may contain material protected by attorney-client privilege. If you are not the intended recipient or the person responsible for delivering the fax to the intended recipient, be advised that you have received this fax in error and that any use, dissemination, forwarding, printing, or copying of this fax and/or any file attachments is strictly prohibited. If you received this fax in error, please immediately notify us by telephone at 561-659-3300 or by reply fax to the sender. You must destroy the original transmission and its contents. You will be reimbursed for reasonable costs incurred in notifying us. Thank you.

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

COLEMAN (PARENT) HOLDINGS, INC., Plaintiff, v. MORGAN STANLEY & CO. INCORPORATED Defendant.	Case No.: 03-CA-005045 AI Judge Elizabeth T. Maas

PHILLIP HARLOW'S MOTION FOR PROTECTIVE ORDER

Philip Harlow ("Harlow") respectfully moves this Court pursuant to Florida Rule of Civil Procedure 1.280(c) for a protective order precluding defendant Morgan Stanley & Co., Inc. ("Morgan Stanley") from proceeding with the deposition of Harlow noticed for November 17, 2004. Harlow, a non-party to the instant case, has already given 13 days of testimony under oath in other Sunbeam Corporation-related cases which exhaustively covered all aspects of his work concerning Sunbeam Corporation. Morgan Stanley's counsel insists on holding a deposition although it has failed to identify a single area of inquiry which was not covered in any of the previous 13 days of testimony. Any deposition testimony given in the instant case could not be admitted as evidence at trial because Harlow is a Florida resident and available for trial. Therefore, the deposition Morgan Stanley has demanded would merely rehash what Harlow has previously testified to over 13 days. Such a pointless exercise would be unduly bu densome for a non-party. In support of this motion, Harlow, through his undersigned counsel, states as follows:

1. On October 26, 2004, Morgan Stanley served a Notice of Taking Videotaped Deposition and a Subpoena for Deposition calling for the deposition of Harlow on November 17, 2004, which deposition "may continue from day to day until completed." A copy of the Notice and Subpoena are annexed hereto as Exhibit A.

2. Counsel for Harlow, informed Morgan Stanley's counsel, Kellogg, Huber, Hansen, Todd & Evans, PLLC ("Kellogg"), that a deposition was unnecessary and unwarranted. Specifically, counsel for Harlow sent a letter, dated November 3, 2004 (a copy is annexed hereto as Exhibit B), advising Kellogg that the deposition should not proceed because:

a) Harlow is not a party to the instant litigation between Morgan Stanley and Coleman (Parent) Holdings, Inc. (the "Coleman case");

b) Harlow has been examined under oath for at least 13 days in various other lawsuits and proceedings concerning Sunbeam Corporation;

c) those depositions covered in exhaustive detail all of Harlow's activities relating to Sunbeam Corporation, Morgan Stanley, and Coleman (Parent) during all times relevant to the Coleman case; and

d) Harlow is a resident of Florida and is available to testify at trial in the Coleman case.

3. Counsel for Harlow explained that there can be no justification to subject Harlow to an additional multi-day deposition when Morgan Stanley knows what Harlow's testimony will be regarding any and all facts which could possibly relate to the Coleman case. In fact, in the November 3 letter, counsel for Harlow specifically asked Kellogg to identify areas about which they wish to examine Harlow that were not fully covered in the many transcripts of Harlow's sworn testimony in Kellogg's (or its co-counsel's) possession.

4. Kellogg refused to attempt to resolve these issues, replying by letter dated November 4, 2004, that they "do not agree with" Harlow's counsels' position and that they expect to proceed with Harlow's deposition on November 17, 2004. No areas of inquiry were identified in Kellogg's letter. A copy of that letter is annexed hereto as Exhibit C.

5. There is simply no logical reason for subjecting Harlow to a multi-day deposition in the Coleman case. Harlow is not a party to the Coleman case and in other Sunbeam Corporation-related cases he already gave at least 13 days of depositions about all aspects of his work concerning Sunbeam Corporation which could possibly be relevant to the Coleman case. Kellogg has not even identified a single area concerning Harlow's work about which he has not already testified under oath.

6. Moreover, the need for a multi-day deposition is particularly unwarranted in this instance because Harlow is a resident of the State of Florida and available to give testimony at trial. Because Harlow will be available at trial, Kellogg's proposed deposition cannot be admitted as evidence at trial, and is therefore purely informational in nature. Considering the 13 days of depositions Harlow has already given, there is no information that Morgan Stanley lacks.

7. As a result, such a purely informational deposition will be unduly burdensome to the point of being abusive. Harlow has already suffered economically by being forced to take time off from his employment to appear at the 13 prior days of depositions he gave in other Sunbeam Corporation-related cases.

8. Harlow submits that this Court should enter a protective order precluding the deposition in its entirety. If this Court does not enter such a protective order, Harlow

respectfully requests that the Court limit the deposition to a total of six hours (three hours for each side in the Coleman case).

WHEREFORE, for the reasons stated herein, Harlow requests that the Court issue the attached protective order.

Dated: November 5, 2004

Attorneys for Philip Harlow

SCHWARZBERG & ASSOCIATES

By: _____

Steven L. Schwarzberg
Florida Bar No.: 306134
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CURTIS, MALLET-PREVOST, COLT & MOSLE LLP
Eliot Lauer
Michael Moscato
Martin Wendel
Scott D. Fischer
101 Park Avenue
New York, NY 10178
Tel: (212) 696-6000
Fax: (212) 697-1559

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below I served by facsimile and U.S. mail a true and correct copy of Harlow's Motion For Protective Order on all counsel on the attached service list.

Dated: November 5, 2004

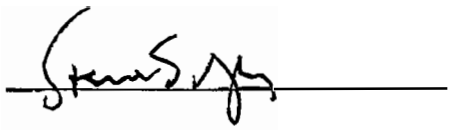

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EXHIBIT A

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

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

NOTICE OF TAKING VIDEOTAPED DEPOSITION

TO: ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that pursuant to Fla.R.Civ.P. Rules 1.310 and 1.410, the undersigned counsel will take the deposition of the following:

NAME:	DATE/TIME:	LOCATION:
Philip Harlow	November 17, 2004 at 9:30 a.m.	Precision Reporting Ocean Executive Suites 515 Seabreeze Blvd., 2nd Floor Ft. Lauderdale, Florida

Upon oral examination before a notary public or other officer authorized by law to take depositions in the State of Florida. The name and address of the videographer is set forth below. This examination may continue from day to day until completed. The deposition is being taken for the purpose of discovery, for use at trial, or for such other purposes, as is permitted under the applicable and governing rules.

[illegible]

Individuals who have a disability that may need accommodation should contact the undersigned seven (7) days prior to the deposition.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and U.S. Mail and e-mail to all counsel of record listed below on this 20th day of October, 2004.

CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368
E-mail: jianno@carltonfields.com

BY: _____
JOSEPH IANNO, JR.
Florida Bar No: 655351

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Counsel for Plaintiff

Jerold S. Solovy
JENNER & BLOCK, LLC
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Chicago, Illinois 60611

Counsel for Plaintiff

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Counsel for Morgan Stanley & Co. Incorporated

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James M. Webster, III
Rebecca A. Beynon
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Visual Evidence
601 N. Dixie Highway
West Palm Beach, FL 33405

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

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO, INCORPORATED,

Defendant.

SUBPOENA FOR DEPOSITION

THE STATE OF FLORIDA:

TO: Phillip E. Harlow
608 Second Key Drive
Ft. Lauderdale, Florida 33304

YOU ARE COMMANDED to appear before a person authorized by law to take depositions in the State of Florida at Precision Reporting, Ocean Executive Suites, 515 Seabreeze Blvd., 2nd Floor Ft. Lauderdale, Florida on November 17, 2004 at 9:30 a.m., for the taking of your deposition.

If you fail to appear you may be in contempt of court.

You are subpoenaed to appear by the following attorneys and unless excused from this Subpoena by these attorneys or the Court, you shall respond to this Subpoena as directed.

Dated: October 26, 2004

Joseph Lenno, Jr. (FL Bar # 655351)
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368

Counsel for Defendant
Morgan Stanley & Co. Incorporated

EXHIBIT B

CURTIS, MALLET-PREVOST, COLT & MOSLE LLP

ATTORNEYS AND COUNSELLORS AT LAW
101 PARK AVENUE
NEW YORK, NEW YORK 10178-0061

FRANKFURT MUSCAT
HOUSTON PARIS
LONDON STANFORD
MEXICO CITY WASHINGTON, D.C.
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WRITER'S DIRECT:
TELEPHONE 212-696-6941
E-MAIL MWENDEL@CM-P.COM

November 3, 2004

Facsimile and U.S. Mail

Rebecca Beynon
Kellogg, Huber, Hansen, Todd & Evans, PLLC
Summer Square
1615 M Street, N.W.
Suite 400
Washington, DC 20036-3206

Re: ***Morgan Stanley & Co., Inc., et al. v. Arthur Andersen LLP, et al.***
Case No. 502004CA002257XXXMBAA

Dear Rebecca:

I am writing in response to the letter you sent on October 21, 2004 to Mike Moscato requesting a two-day deposition of Phillip Harlow ("Harlow") in connection with *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*, Case No. CA 03-5045 AI (the "Coleman Case"). We have also been advised that you served a Notice of Taking Videotaped Deposition of Harlow to be conducted on November 17, 2004 "from day to day until completed." We reserve the right to object to your attempt to depose Harlow for the following reasons.

Harlow is a non-party in the Coleman Case. As you know, Harlow has been examined under oath numerous times, totaling at least 13 days of testimony, in various Sunbeam-related actions. These depositions covered in exhaustive detail all of Harlow's activities relating to Sunbeam Corporation, Morgan Stanley, and Coleman during all times relevant to the Coleman Case. It is inconceivable that there exits any facet of Harlow's activities which has not been thoroughly discussed over the course of the 13 days of deposition testimony he has already given. Your office presumably has all of the transcripts of Harlow's previous deposition testimony and the exhibits thereto. Harlow is also a resident of Florida and is available to testify at trial in the Coleman Case.

Under the above circumstances, there is no justification to subject Harlow to an additional deposition, to say nothing of two or more additional days of deposition testimony, when you clearly know how he will testify on all of the relevant facts in the Coleman Case, and when he is subject to a trial subpoena in this case. Such a deposition would be unduly burdensome, to the point of being abusive.

An additional concern is that, while Harlow is not a party to the Coleman Case, he is a party in *Morgan Stanley & Co., Inc. v. Andersen LLP, et al., Case No. 04-002257.* We are concerned that your subpoena is intended more at improperly eliciting testimony in the Morgan Stanley Case than it is in eliciting testimony in the Coleman Case.

In light of the above, and in order for us to determine whether to object to your subpoena, please identify, by close of business Friday, November 5, 2004, any areas about which you seek to examine Harlow that have not been fully covered in the many transcripts of Harlow's sworn testimony which you have in your possession.

Sincerely,

Martin Wendel

cc: Steven Schwarzberg

EXHIBIT C

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
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1615 M STREET, N.W.
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WASHINGTON, D.C. 20036-3209

(202) 326-7900
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November 4, 2004

Via Facsimile and First-Class Mail

Martin Wendel
Curtis, Mallet-Prevost, Colt & Mosle LLP
101 Park Avenue
New York, NY 10178-0061

Re: Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc., Case No. CA 03-5045 AI

Dear Marty:

I write in response to your letter of November 3, 2004. We do not agree with your position. Pursuant to the Florida Rules, Morgan Stanley is entitled to obtain deposition testimony from any person with information regarding non-privileged matters that are relevant to the subject matter of the pending action. Morgan Stanley has properly noticed Mr. Harlow's deposition and has properly served him with a subpoena requiring him to appear for his deposition on November 17, 2004. We expect to proceed with Mr. Harlow's deposition on that date.

Very truly yours,

Rebecca Beynon

cc: Joseph Ianno, Esq.
Thomas Clare, Esq.
Michael Brody, Esq.

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

COLEMAN (PARENT) HOLDINGS, INC., Plaintiff, v. MORGAN STANLEY & CO. INCORPORATED, Defendant.	Case No.: 2003-CA-005045 AI Judge Elizabeth T. Maas

NOTICE OF HEARING

PLEASE TAKE NOTICE that the undersigned will bring before the Court the following matter:

DATE:	**Wednesday, November 11, 2004**
TIME:	8:45 a.m.
JUDGE:	The Honorable Elizabeth T. Maas **Courtroom 11-A**
PLACE:	Palm Beach County Courthouse, 205 North Dixie Highway West Palm Beach, Florida 33401
MATTER:	**Philip Harlow's Motion For Protective Order**

Movant counsel certifies that a bona fide effort to resolve the issue(s) set forth herein has been made prior to bringing this matter before the Court.

In accordance with the American with Disabilities Act of 1990, persons needing a special accommodation to participate in this proceeding should contact the Court ADA Coordinator no later than seven days prior to the proceedings. Telephone (561) 355 6050 for assistance; or hearing impaired, telephone (800) 955-8771 for assistance.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent on this 5th day of November, 2004, via facsimile and overnight mail to all counsel on the attached Service List.

SCHWARZBERG & ASSOCIATES

BY: _____
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F A C S I M I L E

TO:	**Thomas D. Yannucci, Esq.** **Lawrence P. Bemis, Esq.** **Thomas A. Clare, Esq.** **Zhonette M. Brown, Esq.** 202 879 5000	**FAX:**	202 879 5200
FROM:	Steven L. Schwarzberg, Esq.	**PAGES:**	
RE:	Coleman (Parent) Holdings, Inc. v. Morgan Stanley	**DATE:**	November 5, 2004

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply**

Please see attached Re-Notice of Hearing.

Thank you,
Steven L. Schwarzberg, Esq.

SCHWARZBERG & ASSOCIATES–CONFIDENTIAL INFORMATION

This fax and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to whom it is addressed. This communication may contain material protected by attorney-client privilege. If you are not the intended recipient or the person responsible for delivering the fax to the intended recipient, be advised that you have received this fax in error and that any use, dissemination, forwarding, printing, or copying of this fax and/or any file attachments is strictly prohibited. If you received this fax in error, please immediately notify us by telephone at 561-659-3300 or by reply fax to the sender. You must destroy the original transmission and its contents. You will be reimbursed for reasonable costs incurred in notifying us. Thank you.

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

COLEMAN (PARENT) HOLDINGS, INC., Plaintiff, v. MORGAN STANLEY & CO. INCORPORATED, Defendant.	Case No.: 2003-CA-005045 AI Judge Elizabeth T. Maas

AMENDED NOTICE OF HEARING
(correcting day)

PLEASE TAKE NOTICE that the undersigned will bring before the Court the following matter:

DATE:	**Thursday, November 11, 2004 (previously incorrectly listed as Wednesday)**
TIME:	8:45 a.m.
JUDGE:	The Honorable Elizabeth T. Maas **Courtroom 11-A**
PLACE:	Palm Beach County Courthouse, 205 North Dixie Highway West Palm Beach, Florida 33401
MATTER:	**Philip Harlow's Motion For Protective Order**

Movant counsel certifies that a bona fide effort to resolve the issue(s) set forth herein has been made prior to bringing this matter before the Court.

In accordance with the American with Disabilities Act of 1990, persons needing a special accommodation to participate in this proceeding should contact the Court ADA Coordinator no later than seven days prior to the proceedings. Telephone (561) 355 6050 for assistance; or hearing impaired, telephone (800) 955-8771 for assistance.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent on this 5th day of November, 2004, via facsimile and overnight mail to all counsel on the attached Service List.

SCHWARZBERG & ASSOCIATES

BY: _____
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Attorneys for Philip Harlow

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F A C S I M I L E

TO:	Joseph Ianno, Jr. Esq. 561 659 7070	**FAX:**	659 7368
FROM:	Steven L. Schwarzberg, Esq.	**PAGES:**	
RE:	Coleman (Parent) Holdings, Inc. v. Morgan Stanley	**DATE:**	November 5, 2004

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply**

Mr. Ianno:

Please see attached Re-Notice of Hearing.

Thank you,
Steven L. Schwarzberg, Esq.

SCHWARZBERG & ASSOCIATES--CONFIDENTIAL INFORMATION

This fax and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to whom it is addressed. This communication may contain material protected by attorney-client privilege. If you are not the intended recipient or the person responsible for delivering the fax to the intended recipient, be advised that you have received this fax in error and that any use, dissemination, forwarding, printing, or copying of this fax and/or any file attachments is strictly prohibited. If you received this fax in error, please immediately notify us by telephone at 561-659-3300 or by reply fax to the sender. You must destroy the original transmission and its contents. You will be reimbursed for reasonable costs incurred in notifying us. Thank you.

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

COLEMAN (PARENT) HOLDINGS, INC., Plaintiff, v. MORGAN STANLEY & CO. INCORPORATED, Defendant.	Case No.: 2003-CA-005045 AI Judge Elizabeth T. Maas

AMENDED NOTICE OF HEARING
(correcting day)

PLEASE TAKE NOTICE that the undersigned will bring before the Court the following matter:

DATE:	**Thursday, November 11, 2004 (previously incorrectly listed as Wednesday)**
TIME:	8:45 a.m.
JUDGE:	The Honorable Elizabeth T. Maas **Courtroom 11-A**
PLACE:	Palm Beach County Courthouse, 205 North Dixie Highway West Palm Beach, Florida 33401
MATTER:	**Philip Harlow's Motion For Protective Order**

Movant counsel certifies that a bona fide effort to resolve the issue(s) set forth herein has been made prior to bringing this matter before the Court.

In accordance with the American with Disabilities Act of 1990, persons needing a special accommodation to participate in this proceeding should contact the Court ADA Coordinator no later than seven days prior to the proceedings. Telephone (561) 355 6050 for assistance; or hearing impaired, telephone (800) 955-8771 for assistance.

16div-008115

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent on this 5th day of November, 2004, via facsimile and overnight mail to all counsel on the attached Service List.

SCHWARZBERG & ASSOCIATES

BY: _____

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#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC., Case No. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

MORGAN STANLEY SENIOR FUNDING, INC., Case No. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

_____/

NOTICE OF CANCELLATION OF HEARING

NOTICE is hereby given of the cancellation of the hearing on November 5, 2004 at 8:00 a.m. on Wachovia Bank, N.A.'s Motion to Quash Subpoena or Alternatively Motion for Protective Order.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and U.S. Mail to all counsel on the attached list on this 5th day of Nov., 2004.

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Attorneys for CPH and MAFCO

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Notice Of Cancellation Of Hearing
Case No.: 2003 CA 005045 AI

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F A C S I M I L E

TO:	**Thomas D. Yannucci, Esq.** **Lawrence P. Bemis, Esq.** **Thomas A. Clare, Esq.** **Zhonette M. Brown, Esq.** 202 879 5000	**FAX:**	202 879 5200
FROM:	Steven L. Schwarzberg, Esq.	**PAGES:**	
RE:	Coleman (Parent) Holdings, Inc. v. Morgan Stanley	**DATE:**	November 5, 2004

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply**

Please see attached Re-Notice of Hearing.

Thank you,
Steven L. Schwarzberg, Esq.

SCHWARZBERG & ASSOCIATES--CONFIDENTIAL INFORMATION

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

COLEMAN (PARENT) HOLDINGS, INC., Plaintiff, v. MORGAN STANLEY & CO. INCORPORATED, Defendant.	Case No.: 2003-CA-005045 AI Judge Elizabeth T. Maas

RE-NOTICE OF HEARING

PLEASE TAKE NOTICE that the undersigned will bring before the Court the following matter:

DATE:	**Monday, November 15, 2004**
TIME:	8:45 a.m.
JUDGE:	The Honorable Elizabeth T. Maas **Courtroom 11-A**
PLACE:	Palm Beach County Courthouse, 205 North Dixie Highway West Palm Beach, Florida 33401
MATTER:	**Philip Harlow's Motion For Protective Order**

Movant counsel certifies that a bona fide effort to resolve the issue(s) set forth herein has been made prior to bringing this matter before the Court.

In accordance with the American with Disabilities Act of 1990, persons needing a special accommodation to participate in this proceeding should contact the Court ADA Coordinator no later than seven days prior to the proceedings. Telephone (561) 355 6050 for assistance; or hearing impaired, telephone (800) 955-8771 for assistance.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent on this 5th day of November, 2004, via facsimile and overnight mail to all counsel on the attached Service List.

SCHWARZBERG & ASSOCIATES

BY: _____

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Attorneys for Philip Harlow

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November 5, 2004

VIA FACSIMILE AND FEDERAL EXPRESS

Jack Scarola, Esq.
Searcy, Denney, et al.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33401

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co. Inc.*

Dear Jack:

Enclosed please find a copy of Morgan Stanley's Motion for Protective Order Concerning CPH's Sixth Set of Requests for Admissions and CPH's Notice of Taking Deposition Dated October 22, 2004. We believe that this motion should be addressed in the same manner as the Motion for Protective Order argued and ruled upon this morning.

Please let me know if you agree.

Sincerely,

Joseph Ianno, Jr.

/jed

Enclosure

cc: Jerold Solovy (w/encl.)
Thomas Clare (w/encl.)
Rebecca Beynon (w/encl.)

WPB#566938.9

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY & CO. INC'S MOTION FOR PROTECTIVE ORDER CONCERNING COLEMAN (PARENT) HOLDINGS INC.'S SIXTH SET OF REQUESTS FOR ADMISSION AND CPH'S NOTICE OF TAKING DEPOSITION DATED OCTOBER 22, 2004

Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") requests that this Court enter a Protective Order pursuant to Fla.R.Civ.P. 1.280(c) that (1) relieves Morgan Stanley of the obligation to respond to Coleman (Parent) Holdings Inc.'s ("CPH") Sixth Request for Admissions ("Sixth Request"); (2) CPH's Notice of Taking Deposition dated October 22, 2004 and (3) orders counsel to meet and confer for the purposes of agreeing to the resolution of objections to the admissibility of trial exhibits in this matter without the use of the discovery process. In support, Morgan Stanley states as follows:

1. On October 22, 2004, CPH served, via facsimile, its Sixth Request on Morgan Stanley & Co., Inc. A copy of the Sixth Request is attached hereto as Exhibit "A."

2. In the Sixth Request, CPH identified 427 documents in Exhibit A and Exhibit B. For the identified 427 documents, CPH is asking for no less than five admissions from Morgan Stanley seeking a determination of each document's authenticity as defined under Florida's Rules of Evidence. In total, an overwhelming 2,135 actual requests for admissions are contained

in Requests for Admission Nos. 1 through 5. Moreover, in Request for Admission No. 8, CPH seeks an admission from Morgan Stanley with respect to the 174 documents listed in Exhibit B, bringing the accumulated requests for admission to 2,309.

3. The overwhelming number of admissions sought by CPH in its Sixth Request are harassing, overbroad, and impose an undue burden and expense upon Morgan Stanley.

4. The admissions sought by CPH in its Sixth Request, and any other discovery in the instant case which seeks a determination of the authenticity of documents under Florida's Rules of Evidence, including depositions taken under Fla.R.Civ.P. 1.310, are more properly determined by agreement of counsel. If the objections cannot be resolved through the agreement of counsel, decisions concerning the admissibility of documents are appropriately left to trial court and should not be part of the discovery process.

5. It is important to note that all of the documents have been identified during depositions that have been taken in this action. Each of the discovery requests served by CPH could and should have been asked during the deposition discovery process.

6. In addition, CPH has served a Notice of Taking VideoTaped Deposition for these same documents. A copy of the Deposition Notice is attached hereto as Exhibit "B". For the reasons stated herein, this discovery should not be permitted.

7. Morgan Stanley respectfully suggests that the more efficient process to obtain the information requested by CPH is through the pre-trial process established by the Court once the parties have prepared their exhibit lists for trial, and by requiring the parties to meet and confer to either resolve or narrow the objections to any actual trial exhibits.

WHEREFORE, Morgan Stanley respectfully requests that this Court enter a protective order (1) relieving Morgan Stanley of its obligation to respond to CPH's Sixth Request for

Admission and to appear for the deposition as noticed and, (2) ordering counsel to make a good faith effort to meet and confer to resolve objections to the admissibility of trial exhibits and award such other and further relief as is just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 5th day of November, 2004.

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BY: Joseph Ianno Jr.
Joseph Ianno, Jr.
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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC., et al.,
Defendants.

_____/

COLEMAN (PARENT) HOLDINGS INC.'S
SIXTH SET OF REQUESTS FOR ADMISSION

Plaintiff Coleman (Parent) Holdings Inc., by its attorneys and pursuant to Florida Rule of Civil Procedure 1.370, hereby requests that defendant Morgan Stanley & Co., Inc. answer, under oath and in writing, the following requests for admission within 14 days of the date of service of these requests.

DEFINITIONS AND INSTRUCTIONS

1. "Morgan Stanley" means Morgan Stanley & Co., Inc. or any of its parent, affiliates, subsidiaries, divisions, predecessors, successors, present and former employees, representatives, agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

EXHIBIT
"A"

2. When good faith requires Morgan Stanley to qualify an answer or deny only part of the matter of which an admission is requested, Morgan Stanley shall specify the part of the matter which is true, and qualify or deny the remainder.

REQUESTS FOR ADMISSION

1. Admit that the documents listed in the attached Exhibits A and B are what they purport to be or are otherwise true and authentic copies of original documents within the meaning of Florida Evidence Code § 90.901.

2. Admit that the documents listed in the attached Exhibits A and B were made by Morgan Stanley at or near the time of the event recorded within the meaning of Florida Evidence Code § 90.803(6)(a).

3. Admit that the documents listed in the attached Exhibits A and B were made by Morgan Stanley by or from information transmitted by a person with knowledge within the meaning of Florida Evidence Code § 90.803(6)(a).

4. Admit that the documents listed in the attached Exhibits A and B were kept by Morgan Stanley in the course of a regularly conducted business activity within the meaning of Florida Evidence Code § 90.803(6)(a).

5. Admit that it was Morgan Stanley's regular practice to make the documents listed in the attached Exhibits A and B within the meaning of Florida Evidence Code § 90.803(6)(a).

6. Admit that the documents being Bates numbers Morgan Stanley Confidential 0084771 through 0085783, and Morgan Stanley Confidential 0094003 through 0094032 were made by Morgan Stanley at or near the time of the event recorded within the meaning of Florida Evidence Code § 90.803(6)(a).

7. Admit that the documents bearing Bates numbers Morgan Stanley Confidential 0084771 through 0085783, and Morgan Stanley Confidential 0094003 through 0094032 were

made by Morgan Stanley by or from information transmitted by a person with knowledge within the meaning of Florida Evidence Code § 90.803(6)(a).

8. Admit that Morgan Stanley authored the documents listed in the attached Exhibit B.

COLEMAN (PARENT) HOLDINGS INC.

Dated: October 22, 2004

By: _____
One of Its Attorneys

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 22 day of Oct, 2004.

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and MacAndrews & Forbes Holdings, Inc.

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EXHIBIT A

DEP EXHIBIT #	BATES RANGE
CPH 003	MSC 0080435-0080437
CPH 004	MSC 0031171-0031176
CPH 005	MSC 0031177-0031220
CPH 006	MSC 0080438-0080439
CPH 009	CP 026286-026370
CPH 010	CP 033169-033240
CPH 011	SASMF 10699-10705
CPH 012	CPH 0012526-0012527
CPH 013	CPH 0635991-0635992
CPH 014	MSC 0016944-0016945
CPH 016	MSC 0028858
CPH 017	MS 00375-00381
CPH 024	DPW000001 - 000002
CPH 025	N/A
CPH 026	CPH1412961-1413007
CPH 027	MSC 0026219
CPH 028	MSC 0081555-0080760
CPH 029	MSC 0080440 - 0081556
CPH 031	CPH0635893
CPH 032	CPH0635894 - 0635895
CPH 033	MSC 0029176

DEP EXHIBIT #	BATES RANGE
CPH 034	CPH0520973 - 0520974
CPH 035	CPH1257351
CPH 036	CPH0639323 - 0639327
CPH 037	MSC 0045317 - 0045318
CPH 038	MSC 0041766 - 0041858
CPH 051	CPH0284977-0285008
CPH 064	MSC 0028423
CPH 065	CPH0088703
CPH 066	CPH0038717
CPH 067	CPH0063827-0063833
CPH 068	MSC 0003995-0004001
CPH 069	MSC 0003894-0003930
CPH 070	SB237825-237830
CPH 071	MSC 0005984-0005995
CPH 072	MSC 0064865-0064866
CPH 074	MSC 0080356-0080358
CPH 075	SB0016202-0016288
CPH 076	MSC 0025829-0025886
CPH 078	MSC 0039543
CPH 079	MSC 0031855 – 0031856
CPH 080	CPH0465134

DEP EXHIBIT #	BATES RANGE
CPH 081	MSC 0036393 – 0036395
CPH 081A	N/A
CPH 082	CPH0469477-0469561
CPH 083	N/A
CPH 084	MSC 0033255 – 033263
CPH 084A	N/A
CPH 085	MSC 0036347 – 0036349
CPH 086	MSC 0045112 - 0045113
CPH 087	MSC 0035967- 0035969
CPH 088	MSC 0031791 – 0031799
CPH 089	MSC 0083960 – 0084026
CPH 090	CPH1332631 – 1335633
CPH 091	N/A
CPH 092	MSC 0003389 - 0003415
CPH 093	N/A
CPH 094	N/A
CPH 095	MSC 0036112 – 0036113
CPH 096	CPH0472488 – 0472496
CPH 097	MSC 0033910 – 0033911
CPH 098	CPH0482089 – 0482098
CPH 099	N/A
CPH 100	MSC 0062860 – 0062896

DEP EXHIBIT #	BATES RANGE
CPH 110	CPH0038670 – 0038676
CPH 111	CPH0038700 – 0038705
CPH 112	CPH0129613 – 0129616
CPH 115	CPH0038700 – 0038705
CPH 117	CPH0038523 – 0038524
CPH 120	CPH0012522 – 0012524
CPH 121	CPH1145796
CPH 122	CPH0039327, CPH0038707
CPH 124	CPH0012464 – 0012466
CPH 125	MSC 0004673 - 0004702
CPH 126	MSC 0042248 - 0042275
CPH 128	MSC 0029199 - 0029201
CPH 129	MSC 000513 - 000541
CPH 130	CPH0251869 – 0251889
CPH 131	CPH0251890 – 0251985
CPH 132	CPH0636135 – 0636136
CPH 133	MSC 0059244 – 0059266
CPH 135	MSC 0063735 – 0063804
CPH 136	MSC 0063748 – 0063904
CPH 137	MSC 0039543
CPH 138	CPH1411216 – 1411300
CPH 139	MSC 0026540 – 0026544

DEP EXHIBIT #	BATES RANGE
CPH 140	CPH0483399 – 0483407
CPH 141	CPH 0483341 – 0483350
CPH 142	CPH 0253547 – 0253555
CPH 143	CPH1026942-1026953
CPH 144	MSC 0016944
CPH 145	MSC 0026214 – 0026271
CPH 146	MSC 0080325 – 0080333
CPH 148	MSC 0047892
CPH 149	MSC 0047893
CPH 150	CPH0470006-04700016
CPH 151	MSC 0065651 – 0065784
CPH 152	LAB 000043
CPH 153	MSC 0018885 – 0018942
CPH 154	CPH1258265 – 1258286
CPH 155	CPH1346133 – 1346250
CPH 156	CPH1346276 – 1346342
CPH 157	MSC 0018702 – 0018703
CPH 160	MSC 0003143
CPH 162	MSC 0026868 – 0026891
CPH 163	MSC 0080427 – 0080430
CPH 164	MSC 0045133-0045139
CPH 165	N/A

DEP EXHIBIT #	BATES RANGE
CPH 166	MSC 0045102-0045108
CPH 167	N/A
CPH 168	N/A
CPH 169	MSC 0044556-0044573
CPH 170	MSC 0042538-0042540
CPH 171	N/A
CPH 172	MSC 0044462
CPH 173	MSC 0043129
CPH 174	MSC 0042570
CPH 175	N/A
CPH 176	N/A
CPH 177	MSC 0085779
CPH 178	MSC 0084771-0084778
CPH 179	CPH0635892-0635895
CPH 180	MSC 0029194-0029196
CPH 181	MSC 0006284-0006335
CPH 182	CPH 1089795-1089815
CPH 183	MSC 0063286-0063330
CPH 184	N/A
CPH 186	MSC 0041901-0041912
CPH 187	MSC 0041870-0041888
CPH 187A	CP0254621-0254640

DEP EXHIBIT #	BATES RANGE
CPH 188	CPH1408952-1408956
CPH 189	CPH0642933-0642937
CPH 190	N/A
CPH 194	N/A
CPH 195	MSC 0040237-0040305
CPH 196	MSC 085612-0085613
CPH 200	CPH0472360-0472361
CPH 202	MSC 0003931
CPH 203	MSC 0042314-0042327
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CPH 207	CPH0471614-0471629
CPH 208	CPH632817-0632905
CPH 209	CPH1348404-1348475
CPH 210	CPH0632981
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CPH 212	CPH1257349
CPH 213	MSC 0029159-0029162
CPH 214	CPH127359
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CPH 217	MSC 0045865-0045758
CPH 217A	MSC 0080431- 0080434

DEP EXHIBIT #	BATES RANGE
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CPH 218A	MSC 0045760- 0045761
CPH 219	MSC 0036347- 0036349
CPH 220	CPH0467090-0467126
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CPH 222	MSC 0003431- 0003464
CPH 223	MSC 0042482- 0042483
CPH 224	N/A
CPH 225	CPH 0147626-0147627
CPH 226	CPH 0147607-0147616
CPH 227	CPH 0639174-0639182
CPH 228	MSC 0085750- 0085751
CPH 229	MSC 0085763-0085765
CPH 230	CPH 0635890-0635891
CPH 232	MSC 0085589-0085609
CPH 233	MSC 0085274-0085283
CPH 234	MSC 0084771-0084776
CPH 235	MSC 0085726-0085727
CPH 238	CPH 1412552-1412570
CPH 242	MSC 0045156
CPH 243	MSC 0026587-0026588
CPH 244	MSC 0031982-0031984

DEP EXHIBIT #	BATES RANGE
CPH 245	MSC 0043210
CPH 246	CPH 0473192-0473193
CPH 247	MSC 0004132-0004143
CPH 248	MSC 0085175- 0085181
CPH 249	MSC 0036633-0036634
CPH 250	CPH 0146467
CPH 251	MSC 0005547-0005599
CPH 252	MSC 0019638-0019725
CPH 255	MSC 0045317- 0045318
CPH 256	MSC 0019097- 0019116
CPH 257	FUNB 021139
CPH 258	FUNB 021243
CPH 260	CPH 0485371- 0485378
CPH 261	MSC 0024383- 0024451
CPH 262	MSC 0018860- 0018725 *(18687-88)**
CPH 263	MSC 0018730- 0018731
CPH 264	MSC 0024863
CPH 265	MSC 0024864- 0024866
CPH 266	CPH 1349253- 1349282
CPH 272	CPH0473148-0473165
CPH 273	MSC 0023225-0023229
CPH 274	MSC 0054921-0054925

DEP EXHIBIT #	BATES RANGE
CPH 275	MSC 0001575-0001579
CPH 277	MSC0004673-0004702
CPH 278	MSC 0036700-0036720
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CPH 281	MSC 0059244-0059266
CPH 284	MSC 0025887
MS 13	MSC 0027828-0027829
MS 40	MSC 0000001-0000175
MS 48	CPH 0041655-0041661
MS 57	FUNB 016564-016567
MS 79	CPH 0467007
MS 80	CPH 1426289-1426295
MS 81	CPH 1421814-1421817
MS 82	CPH 1406962-1406964
MS 83	CPH 1427250-1427253
MS 85	CPH 1411216-1411300
MS 115	MSC 0063805-0063811
MS 166	CPH 1326487-1326662
MS 175	CPH 0482090-0482098
MS 182	CPH 1412533- 1412551
MS 183	CPH 1109095- 1109115

DEP EXHIBIT #	BATES RANGE
MS 189	CPH 1399821-1399822
MS 194	CPH 1185762-1185784
MS 238	CPH 1418423- 1418489
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	MSC 0015626-0015703
	MSC 0020477- 0020552
	MSC 0061553- 0061621
	MSC 0061191- 0061251
	MSC 0067528- 0067602
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	MSC 0073484- 0073562
	MSC 0067258- 0067341
	MSC 0087405- 0087490
	MSC 0070445- 0070542
	MSC 0086753- 0086799
	MSC 0092043- 0092076
	MSC 0092077- 0092111
	MSC 0092146-0092177
	MSC 0092032- 0092042
	MSC 0092178- 0092188
	MSC 0092112- 0092133
	MSC 0092134- 0092145

EXHIBIT B

DEP EXHIBIT #	BATES RANGE
CPH 003	MSC 0080435-0080437
CPH 004	MSC 0031171-0031176
CPH 005	MSC 0031177-0031220
CPH 006	MSC 0080438-0080439
CPH 009	CP 026286-026370
CPH 010	CP 033169-033240
CPH 011	SASMF 10699-10705
CPH 012	CPH 0012528-0012527
CPH 014	MSC 0016944-0016945
CPH 024	DPW000001 - 000002
CPH 026	CPH1412961-1413007
CPH 027	MSC 0026219
CPH 028	MSC 0081555-0080760
CPH 029	MSC 0080440 - 0081558
CPH 031	CPH0635893
CPH 033	MSC 0029176
CPH 034	CPH0520973 - 0520974
CPH 035	CPH1257351
CPH 037	MSC 0045317 - 0045318
CPH 038	MSC 0041766 - 0041858
CPH 061	CPH0284977-0285008

DEP EXHIBIT #	BATES RANGE
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CPH 072	MSC 0064865-0064866
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CPH 075	SB0018202-0018288
CPH 076	MSC 0025829-0025886
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CPH 079	MSC 0031855 – 0031858
CPH 081	MSC 0036393 – 0036395
CPH 081A	N/A
CPH 082	CPH0469477-0469561
CPH 083	N/A
CPH 084	MSC 0033255 – 033283
CPH 084A	N/A
CPH 085	MSC 0036347 – 0036349
CPH 086	MSC 0045112 - 0045113
CPH 087	MSC 0035967- 0035969
CPH 088	MSC 0031791 – 0031799

DEP EXHIBIT #	BATES RANGE
CPH 089	MSC 0083960 – 0084026
CPH 090	CPH1332631 – 1335633
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CPH 095	MSC 0036112 – 0036113
CPH 096	CPH0472488 – 0472496
CPH 097	MSC 0033910 – 0033911
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CPH 100	MSC 0062860 – 0062895
CPH 122	CPH0039327, CPH0038707
CPH 125	MSC 0004673 - 0004702
CPH 126	MSC 0042248 - 0042275
CPH 128	MSC 0029199 - 0029201
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CPH 130	CPH0251889 – 0251889
CPH 131	CPH0251890 – 0251985
CPH 133	MSC 0059244 – 0059286
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CPH 136	MSC 0083748 – 0083904

DEP EXHIBIT #	BATES RANGE
CPH 137	MSC 0039543
CPH 138	CPH1411216 – 1411300
CPH 139	MSC 0026540 – 0026544
CPH 140	CPH0483399 – 0483407
CPH 141	CPH 0483341 – 0483350
CPH 142	CPH 0253547 – 0253555
CPH 143	CPH1026942-1026953
CPH 144	MSC 0018944
CPH 145	MSC 0028214 – 0028271
CPH 146	MSC 0080325 – 0080333
CPH 148	MSC 0047892
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CPH 151	MSC 0065651 – 0065764
CPH 153	MSC 0018885 – 0018942
CPH 155	CPH1346133 – 1346250
CPH 156	CPH1346276 – 1346342
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CPH 165	N/A
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DEP EXHIBIT #	BATES RANGE
CPH 167	N/A
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CPH 170	MSC 0042538-0042540
CPH 171	N/A
CPH 172	MSC 0044462
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CPH 174	MSC 0042570
CPH 175	N/A
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CPH 177	MSC 0085779
CPH 178	MSC 0084771-0084778
CPH 179	CPH0635892-0635895
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CPH 181	MSC 0006284-0006335
CPH 182	CPH 1089795-1089815
CPH 183	MSC 0063286-0063330
CPH 184	N/A
CPH 186	MSC 0041901-0041912
CPH 187	MSC 0041870-0041888
CPH 187A	CP0254621-0254640
CPH 188	CPH1408952-1408956

DEP EXHIBIT #	BATES RANGE
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CPH 194	N/A
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CPH 198	MSC 085612-0085613
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CPH 203	MSC 0042314-0042327
CPH 204	MSC 0042328-0042341
CPH 205	MSC 0004005- 004007
CPH 207	CPH0471614-0471629
CPH 209	CPH1348404-1348475
CPH 210	CPH0632981
CPH 211	CPH0633012-0633049
CPH 212	CPH1257349
CPH 213	MSC 0029159-0029162
CPH 214	CPH127359
CPH 215	N/A
CPH 217	MSC 0045665-0045758
CPH 217A	MSC 0080431- 0080434
CPH 218	MSC 0004724-0004726
CPH 218A	MSC 0045760- 0045761
CPH 219	MSC 0036347- 0036349

DEP EXHIBIT #	BATES RANGE
CPH 220	CPH0467090-0467126
CPH 221	MSC 0045474-0045475
CPH 222	MSC 0003431- 0003464
CPH 223	MSC 0042482- 0042483
CPH 224	N/A
CPH 228	MSC 0085750- 0085751
CPH 229	MSC 0085763-0085765
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CPH 233	MSC 0085274-0085283
CPH 234	MSC 0084771-0084778
CPH 235	MSC 0085726-0085727
CPH 238	CPH 1412552-1412570
CPH 242	MSC 0045156
CPH 243	MSC 0026587-0026588
CPH 244	MSC 0031982-0031984
CPH 245	MSC 0043210
CPH 246	CPH 0473192-0473193
CPH 247	MSC 0004132-0004143
CPH 248	MSC 0085175- 0085181
CPH 249	MSC 0036633-0036634
CPH 250	CPH 0148467

DEP EXHIBIT #	BATES RANGE
CPH 251	MSC 0005547-0005599
CPH 252	MSC 0019636-0019725
CPH 255	MSC 0045317- 0045318
CPH 256	MSC 0019097- 0019116
CPH 257	FUNB 021139
CPH 258	FUNB 021243
CPH 260	CPH 0485371- 0485376
CPH 261	MSC 0024363- 0024451
CPH 262	MSC 0018660- 0018725 *(18687-88)**
CPH 263	MSC 0018730- 0018731
CPH 264	MSC 0024863
CPH 265	MSC 0024864- 0024866
CPH 266	CPH 1349253- 1349282
CPH 272	CPH0473148-0473185
CPH 275	MSC 0001575-0001579
CPH 277	MSC0004673-0004702
CPH 278	MSC 0036700-0036720
CPH 279	MSC 006375-006432
CPH 280	MSC 0018885-0018942
CPH 281	MSC 0059244-0059266
MS 166	CPH 1326467-1326562
MS 175	CPH 0482090-0482098

DEP EXHIBIT #	BATES RANGE
MS 182	CPH 1412533- 1412551
MS 183	CPH 1109095- 1109115
MS 189	CPH 1399821-1399822
MS 194	CPH 1185782-1185784
MS 238	CPH 1416423- 1416499
MS 40	MSC 0000001-0000175
MS 57	FUNB 016564-016567

DEP EXHIBIT #	BATES RANGE
MS 79	CPH 0467007
MS 80	CPH 1426288-1426296
MS 81	CPH 1421814-1421817
MS 82	CPH 1406962-1406964
MS 83	CPH 1427250-1427253
MS 85	CPH 1411216-1411300

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC., et al.,
Defendants.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITION

To:

Thomas A. Clare, Esq.
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Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
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Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings, Inc. will take the deposition upon oral examination of the following parties and witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co. on topics identified on Exhibit A.	November 9, 2004 at 9:30 a.m.
Morgan Stanley Senior Funding, Inc. on topics identified on Exhibit A.	November 9, 2004 at 1:30 a.m.

The depositions will be recorded by stenographic and videographic means at the offices of Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017-3004. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until complete.

EXHIBIT "B"

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to all counsel on the attached Service List, this 24th day of October, 2004.

Dated: October 22, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
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Deirdre E. Connell
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One IBM Plaza, Suite 4400
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Jack Scarola
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EXHIBIT A

You are hereby requested to respond to the following topics pursuant to the definitions set forth below.

RULE 1.310 TOPICS

1. The authenticity, source, creation, use, maintenance, and business purpose of documents produced and/or authored by Morgan Stanley and/or MSSF, bearing the following deposition exhibit number and/or Bates numbers, and information contained therein:

DEP EXHIBIT #	BATES RANGE
	MSC 0015896-0019970
	MSC 0015626-0015703
	MSC 0020477-0020552
	MSC 0061553-0061621
	MSC 0061191-0061251
	MSC 0067528-0067602
	MSC 0072800-0072863
	MSC 0073484-0073562
	MSC 0067258-0067341
	MSC 0087405-0087490
	MSC 0070445-0070542
	MSC 0086753-0086799
	MSC 0092043-0092076
	MSC 0092077-0092111

DEP EXHIBIT #	BATES RANGE
	MSC 0092146-0092177
	MSC 0091032-0092042
	MSC 0092178-0092188
	MSC 0092112-0092133
	MSC 0092134-0092145
CPH 003	MSC 0080435-0080437
CPH 004	MSC 0031171-0031176
CPH 005	MSC 0031177-0031220
CPH 006	MSC 0080438-0080439
CPH 009	CP 026286-026370
CPH 010	CP 033189-033240
CPH 011	SASMF 10699-10705
CPH 012	CPH 0012526-0012527
CPH 013	CPH 0635991-0636992
CPH 014	MSC 0016944-0016945

DEP EXHIBIT #	BATES RANGE
CPH 016	MSC 0028858
CPH 017	MS 00375-00381
CPH 024	DPW000001 - 000002
CPH 025	N/A
CPH 026	CPH1412981-1413007
CPH 027	MSC 0026219
CPH 028	MSC 0081555-0080760
CPH 029	MSC 0080440 - 0081556
CPH 031	CPH0635893
CPH 032	CPH0635894 - 0635895
CPH 033	MSC 0029176
CPH 034	CPH0520973 - 0520974
CPH 035	CPH1257351
CPH 036	CPH0639323 - 0639327
CPH 037	MSC 0045317 - 0045318

DEP EXHIBIT #	BATES RANGE
CPH 038	MSC 0041766 - 0041858
CPH 061	CPH0284977-0285008
CPH 062	CPH0283484
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CPH 066	CPH0038717
CPH 067	CPH0063827-0063833
CPH 068	MSC 0003995-0004001
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CPH 072	MSC 0064865-0064866
CPH 074	MSC 0080356-0080358
CPH 075	SB0018202-0018286
CPH 076	MSC 0025829-0025886
CPH 078	MSC 0039543
CPH 079	MSC 0031855 – 0031856
CPH 080	CPH0465134
CPH 081	MSC 0036393 – 0036395
CPH 081A	N/A
CPH 082	CPH0469477-0469561
CPH 083	N/A

DEP EXHIBIT #	BATES RANGE
CPH 084	MSC 0033255 – 033283
CPH 084A	N/A
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CPH 086	MSC 0045112 - 0045113
CPH 087	MSC 0035967-0035969
CPH 088	MSC 0031791 – 0031799
CPH 089	MSC 0063960 – 0064026
CPH 090	CPH1332631 – 1335633
CPH 091	N/A
CPH 092	MSC 0003389 - 0003415
CPH 093	N/A
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CPH 095	MSC 0036112 – 0036113
CPH 096	CPH0472488 – 0472496
CPH 097	MSC 0033910 – 0033911
CPH 098	CPH0482089 – 0482098
CPH 099	N/A
CPH 100	MSC 0062860 – 0062896
CPH 110	CPH0038670 – 0038676
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CPH 112	CPH0129613 – 0129616
CPH 115	CPH0038700 – 0038706

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CPH 130	CPH0251869 – 0251889
CPH 131	CPH0251890 – 0251985
CPH 132	CPH0636135 – 0636136
CPH 133	MSC 0059244 – 0059266
CPH 135	MSC 0063735 – 0063804
CPH 136	MSC 0063748 – 0063904
CPH 137	MSC 0039543
CPH 138	CPH1411215 – 1411300
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CPH 142	CPH 0253547 – 0253555

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CPH 150	CPH0470006-04700018
CPH 151	MSC 0065651 – 0065784
CPH 152	LAB 000043
CPH 153	MSC 0018885 – 0018942
CPH 154	CPH1258269 – 1258288
CPH 155	CPH1346133 – 1346250
CPH 156	CPH1346276 – 1346342
CPH 157	MSC 0018702 – 0018703
CPH 160	MSC 0003143
CPH 162	MSC 0026888 – 0026891
CPH 163	MSC 0080427 – 0080430
CPH 164	MSC 0045133-0045139
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CPH 166	MSC 0045102-0045108
CPH 167	N/A
CPH 168	N/A

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CPH 170	MSC 0042538-0042540
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CPH 178	MSC 0084771-0084778
CPH 179	CPH0635892-0635895
CPH 180	MSC 0029194-0029198
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CPH 182	CPH 1089795-1089815
CPH 183	MSC 0063286-0063330
CPH 184	N/A
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CPH 187	MSC 0041870-0041888
CPH 187A	CP0254821-0254840
CPH 188	CPH1408952-1408956
CPH 189	CPH0842933-0842937
CPH 190	N/A

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CPH 208	CPH632817-0632905
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CPH 224	N/A
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CPH 230	CPH 0635890-0635891
CPH 232	MSC 0085589-0085609
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CPH 238	CPH 1412552-1412570
CPH 242	MSC 0045156
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CPH 258	FUNB 021243
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CPH 263	MSC 0018730-0018731
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CPH 272	CPH0473148-0473165
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CPH 281	MSC 0059244-0059266
CPH 284	MSC 0025887
MS 013	MSC 0027828-0027829
MS 040	MSC 0000001-0000175
MS 048	CPH 0041655-0041661
MS 057	FUNB 016564-016587
MS 079	CPH 0487007
MS 080	CPH 1426289-1426296
MS 081	CPH 1421814-1421817
MS 082	CPH 1408962-1408964
MS 083	CPH 1427250-1427253
MS 085	CPH 1411216-1411300
MS 115	MSC 0063805-0063811
MS 166	CPH 1326487-1326662
MS 175	CPH 0482090-0482098
MS 182	CPH 1412533-1412551
MS 183	CPH 1109095-1109115
MS 189	CPH 1399821-1399822
MS 194	CPH 1185762-1185784
MS 238	CPH 1418423-1418499

DEFINITIONS

1. "CPH" means Coleman (Parent) Holdings, Inc., its predecessors, successors, subsidiaries, and present and former officers, directors, and employees.

2. "Morgan Stanley" means Morgan Stanley & Co., Inc. and any of its direct or indirect parents, affiliates, subsidiaries, and present and former officers, directors, partners, employees, representatives, and agents.

3. "MSSF" means Morgan Stanley Senior Funding, Inc. and any of its direct or indirect parents, affiliates, subsidiaries, and present and former officers, directors, partners, employees, representatives, and agents.

4. "Documents" shall be given the broad meaning provided in CPLR 3120 and refers to any form or means, whether physical, visual, or electronic, in or by which words, numbers, or ideas are recorded or preserved, whether fixed in tangible medium or electronically stored, including any and all drafts of any final document. The word "documents" shall include, by way of example and not by way of limitation, all of the following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, notes, messages, reports, studies, press releases, comparisons, books, accounts, checks, audio and video recordings and transcriptions thereof, pleadings, testimony, articles, bulletins, pamphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk calendars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, minutes for meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements,

memoranda of understanding, letters of intent, computer tapes, computer drives or memories, computer diskettes or disks, e-mail, CD-ROMs, or any other tangible thing on which any handwriting, typing, printing, photostatic, electronic, or other form of communication or information is recorded or reproduced, together with all notations on any of the foregoing, all originals, file copies, or other unique copies of the foregoing, and all versions or drafts thereof, whether used or not.

5. "You" or "Your" means Morgan Stanley and/or MSSF and any of its present and former partners, employees, representatives, and agents.

SERVICE LIST

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FAX COVER SHEET

		Phone Number	Fax Number
Date:	November 5, 2004		
To:	Jack Scarola	(561) 686-6300	(561) 684-5816
	Jerold Solovy/Michael Brody	(312) 222-9350	(312) 840-7711
	Lorie Gleim	(561) 665-7900	(561) 655-6222
	Thomas Clare	(202) 879-5993	(202) 879-5200
	Rebecca Beynon/Mark Hansen	(202) 326-7900	(202) 326-7999
From:	Joyce Dillard, CLA	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 4

Message:

Coleman v. Morgan Stanley & Co., Inc.

To follow please find a copy of Morgan Stanley's Notice of Hearing.

☐ ***Original to follow Via Regular Mail*** ☐ ***Original will Not be Sent*** ☐ ***Original will follow via Overnight Courier***

****

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (if long distance, please call collect) and return the original message to us at the above address via the U.S. Postal Service. Thank you.

****

IF THERE ARE ANY PROBLEMS OR COMPLICATIONS, PLEASE NOTIFY US IMMEDIATELY AT:
(561) 659-7070

TELECOPIER OPERATOR: _____

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a hearing has been set in the above-styled case as follows:

DATE:	November 15, 2004
TIME:	8:45 a.m.
PLACE:	Palm Beach County Courthouse, Courtroom 11A 205 North Dixie Highway West Palm Beach, Florida 33401
BEFORE:	Judge Elizabeth T. Maass
CONCERNING:	Morgan Stanley's Motion to Compel Deposition of Jerry Levin

KINDLY GOVERN YOURSELVES ACCORDINGLY.

The undersigned counsel hereby certifies that a good faith attempt to resolve the issues contained in the foregoing motions or matters will be made with opposing counsel prior to hearing on these matters on the Court's Motion Calendar.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no costs to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-2431 within two (2) working days of your receipt of this notice; if you are hearing or voice impaired, call 1-800-955-8771.

WPB#571076.21

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 5th day of November, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
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E-mail: jianno@carltonfields.com

BY: Joseph Ianno, Jr.
Joseph Ianno, Jr.
Florida Bar No. 655351

Counsel for Morgan Stanley & Co. Incorporated

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From:	Joyce Dillard, CLA	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 6

Message:

Coleman v. Morgan Stanley & Co., Inc.

To follow please find a copy of Morgan Stanley's Notice of Taking Videotaped Depositions and Joseph Ianno's letters of today's date.

☐ ***Original to follow Via Regular Mail*** ☐ ***Original will Not be Sent*** ☑ ***Original will follow via Overnight Courier***

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (if long distance, please call collect) and return the original message to us at the above address via the U.S. Postal Service. Thank you.

IF THERE ARE ANY PROBLEMS OR COMPLICATIONS, PLEASE NOTIFY US IMMEDIATELY AT:
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TELECOPIER OPERATOR: _____

ATLANTA
MIAMI
ORLANDO
ST. PETERSBURG
TALLAHASSEE
TAMPA
WEST PALM BEACH

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November 5, 2004

VIA FACSIMILE AND FEDERAL EXPRESS

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West Palm Beach, Florida 33401

Jerold Solovy, Esq.
Jenner & Block LLP
One IBM Plaza
330 N. Wabash, Suite 4400
Chicago, IL 60611

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co. Inc.*

Dear Jack and Jerry:

Please be advised that pursuant to the Court's ruling on November 4, 2004, we will depose Mr. Perelman in Florida on November 17th and 18th and Mr. Gittis in Florida on November 19th.

An amended deposition notice is enclosed.

Sincerely,

Joseph Ianno, Jr.

/jed

Enclosure

cc: Thomas Clare (w/encl.)
Rebecca Beynon (w/encl.)

WPB#566938.9

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

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITIONS

TO: ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that pursuant to Fla.R.Civ.P. Rules 1.310 and 1.410, the undersigned counsel will take the deposition of the following:

NAME:	DATE/TIME:	LOCATION:
Ronald Perelman	November 17-18, 2004 at 9:00 a.m.	Carlton Fields, P.A 222 Lakeview Ave., Suite 1400 West Palm Beach, FL 33401
Howard Gittis	November 19, 2004 at 9:00 a.m.	Carlton Fields, P.A. 222 Lakeview Ave., Suite 1400 West Palm Beach, FL 33401

Upon oral examination before a notary public or other officer authorized by law to take depositions in the State of Florida. The name and address of the videographer is Visual Evidence, 601 N. Dixie Highway, West Palm Beach, FL 33405. This examination may continue

from day to day until completed. The deposition is being taken for the purpose of discovery, for use at trial, or for such other purposes, as is permitted under the applicable and governing rules.

Individuals who have a disability that may need accommodation should contact the undersigned seven (7) days prior to the deposition.

CERRTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and Federal Express to all counsel of record listed below on this 5th day of November, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
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Counsel for
Morgan Stanley & Co. Incorporated

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BY: Joseph Ianno, Jr.
Joseph Ianno, Jr.
Florida Bar No. 655351

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November 5, 2004

VIA FACSIMILE AND FEDERAL EXPRESS

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Jerold Solovy, Esq.
Jenner & Block LLP
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330 N. Wabash, Suite 4400
Chicago, IL 60611

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co. Inc.*

Dear Jack and Jerry:

Pursuant to the Court's ruling on November 4, 2004 with regard to Morgan Stanley's Motion for Protective Order regarding CPH's Notice of Taking Videotaped Depositions, please be advised that Morgan Stanley is not asserting that CPH or any of its affiliates or related entities made any misrepresentations or omissions in connection with the transaction forming the subject matter of CPH's complaint.

Further, with regard to synergies, Morgan Stanley proposes to delete the language "and on synergy analyses which MS&Co. received from CPH." from paragraph 43 of the Amended Answer and Amended Affirmative Defenses. Thus, this obviates the need for a deposition entirely on this topic.

Please contact me if there are any questions.

Sincerely,

Joseph Ianno, Jr.

/jed

cc: Thomas Clare (w/encl.)

WPB#5669388

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

CASE NO: CA 03-5045 AI

vs.

MORGAN STANLEY & CO. INC.,
Defendant.
_____/

MORGAN STANLEY'S OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC.'S NINTH REQUEST FOR PRODUCTION OF DOCUMENTS

Defendant, Morgan Stanley & Co. Incorporated ("Morgan Stanley"), pursuant to Fla.R.Civ.P. Rules 1.280 and 1.350, provides the following Responses and Objections to Coleman (Parent) Holdings Inc.'s ("CPH") Ninth Request for Production of Documents to Morgan Stanley & Co. Inc. ("Document Request") served October 22, 2004.

GENERAL OBJECTIONS

The following general objections apply to the Document Request in its entirety and apply to each and every Document Request as if fully set forth with respect to each request:

1. Morgan Stanley objects to the Document Request in its entirety to the extent that it seeks materials protected from disclosure by the attorney-client privilege, the attorney-work-product doctrine, the common-interest doctrine, or any other applicable constitutional, statutory, or common-law privilege, doctrine, immunity, or rule. Pursuant to the Agreed Order Regarding Enlargement of Time to Prepare Privilege Log dated September 4, 2003, Morgan Stanley will exchange with CPH a categorization of documents not produced based on a claim of privilege or

discovery immunity within 30 days after Morgan Stanley's production of the documents from which the documents have been withheld on grounds of privilege or discovery immunity.

2. Morgan Stanley objects to the Document Request because it seeks materials that are neither relevant nor likely to lead to the discovery of evidence related to Morgan Stanley's current net worth and to the subject matter of the pending action as framed by the pleadings in the above-captioned consolidated actions.

3. Morgan Stanley objects to the Document Request in its entirety to the extent that it seeks to impose obligations, including a continuing duty of supplementation, different from, or in addition to, those provided in the Florida Rules of Civil Procedure, discovery guidelines of this Court, and applicable case law.

4. Morgan Stanley objects to the Document Request in its entirety to the extent that it seeks the production of documents in the possession of third parties and not within Morgan Stanley's possession, custody, or control.

5. Morgan Stanley objects to the Document Request in its entirety to the extent that it seeks the production of documents that are publicly available or otherwise equally accessible to both parties, including deposition transcripts and court records.

6. It should not be inferred from the form or substance of any objection or response contained herein that documents responsive to any particular request exist.

7. Morgan Stanley's responses to CPH's Document Request shall not be construed in any way as an admission that any definition provided by CPH is either factually correct or legally binding upon Morgan Stanley, or as a waiver of any of Morgan Stanley's objections, including, but not limited to, objections regarding discoverability and admissibility of documents.

8. Morgan Stanley's objections are based on its good-faith investigations and discovery to date. Morgan Stanley expressly reserves the right to modify and supplement these objections.

9. Subject only to Morgan Stanley Senior Funding, Inc.'s ("MSSF") objections, and this Court's prior rulings on discovery, all materials required to be produced by MSSF prior to October 22, 2004, the date of MSSF's voluntary dismissal of the companion case of *Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc.*, Case No. CA 03-5165-AI, have been produced.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

OBJECTIONS: Morgan Stanley incorporates by reference its objections to the definitions as set forth in Morgan Stanley's Objections to CPH's First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Requests for Production of Documents. In addition, Morgan Stanley has the following specific objections:

SPECIFIC OBJECTIONS AND RESPONSES

DOCUMENT REQUEST NO. 1: Produce any and all documents within your possession, custody, or control responsive to the Document Requests served upon MSSF in this case.

RESPONSE: In addition to the general objections stated above, Morgan Stanley objects to this request on the grounds that it is irrelevant, harassing, unduly burdensome, and seeks information that is neither protected by the work product and attorney client privileges nor reasonably calculated to lead to the discovery of admissible evidence. A "party may obtain discovery regarding any matter, not privileged, *that is relevant to the subject matter* of the pending action . . . reasonably calculated to lead to the discovery of admissible evidence."

Fla.R.Civ.P. 1.280(b)(1). "To allow discovery that is overly burdensome and that harasses, embarrasses, and annoys one's adversary would lead to a lack of public confidence in the credibility of the civil court process." *Elkins v. Syken*, 672 So.2d 517, 522 (Fla. 1997) (affirming district court's finding that extensive and overbroad discovery from experts has a chilling effect on the court process). Questions seeking answers immaterial to the issue of the case are "unduly and improperly burdensome." *Wooten, Honeywell & Kest, P.A. v. Posner*, 556 So.2d 1245, 1247 (Fla. 5th DCA 1990) (quashing document discovery requiring information from parties unrelated to the case). Since MSSF is no longer a party to litigation before this Court, any document requests to MSSF would necessarily seek information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence.

Morgan Stanley will not produce documents responsive to this Request.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 5th day of November, 2004.

Thomas D. Yannucci, P.C.
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BY: Joseph Ianno, Jr.
Florida Bar No. 655351

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION FOR PROTECTIVE ORDER REGARDING THE DEPOSITION NOTICED FOR MR. GITTIS

THIS CAUSE came before the Court November 4, 2004 on Coleman (Parent) Holdings, Inc.'s Motion for Protective Order Regarding the Deposition Noticed for Mr. Gittis, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Coleman (Parent) Holdings, Inc.'s Motion for Protective Order Regarding the Deposition Noticed for Mr. Gittis is Granted, in part. Mr. Gittis shall appear for deposition on November 24, 2004, from 9:00 a.m. to 5:00 p.m., or until such earlier time as the deposition is completed, at a mutually convenient site in New York City, unless by 12 noon November 5, 2004 Defendant serves its notice setting Mr. Gittis for deposition November 19, 2004 in either New York City or Palm Beach County, Florida, in which event Mr. Gittis shall appear as noticed.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 5 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

16div-008170

copies furnished:
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Washington, DC 20036

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION FOR PROTECTIVE ORDER REGARDING THE DEPOSITION NOTICED FOR MR. PERELMAN

THIS CAUSE came before the Court November 4, 2004 on Coleman (Parent) Holdings, Inc.'s Motion for Protective Order Regarding the Deposition Noticed for Mr. Perelman, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Coleman (Parent) Holdings, Inc.'s Motion for Protective Order Regarding the Deposition Noticed for Mr. Perelman is Granted, in part. Mr. Perelman shall appear for deposition on November 22 and 23, 2004, from 9:00 a.m. to 5:00 p.m., or until such earlier time as the deposition is completed, at a mutually convenient site in New York City, unless by 12 noon November 5, 2004 Defendant serves its notice setting Mr. Perelman for deposition November 17 and 18, 2004 in either New York City or

Palm Beach County, Florida, in which event Mr. Perelman shall appear as noticed.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 5 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
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West Palm Beach, FL 33401

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION FOR PROTECTIVE ORDER REGARDING THE DEPOSITION NOTICED FOR MR. GITTIS

THIS CAUSE came before the Court November 4, 2004 on Coleman (Parent) Holdings, Inc.'s Motion for Protective Order Regarding the Deposition Noticed for Mr. Gittis, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Coleman (Parent) Holdings, Inc.'s Motion for Protective Order Regarding the Deposition Noticed for Mr. Gittis is Granted, in part. Mr. Gittis shall appear for deposition on November 24, 2004, from 9:00 a.m. to 5:00 p.m., or until such earlier time as the deposition is completed, at a mutually convenient site in New York City, unless by 12 noon November 5, 2004 Defendant serves its notice setting Mr. Gittis for deposition November 19, 2004 in either New York City or Palm Beach County, Florida, in which event Mr. Gittis shall appear as noticed.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 5 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

16div-008174

copies furnished:
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Washington, DC 20036

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION FOR PROTECTIVE ORDER REGARDING THE DEPOSITION NOTICED FOR MR. PERELMAN

THIS CAUSE came before the Court November 4, 2004 on Coleman (Parent) Holdings, Inc.'s Motion for Protective Order Regarding the Deposition Noticed for Mr. Perelman, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Coleman (Parent) Holdings, Inc.'s Motion for Protective Order Regarding the Deposition Noticed for Mr. Perelman is Granted, in part. Mr. Perelman shall appear for deposition on November 22 and 23, 2004, from 9:00 a.m. to 5:00 p.m., or until such earlier time as the deposition is completed, at a mutually convenient site in New York City, unless by 12 noon November 5, 2004 Defendant serves its notice setting Mr. Perelman for deposition November 17 and 18, 2004 in either New York City or

Palm Beach County, Florida, in which event Mr. Perelman shall appear as noticed.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 5 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
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222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

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John Scarola, Esq.
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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON MOTION FOR PROTECTIVE ORDER

THIS CAUSE came before the Court November 5, 2004 on Defendant Morgan Stanley & Co. Inc.'s Motion for Protective Order, with all counsel present. In open Court counsel stipulated that the Morgan Stanley personnel evaluations meet the requirements of Florida Statute §90.803 (6) (a). However, there is no stipulation that the items are not made inadmissible in evidence under other provisions of the Florida Evidence Code, including Florida Statute §90.803 (6) (b). Based on the proceedings before the Court and this stipulation, it is

ORDERED AND ADJUDGED that Defendant Morgan Stanley & Co. Inc.'s Motion for Protective Order is Granted. The CPH depositions set October 29, 2004 shall not go forward.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 5 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER ON MOTION FOR PROTECTIVE ORDER CONCERNING THE NOTICE OF TAKING VIDEOTAPED DEPOSITIONS SERVED BY COLEMAN (PARENT) HOLDINGS, INC. ON OCTOBER 18, 2004

THIS CAUSE came before the Court November 4, 2004 on Defendant Morgan Stanley & Co. Inc.'s Motion for Protective Order Concerning the Notice of Taking Videotaped Depositions Served by Coleman (Parent) Holdings, Inc. on October 18, 2004, with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that if Defendant stipulates in writing by 12 noon November 5, 2004 that it does not contend that Plaintiff or any of its affiliates or related entities made any misrepresentation or omission in connection with the transaction forming the subject matter of Plaintiff's Complaint other than as alleged in paragraph 43 of its Answer, Exhibit A to the Motion shall be deemed amended by interlineation to designate a corporate representative for the matters raised by paragraph 43 only. Whether or not the stipulation is made amending Exhibit A by interlineation, the Motion is hereby Denied.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 5 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER ON DEFENDANT MORGAN STANLEY & CO. INC.'S MOTION FOR PROTECTIVE ORDER CONCERNING THE NOTICE OF TAKING VIDEOTAPED DEPOSITIONS SERVED BY MACANDREWS & FORBES HOLDINGS, INC. ON OCTOBER 18, 2004

THIS CAUSE came before the Court November 4, 2004 on Defendant Morgan Stanley & Co. Inc.'s Motion for Protective Order Concerning the Notice of Taking Videotaped Depositions Served by MacAndrews & Forbes Holdings, Inc. on October 18, 2004, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Defendant's Motion is Granted, in part. (i) On or before November 12, 2004 for depositions already noticed and within 5 business days of the date of service of the notice for any deposition not yet noticed but in any event (ii) not less than 48 hours prior to the commencement of any deposition, MS & Co. shall notify Plaintiff in writing whether it contends there is a MSSF representative who would testify on the designated topic(s) other that the MS & Co. representative who will appear and, if so,

will give the name, address, and title of the person and commit to producing that person for deposition within 7 business days following completion of the scheduled deposition of the MS & Co. representative.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 5 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON MORGAN STANLEY & CO. INCORPORATED'S MOTION TO STRIKE EVIDENCE FROM COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES

THIS CAUSE came before the Court November 5, 2004 on Morgan Stanley & Co. Incorporated's Motion to Strike Evidence from Coleman (Parent) Holdings Inc.'s Motion to Amend its Complaint to Seek Punitive Damages, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Morgan Stanley & Co. Incorporated's Motion to Strike Evidence from Coleman (Parent) Holdings Inc.'s Motion to Amend its Complaint to Seek Punitive Damages is Denied, without prejudice to Defendant's right to argue that certain assertions, arguments, or proffers made in Plaintiff's Motion to Amend its Complaint to Seek Punitive Damages should not be considered.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 5 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
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1615 M Street, NW, Suite 400
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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER ON MOTION FOR PROTECTIVE ORDER CONCERNING THE NOTICE OF TAKING VIDEOTAPED DEPOSITIONS SERVED BY COLEMAN (PARENT) HOLDINGS, INC. ON OCTOBER 18, 2004

THIS CAUSE came before the Court November 4, 2004 on Defendant Morgan Stanley & Co. Inc.'s Motion for Protective Order Concerning the Notice of Taking Videotaped Depositions Served by Coleman (Parent) Holdings, Inc. on October 18, 2004, with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that if Defendant stipulates in writing by 12 noon November 5, 2004 that it does not contend that Plaintiff or any of its affiliates or related entities made any misrepresentation or omission in connection with the transaction forming the subject matter of Plaintiff's Complaint other than as alleged in paragraph 43 of its Answer, Exhibit A to the Motion shall be deemed amended by interlineation to designate a corporate representative for the matters raised by paragraph 43 only. Whether or not the stipulation is made amending Exhibit A by interlineation, the Motion is hereby Denied.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 5 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER ON DEFENDANT MORGAN STANLEY & CO. INC.'S MOTION FOR PROTECTIVE ORDER CONCERNING THE NOTICE OF TAKING VIDEOTAPED DEPOSITIONS SERVED BY MACANDREWS & FORBES HOLDINGS, INC. ON OCTOBER 18, 2004

THIS CAUSE came before the Court November 4, 2004 on Defendant Morgan Stanley & Co. Inc.'s Motion for Protective Order Concerning the Notice of Taking Videotaped Depositions Served by MacAndrews & Forbes Holdings, Inc. on October 18, 2004, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Defendant's Motion is Granted, in part. (i) On or before November 12, 2004 for depositions already noticed and within 5 business days of the date of service of the notice for any deposition not yet noticed but in any event (ii) not less than 48 hours prior to the commencement of any deposition, MS & Co. shall notify Plaintiff in writing whether it contends there is a MSSF representative who would testify on the designated topic(s) other that the MS & Co. representative who will appear and, if so,

will give the name, address, and title of the person and commit to producing that person for deposition within 7 business days following completion of the scheduled deposition of the MS & Co. representative.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 5 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.
MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,
vs.
MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

CASE NO. CA 03-5165 AI

AMENDED NOTICE OF TAKING VIDEOTAPED DEPOSITION

To:
Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
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Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following party pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co., Inc. on the topics identified on Exhibit A.	November 23, 2004

The deposition will be conducted at Esquire Deposition Services, 216 East 45th Street, New York, NY 10017 and will begin at 9:30 a.m. The depositions will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until completed.

With respect to the depositions of Morgan Stanley & Co., Inc. ("MS&Co.") identified above, please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List this 8th day of November 2004.

Dated: November 8, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART
& SHIPLEY P.A.
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West Palm Beach, Florida 33409
(561) 686-6300

Document Number: 1167384

SERVICE LIST

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Washington, D.C. 20036-3209

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Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Exhibit A

CORPORATE DEPOSITION TOPICS

1. Any payments or transfers received from American Household, Inc. by or on behalf of by MS & Co., Morgan Stanley Senior Funding, Inc. ("MSSF"), or any affiliate of MS&Co.

2. The value of any interest of MS&Co., MSSF, or any affiliate of MS&Co. in American Household, Inc. on the following dates: (a) February 6, 2001; and (b) September 20, 2004.

3. Any debts owed by American Household, Inc. to MS&Co., MSSF, or any affiliate of MS&Co., and any agreements concerning an assumption of any such indebtedness in connection with any transaction involving stock in American Household, Inc.

4. Any mark-downs or write-offs taken by MS&Co., MSSF, or any affiliate of MS&Co. in connection with any debt owed by Sunbeam Corporation.

#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC., Case No. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

MORGAN STANLEY SENIOR FUNDING, INC., Case No. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

_____/

RE-NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: November 16, 2004

TIME: 8:45 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD: Wachovia Bank N.A.'s Motion to Quash

Moving counsel certifies that he or she contacted opposing counsel and attempted to resolve the discovery dispute without hearing.

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Fedex to all Counsel on the attached list, this 8th day of Nov., 2004.

JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 478-0754
Attorney for CPH and MAFCO

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

COUNSEL LIST

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Lori Gleim, Esq.
Greenberg Traurig
777 S. Flagler Drive, Suite 300 East
West Palm Beach, FL 33401

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S MOTION FOR PROTECTIVE ORDER

Pursuant to Fla. R. Civ. P. 1.280(c), Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, respectfully requests that this Court enter a Protective Order barring Morgan Stanley & Co., Inc. ("Morgan Stanley") from taking the deposition of a CPH corporate representative on Topics Two and Five as described in the notice of deposition attached hereto as Exhibit 1. In support of this motion, CPH states as follows:

1. Morgan Stanley has served upon CPH a notice of deposition pursuant to Fla. R. Civ. P. 1.310(b)(6), stating its intent to depose a CPH corporate representative designated by CPH on five separate topics. Two topics — Topics Two and Five — are pertinent to the instant motion. Topic Two requests that the CPH representative address (*id.* at 1):

> All gains and/or losses experienced by CPH as a result of CPH's investment in The Coleman Company, including the value of all payments, consideration, and other financial benefits received by CPH, directly or indirectly, as a result of that investment.

Topic Five requests that the CPH representative address (*id.* at 2):

> The balances due and available under any Mafco Finance Corp. (or Marvel IV Holdings Inc.) Credit Agreement or Mafco Holdings Inc. Guaranty (including any Amendments or Restatements) in the first and second quarters of 1998.

On November 2, 2004, CPH notified Morgan Stanley that it objected to these two lines of inquiry as irrelevant. *See* 11/2/04 Letter from M. Brody to T. Clare at 1. Morgan Stanley, however, is persisting in its effort to take the corporate representative deposition on these topics.

Morgan Stanley should be barred from doing so because Topics Two and Five concern lines of inquiry that cannot possibly lead to the discovery of admissible evidence.

2. With respect to Topic Two, Morgan Stanley has demanded testimony about "[a]ll gains and/or losses experienced by CPH" and "all payments, consideration, and other financial benefits received by CPH" for the entire (and lengthy) period of its investment in The Coleman Company, Inc. ("Coleman"). *See* Ex. 1 at 1 (emphasis added). Besides seeking an enormous quantity of historical information, this topic is irrelevant, because historical details of CPH's investment in Coleman, which began in 1989, have nothing to do with the issue in this case — namely, whether Morgan Stanley defrauded CPH in 1998. The 1998 fraud — and the resulting damage to CPH — are unrelated to how much Coleman was worth when CPH acquired it in 1989 or the history of that investment since 1998.

3. With respect to Topic Five, Morgan Stanley has demanded deposition testimony concerning "balances due and available" under any MAFCO credit agreement or guaranty "in the first and second quarters of 1998." *See* Ex. 1 at 2. But the credit status of MAFCO (a parent of CPH) during that time period — or in any time period, for that matter — has nothing to do with this case. Whether Morgan Stanley defrauded CPH does not turn in any way upon the credit status of CPH's parent.

4. Rule 1.280(c) provides that a Protective Order may issue where "good cause" exists. Because Topics Two and Five in Morgan Stanley's deposition notice involve factual issues that are unrelated to this lawsuit, good cause exists for the issuance of a Protective Order. *See, e.g., Leonhardt v. Cammack*, 327 So. 2d 848, 849 (Fla. 4th DCA 1976) (reversing trial court's denial of a protective order where the discovery sought "related to matters that were clearly not relevant to the subject matter of the pending action").

WHEREFORE, CPH requests a Protective Order barring Morgan Stanley from taking the deposition of a CPH corporate representative on Topics Two and Five, as set forth in the notice of deposition attached hereto as Exhibit 1.

Dated: November 8, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

#1176201

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 8th day of Nov., 2004.

JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 684-5816
Attorneys for Coleman(Parent)Holdings Inc.
and MacAndrews & Forbes Holdings, Inc.

COUNSEL LIST

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Washington, DC 20036-3206

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO. INC.,
Defendant.

CASE NO: CA 03-5045 AI

AMENDED NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") will take the deposition of Coleman (Parent) Holdings, Inc. ("CPH") through a CPH representative or representatives with knowledge on the following topics, pursuant to Florida Rules of Civil Procedure 1.280 and 1.310, on the dates and times set forth below. The oral examination will take place at Kirkland & Ellis LLP, Citigroup Center, 153 East 53rd Street, New York, NY 10022-4611. The deposition will be taken before a person authorized to administer oaths and recorded by stenographic and videographic means. The video operator will be Esquire Deposition Services of 216 E. 45th Street in New York, New York.

Topic	Representative	Date & Time
The value of the warrants and other consideration that CPH received from Sunbeam pursuant to the August 12, 1998 Settlement Agreement between CPH and Sunbeam.	Lawrence Winoker	November 18, 2004, at 1:30 pm
All gains and/or losses experienced by CPH as a result of CPH's investment in The Coleman Company, including the value of all payments, consideration, and other financial benefits received by CPH, directly or indirectly, as a result of that investment.		November 10, 2004, at 9:30 am
CPH's decision not to hedge its position in the Sunbeam stock that CPH received from Sunbeam in connection with the February 27, 1998.	Glenn Dickes	November 18, 2004, at 9:30 am

EXHIBIT
tabbies
1

Topic	Representative	Date & Time
The authenticity, source, creation, use, maintenance, and business purpose of documents produced and/or authored by CPH and/or MacAndrews & Forbes bearing the bates numbers identified in Attachment A.		November 10, 2004, at 9:30 am
The balances due and available under any Mafco Finance Corp. (or Marvel IV Holdings Inc.) Credit Agreement or Mafco Holdings Inc. Guaranty (including any Amendments or Restatements) in the first and second quarters of 1998.		November 10, 2004, at 9:30 am

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 3d day of November, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
Thonette M. Brown
Michael C. Occhuizzo
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Mark C. Hansen
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CARLTON FIELDS, P.A.
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West Palm Beach, FL 33401
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Facsimile: (561) 659-7368
E-mail: jimmo@carltonfields.com

BY: _____
Michael C. Occhuizzo

Counsel for:
Morgan Stanley & Co. Incorporated.

SERVICE LIST

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Attachment A

MS		
MS	2	CPH 2000000-20000007
MS	5	CPH 2000039-20000040
MS	6	CPH 2000044
MS	11	MSC 0016944-0016945
MS	14	CPH 0090040-0090045
MS	15	CPH 0084310-0084311
MS	31	CPH 0041641-0041648
MS	39	CPH 1075408
MS	40	MSC 0000001-0000175
MS	41	MSC 0028858
MS	42	CPH 0129975-0129977
MS	62	CPH 1433326-1433329
MS	67	
MS	68	
MS	69	CPH 1341551-1341574
MS	70	CPH 1399305-1399316
MS	73	CPH 1421226-1421248
MS	75	CPH 1401525-1401534
MS	77	CPH 1425610-1425629
MS	78	MSC 0026587-0026588
MS	79	CPH 0467007
MS	80	CPH 1426289-01426296
MS	81	CPH 1421814-1421817
MS	82	CPH 1406962-1406964
MS	83	CPH 1427260-1427263
MS	84	CPH 1324758-1324774
MS	86	CPH 2000687-2000707
MS	87	CPH 1422243-1422246
MS	88	CPH 0634056-0634064
MS	89	CPH 0349166-0349167
MS	90-A	
MS	90-B	
MS	90-C	
MS	90-D	
MS	90-E	
MS	90-F	
MS	90-G	
MS	90-H	
MS	90-I	
MS	90-J	
MS	90-K	

MS		
MS	90-L	
MS	90	
MS	91	CPH 0024757
MS	92	CPH 1429803-1429805
MS	93	MSC 0007947-0008010
MS	94	CPH 1428774-1428775
MS	95	CPH 1429806-1429807
MS	96	CPH 2000731-2000763
MS	97	CPH 1308865-1308870
MS	100	CPH 0282212-0282227
MS	102	CPH 0171292-0171295
MS	103	CPH 1402232-1402234
MS	104	CPH 2000144-2000149
MS	105	CPH 1426298-1426303
MS	106	CPH 1426922-1426931
MS	107	CPH 2000086-2000095
MS	108	CPH 1120631-1120659
MS	112	CPH 1401219-1401238
MS	113	CPH 0634065-0634075
MS	114	CPH 1344526-1344542
MS	115	MSC 0063805-0063811
MS	116	CPH 0014650
MS	117	MSC 0008011-0008066
MS	118	CPH 0634065-0634085
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MS	121	CPH 2005974-2005976
MS	122	CPH 1433326-1433329
MS	123	CPH 2000848
MS	124	CPH 2000037
MS	125	CPH 2000041
MS	126	CPH 2000044
MS	127	DPW 0014210-0014229
MS	128	DPW 0014376-0014398
MS	129	DPW 0014143-0014144
MS	130	CPH 1408746-1408755
MS	131	CPH 1426091
MS	132	CPH 1414669-1414713
MS	133	CPH 0642926-0642932
MS	135	CPH 1326201-1326202
MS	137	CPH 1393114; 1327092
MS	138	CPH 1327714-1327721

MS	165	CPH 1426297-1426303
MS	167	CPH 1011319-1011351
MS	168	CPH 1433889-1433890
MS	169	CPH 1402232-1402235
MS	170	CPH 1429981-1429983
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MS	188	CPH 1316960-1316962
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MS	191	CPH 1418025
MS	192	CPH 1408944
MS	195	CPH 2000695-2000696
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MS	197	CPH 1392397-1392444
MS	200	CPH 2000103-2000105
MS	205	CPH 1327077-1327081
MS	206	CPH 1327166-1327167
MS	220	CPH 1267964-1267969
MS	224	CPH 1427923-1427924
MS	226	CPH 1392570-1392604
MS	227	CPH 1392708-1392709
MS	228	CPH 1406941
MS	229	CPH 1426262
MS	230	CPH 1121260-1121271
MS	231	CPH 1406939
MS	232	CPH 2000771
MS	233	CPH 1328300-1328301
MS	234	CPH 2000830
MS	236	CPH 0827064-0827210
MS	237	CPH1325251-1325253
MS	238	CPH 1418423-1418489
MS	239	
MS	240	CPH 1144559-1144565
MS	246	DPW 0011015-0011020
MS	248	
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MS	257	CPH 0505156
MS	261	CPH 0599715-0599741

MS	262	CPH 0648982-0648989
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MS	271	CPH 1200325-1200441
MS	272	CPH 0642954-0642974
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MS	274	WLRK0009197-0009199
MS	276	DPW0014400-0014403
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MS	278	CPH 1094218-1094235
MS	279	CPH 1398266-1398537
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MS	283	MSC 0003590
MS	287	CPH 1408297
MS	288	
MS	290	CPH 2008104-2008108
MS	291	CPH 2007915
MS	295	CPH 2010664-2010666
MS	296	CPH 2010681
MS	297	CPH 2010676-2010679
MS	298	CPH 2010668-2010675
MS	299	CPH 2007230-2007296
MS	300	CPH 2006250-2006413
MS	301	CPH 2006577-2006628
MS	302	CPH 2006618-2006669
MS	303	CPH 2007528-2007534
MS	304	DPW 0000719-0000720
MS	305	DPW 0014400-0014403
MS	306	DPW 0011015-0011020
MS	307	CPH 1421212-1421219
MS	308	CPH 2006236-2006249
MS	310	CPH 2011528-2011531
MS	311	CPH 2006641-2006669
MS	313	CPH 2008018-2008020
MS	314	WLHK 0014181-0014295
MS	315	CPH 0643329-0643338
MS	316	
MS	317	CPH 2011532-2011533
MS	318	CPH 1408945-1408947
MS	319	CPH 1407656-1407666
MS	322	CPH 1087788-1087789
MS	323	CPH 1408270
MS	325	CPH 1395054-1395058
MS	326	
MS	327	DPW 0013825-0013827

MS	328	CPH 1406269
MS	330	CPH 1121275-1121332
MS	337	CPH 1258279-1258282
MS	342	CPH 0842872-0842878
MS	343	WLRK0008567-0008660
MS	344	WLRk0007554-0007562
MS	345	CPH 1167570-1167612
MS	346	CPH 1414454-1414459
MS	347	CPH 1421220-1421223
MS	348	WLRK 0010179
MS	349	CPH 1167561-1167563
MS	350	WLRK 0012087
MS	351	CPH 1411596-1411654
MS	352	CPH 1411183-1411209
MS	353	CPH 2005703
MS	354	CPH 2005706
MS	355	CPH 1278481-1278484
MS	356	CPH 1120685-1120704
MS	357	CPH 1087146-1087148
MS	358	WLRK 0020591-0020595
MS	359	CPH 1010541-1010546
MS	360	CPH 1411943
MS	361	CPH 1192456-1192488
MS	362	WLRK 0012066-0012087
MS	363	CPH 1426259
MS	364	CPH 1433908-1433917
MS	365	CPH 1433895
MS	366	CPH 1426745-1426746
MS	367	DPW 0014300-0014301
MS	368	CPH 1272487-1272536
MS	369	DPW 0014073-0014074
MS	370	DPW 0014028-0014029
MS	371	WLRK 0013747-0013790
MS	372	DPW 0013720-0013723
MS	373	DPW 0013793-0013794
MS	374	WLRK 0003018-0003020
MS	375	DPW 0014107-0014110
MS	376	DPW 0014141-0014142
MS	377	DPW 0013936-0013936
MS	378	DPW 0013821-0013822
MS	379	
MS	380	DPW 0013662
MS	381	
MS	382	

MS	383	
MS	385	CPH 1111639-1111648
MS	388	WLRK 0008777-0008794
MS	395	
MS	402	DPW 0013767-0013768
MS	403	CPH 0637558-0637570

#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC., Case No. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

MORGAN STANLEY SENIOR FUNDING, INC., Case No. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

_____/

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: November 15, 2004

TIME: 8:45 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

(1) Coleman (Parent) Holdings Inc.'s Motion for Protective Order dated 11/8/04

(2) Morgan Stanley's Motion for Protective Order re: CPH's Sixth Set of Requests for Admission and CPH's Notice of Taking Deposition dated 10/22/04 dated 11/5/04.

Coleman Holdings, Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

Moving counsel certifies that he or she contacted opposing counsel and attempted to resolve the discovery dispute without hearing.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Fedex to all Counsel on the attached list, this 8th day of Nov., 2004.

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Attorney for CPH and MAFCO

Coleman Holdings, Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S OBJECTIONS TO MORGAN STANLEY & CO. INCORPORATED'S FOURTH SET OF REQUESTS FOR ADMISSION

Coleman (Parent) Holdings Inc. ("CPH"), by and through its attorneys Jenner & Block LLP, and pursuant to Florida Rule of Civil Procedure 1.370 and the Court's October 14, 2004 Order, objects to Morgan Stanley & Co. Incorporated's ("MS & Co.'s") Fourth Set of Requests for Admission ("Requests for Admission") as follows:

INITIAL OBJECTIONS

1. CPH objects on the basis that Morgan Stanley's Requests for Admission violate Rule 1.370(a) of the Florida Rules of Civil Procedure, as amended by 2003 Florida Court Order 18 and effective January 1, 2004, which limits the number of requests for admission to 30 requests.

2. CPH objects on the basis that Morgan Stanley's 4th Requests for Admission are untimely. The Requests for Admission were served by facsimile at 9:32 p.m. on October 25, 2004. Pursuant to Fla. R. Civ. P. 1.080(b)(5), service shall be deemed to have been made on October 26, 2004, which is less than 30 days prior to the deadline of November 24, 2004 for completing fact discovery.

3. CPH objects to the Requests for Admission on the basis that they are vague, ambiguous, overly broad, unduly burdensome, oppressive, abusive, vexatious, and excessively time-consuming as written.

4. CPH objects to the Requests for Admission to the extent that they seek information not in CPH's possession, custody, or control.

5. CPH objects to the Requests for Admission to the extent that the definitions, instructions, or the requests themselves incorrectly characterize the facts and evidence to be presented in this case.

6. CPH objects to the Requests for Admission to the extent that they assume, imply or require any legal conclusions.

7. CPH objects to the definition of "CPH" as ambiguous and overly broad. CPH will construe the term "CPH" to mean Coleman (Parent) Holdings Inc.

8. CPH objects to the definition of "Coleman Transaction" as vague, ambiguous and overly broad to the extent that it includes "all related communications, agreements, and financing transactions." CPH will construe the term "Coleman Transaction" to mean the transaction by which CPH transferred its interest in The Coleman Company, Inc. to Sunbeam.

9. CPH objects to the definition of "February 23, 1998 Letter" as a mischaracterization of the evidence and an incorrect reflection of the record. CPH will construe the term "February 23, 1998 Letter" as the letter marked as Morgan Stanley Exhibit 307.

10. CPH objects to the definition of "February 27, 1998 Company Agreement" as vague, ambiguous and overly broad to the extent that it includes "all . . . documents related to those Agreements." CPH will construe the term "February 27, 1998 Company Agreement" to

mean the Agreement and Plan of Merger dated February 27, 1998 among Sunbeam Corp., Camper Acquisition Corp., and The Coleman Company, Inc.

11. CPH objects to the definition of "Mafco" as ambiguous and overly broad. CPH will construe the term "Mafco" to mean MacAndrews & Forbes Holdings, Inc.

12. To the extent that CPH is ordered to respond to Morgan Stanley's Requests for Admission, CPH will do so subject to and without waiving these Initial Objections. CPH will incorporate, as though fully set forth herein, these Initial Objections into each of its responses.

FURTHER OBJECTIONS

Request No. 1. The February 23, 1998 Letter was drafted by counsel for CPH and signed by or on behalf of Coleman.

OBJECTION:

Request No. 2. The February 23, 1998 Letter is one of the Confidentiality Agreements identified in the February 27, 1998 Company Agreement at section 7.2, and one of the Confidentiality Agreements identified in the February 27, 1998 Agreement at section 6.7.

OBJECTION:

Request No.3. CPH signed the February 27, 1998 Agreement without requesting from Sunbeam copies of its interim financial statements for the months (to date) of January or February 1998.

OBJECTION:

Request No. 4. CPH signed the February 27, 1998 Agreement without requesting from Sunbeam its actual net sales or net income (loss) to date in the first quarter of 1998.

OBJECTION:

Request No. 5. Before signing the February 27, 1998 Agreement, CPH learned that 50 percent of Sunbeam's sales typically occurred in the last month of the quarter.

OBJECTION:

Request No. 6. In 1997 CPH had concerns about Sunbeam's "international sales pipeline fillings."

OBJECTION:

Request No. 7. In January 1998, CPH learned that the Sunbeam Research Analysts were decreasing their estimates of Sunbeam's earnings per share for 1998.

OBJECTION:

Request No. 8: On or around February 23, 1998, CPH representatives were told by Sunbeam representatives that Sunbeam's sales for January and February [1998] were "slow."

OBJECTION:

Request No. 9: CPH received Sunbeam's 1997 Annual Report on form 10-K before March 30, 1998.

OBJECTION:

Request No. 10: Between March 19, 1998 and March 30, 1998, CPH did not request from either Sunbeam or Morgan Stanley the net sales (to date) that Sunbeam had recorded on its books and records for the first quarter of 1998.

OBJECTION:

Request No. 11: Between March 19, 1998 and March 30, 1998, CPH did not request from either Sunbeam or Morgan Stanley a projection of Sunbeam's net sales for Sunbeam's first quarter of 1998.

OBJECTION:

Request No. 12: Between March 19, 1998 and March 30, 1998, CPH did not request from either Sunbeam or Morgan Stanley a projection of Sunbeam's net earnings (loss) for Sunbeam's first quarter of 1998.

OBJECTION:

Request No. 13: CPH made no inquiries of Sunbeam at the March 30, 1998 closing of the Coleman Transaction about Sunbeam's actual (to date) net sales or net earnings (loss) for the first quarter of 1998.

OBJECTION:

Request No. 14: CPH did not request from Sunbeam, Arthur Andersen, or Morgan Stanley a copy of any comfort letter issued by Arthur Andersen to any person in connection with the Coleman Transaction before the closing of the Coleman Transaction.

OBJECTION:

Request No. 15: The Coleman Transaction involved a transaction negotiated at arm's length by two large, sophisticated, and publicly traded corporations that were represented by prominent, highly paid advisors: Morgan Stanley, Skadden Arps, and Arthur Andersen for Sunbeam, and Credit Suisse First Boston and Wachtell, Lipton, Rosen & Katz for The Coleman Company.

OBJECTION:

Request No. 16: Between December 1, 1997 and March 31, 1998, Sunbeam made the only proposal to CPH or Coleman's shareholders to acquire Coleman in whole or in part, whether by purchase of stock or assets.

OBJECTION:

Request No. 17: A Sunbeam representative orally presented Sunbeam's Long Range Strategic Plan on February 23, 1998.

OBJECTION:

Request No. 18: Each of the following statements in CPH Exhibit 9 is a statement of subjective opinion:

(a) "Sunbeam represents an attractive growth story and investment opportunity."

(b) "Sunbeam has undergone a profound transformation since the arrival of new management in July 1996."

(c) Sunbeam has "renewed focus on profitability and growth."

(d) There is "tremendous intrinsic value in Sunbeam."

(e) Sunbeam had a "strong management team that is opportunistic but disciplined."

(f) Sunbeam had a "valuable opportunity to penetrate and become a global market leader of branded consumer devices."

OBJECTION:

Request No. 19: The 1998 and 1999 estimates on pages CP026296 and CP026297 of CPH Exhibit 9 were from an Oppenheimer research report dated December 11, 1997.

OBJECTION:

Request No. 20: Each of the following statements, which CPH alleges were made on February 23, 1998, is a projection of future performance:

(a) that in 1998 Sunbeam expected significant growth in sales and earnings over and above 1997 levels;

(b) that Sunbeam's 1998 revenues were expected to increase by 34 percent over 1997 levels;

(c) that Sunbeam's 1999 revenues were expected to increase 25 percent over 1998 levels;

(d) that Sunbeam's gross was expected to increase by 31 percent in both 1998 and 1999;

(e) that Sunbeam would "meet or exceed Wall Street's expectations for Sunbeam's earnings estimates" for 1998;

(f) that "analysts' favorable 1998 earnings estimates of $1.90 to $2.12 per share were low"; or

(g) that "Sunbeam's plan to earn $2.20 per share in 1998 were easily achievable and probably low."

OBJECTION:

Request No. 21: A statement made on March 19, 1998 that Sunbeam's net sales for the first quarter of 1998 may be lower than the range of Wall Street analysts" estimates is a projection of future performance.

OBJECTION:

Request No. 22: A statement made on March 19, 1998 that Sunbeam's net sales for the first quarter of 1998 are expected to exceed 1997 first quarter net sales is a projection of future performance.

OBJECTION:

Request No. 23: CPH or Mafco requested Sunbeam stock as part of the consideration for CPH's interest in Coleman.

OBJECTION:

Request No. 24. CPH or Mafco requested expedited Hart-Scott-Rodino approval for the Transaction to allow the Transaction to close before or at the end of the first quarter of 1998.

OBJECTION:

Request No. 25. Between February 27, 1998 and March 30, 1998 CPH did not exercise its rights, pursuant to section 6.7 of the February 27, 1998 Agreement, to access Sunbeam's books, records, properties, plants, and personnel.

OBJECTION:

Request No. 26. The documents listed in the attached Exhibits A and B are what they purport to be or are otherwise true and authentic copies of original documents within the meaning of Florida Evidence Code § 90.901.

OBJECTION: CPH objects to this request on the basis that it is overly broad, unduly burdensome, oppressive, abusive, vexatious, and excessively time consuming as written. Exhibits A and B contain thousands of pages of documents, including documents plainly authored by Morgan Stanley and third parties.

Request No. 27. The documents listed in the attached Exhibits A and B are business records within the meaning of Florida Evidence Code § 90.803(6).

OBJECTION: CPH objects to this request on the basis that it is overly broad, unduly burdensome, oppressive, abusive, vexatious, and excessively time consuming as written.

Exhibits A and B contain thousands of pages of documents, including documents plainly authored by Morgan Stanley and third parties.

Request No. 28: CPH authored the documents listed in the attached Exhibit B.

OBJECTION: CPH objects to this request on the basis that it is overly broad, unduly burdensome, oppressive, abusive, vexatious, and excessively time consuming as written. Exhibit B includes thousands of pages of documents, including documents plainly authored by Morgan Stanley and third parties.

Dated: November 8, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and federal express to counsel listed below on this 8th day of November, 2004:

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By: Deirdre Connell

Deirdre E. Connell

Document Number: 1175048

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.'S OBJECTIONS TO MORGAN STANLEY & CO. INCORPORATED'S FIFTH SET OF INTERROGATORIES

Plaintiff Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys and pursuant to the Florida Rules of Civil Procedure 1.280 and 1.340 and the Court's October 14, 2004 Order, hereby objects to Morgan Stanley & Co., Inc.'s ("MS & Co.'s") Fifth Set of Interrogatories as follows:

INITIAL OBJECTIONS

1. CPH objects to defendant's Interrogatories, including all Definitions and Instructions, to the extent they purport to impose upon CPH any requirements that exceed or are inconsistent with the Florida Rules of Civil Procedure or any other applicable rule or court order. CPH will comply with the applicable rules and law.

2. CPH objects to defendant's interrogatories to the extent that they seek information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other privilege, doctrine, immunity, or rule. CPH reserves the right to assert any and all privileges to which CPH is entitled under the law.

3. CPH objects to the definition of "CPH" and "MAFCO" to the extent it includes CPH's counsel in this litigation. CPH interprets these definitions to exclude Jenner & Block, LLC and Searcy Denney Scarola Barnhart & Shipley P.A.

4. CPH's response to any interrogatory is not intended and should not be construed as an acknowledgment that the requested information is relevant or that any persons identified actually possess knowledge or information relevant to the subject matter of this action.

5. CPH's objections and responses are based on a good-faith investigation. CPH expressly reserves the right to amend and/or modify its objections and responses.

6. CPH will respond to Morgan Stanley's interrogatories within 30 days of service without waiving the Initial Objections. CPH will incorporate, as though fully set forth therein, these Initial Objections into each its responses.

FURTHER OBJECTIONS

INTERROGATORY 1: Identify every instance in which Mafco or CPH engaged or retained Morgan Stanley between January 1, 1993 and March 30, 1998. Your response should identify the nature, subject, and purpose of each such engagement, the transaction or proposed transaction contemplated by each such engagement, and the name(s) of any Morgan Stanley employee or agents retained or consulted by Mafco or CPH.

OBJECTION: CPH objects to this interrogatory as unduly burdensome because it seeks information already in the possession of Morgan Stanley and "every instance" in which Morgan Stanley was engaged or retained between five and ten years ago. CPH also notes that Interrogatory No. 1 constitutes multiple separate interrogatories.

INTERROGATORY 2: Identify all communications between Coleman, CPH, or Mafco (or any of their attorneys or financial advisors) and Sunbeam, Arthur Andersen, Morgan Stanley, or Skadden Arps between March 19, 1998 and March 30, 1998 concerning Sunbeam's sales during the first quarter of 1998, Sunbeam's March 19, 1998 Press Release, or any of the information contained in Sunbeam's March 19, 1998 Press Release.

OBJECTION:

INTERROGATORY 3: Identify all inquiries or requests for information that Coleman, CPH, or Mafco (or any of their attorneys or financial advisors) made to Sunbeam, Arthur Andersen, Morgan Stanley, or Skadden Arps regarding Sunbeam's history, operations, financial performance, or projection that Sunbeam, Arthur Andersen, Morgan Stanley, or Skadden Arps failed or refused to answer.

OBJECTION: Morgan Stanley has exceeded any conceivable calculation of its 30 permissible interrogatories under Rule 1.340 of the Florida Rules of Civil Procedure without securing the agreement of plaintiff or a court order.

INTERROGATORY 4: For each of Morgan Stanley's Second, Third, and Fourth Set of Requests for Admission that CPH has denied, in whole or in part, state each fact that supports the denial. If CPH's denial is related to its objection to Morgan Stanley's definition of the term "CPH" in the Requests for Admission, state how CPH's response to the Request for Admission would change if CPH applied Morgan Stanley definition.

OBJECTION: Morgan Stanley has exceeded any conceivable calculation of its 30 permissible interrogatories under Rule 1.340 of the Florida Rules of Civil Procedure without securing the agreement of plaintiff or a court order. CPH further objects to Interrogatory No. 4 as overbroad insofar as it seeks identification of "all facts" that support CPH's denial of the requests for admission. CPH also notes that Interrogatory No. 4 constitutes multiple separate interrogatories.

INTERROGATORY 5: State the value that CPH and/or Mafco ascribed to the warrants that they received from Sunbeam pursuant to the August 12, 12998 settlement between CPH and Sunbeam, including but not limited to the value that CPH and Mafco placed upon the warrants for tax or accounting purposes and an identification of all persons from CPH, Mafco, or their outside advisors involved in the valuation.

OBJECTION: Morgan Stanley has exceeded any conceivable calculation of its 30 permissible interrogatories under Rule 1.340 of the Florida Rules of Civil Procedure without

securing the agreement of plaintiff or a court order. CPH further objects that the interrogatory is overbroad and not reasonably calculated to lead to the discovery of admissible evidence to extent that the interrogatory is not limited as to time. Only the current valuation of the warrants is relevant. CPH further objects that the tax and accounting treatment of the warrants is not a relevant issue in this case. CPH has not placed its tax treatment of the warrants at issue and Morgan Stanley has failed to show that it is unable to obtain discovery concerning the value of the warrants from other sources. Indeed, the parties have scheduled the corporate deposition of CPH on the value of the warrants.

INTERROGATORY 6: Identify every potential bidder and/or acquirer for Coleman that discussed a proposed acquisition of Coleman with Mafco, CPH or Coleman between January 1, 1997 and March 30, 1998, including without limitation "the most likely potential bidder" referenced at CPH 0634057 of the 2/25/98 Coleman Board Meeting Minutes. Your response should include the dates, terms and outcome of any such discussions.

OBJECTION: Morgan Stanley has exceeded any conceivable calculation of its 30 permissible interrogatories under Rule 1.340 of the Florida Rules of Civil Procedure without securing the agreement of plaintiff or a court order. CPH further objects that the interrogatory is not reasonably calculated to lead to the discovery of admissible evidence.

Dated: November 8, 2004

As to objections:

By: _____

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

John Scarola
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West Palm Beach, Florida 33402-3626
(561) 686-6300

Attorneys for Coleman (Parent) Holdings Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and federal express to counsel listed below on this 8th day of November, 2004:

Thomas A. Clare
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr.
CARLTON FIELDS, P.A.
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Mark C. Hansen
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Deirdre E. Connell

Document Number: 1171861

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.'S OBJECTIONS TO MORGAN STANLEY & CO. INCORPORATED'S EIGHTH [NINTH] REQUEST FOR PRODUCTION OF DOCUMENTS

Coleman (Parent) Holdings Inc. ("CPH"), by and through its attorneys Jenner & Block LLP, and pursuant to Rules 1.280 and 1.350 of the Florida Rules of Civil Procedure and the Court's October 14, 2004 Order, objects to Morgan Stanley & Co. Incorporated's ("MS & Co.'s") Eighth [Ninth] Request for Production of Documents ("Requests for Production") as follows:

INITIAL OBJECTIONS

1. CPH objects to the Requests for Production, including all Definitions and Instructions, to the extent that they purport to impose upon CPH any requirements that exceed or are inconsistent with the requirements of the Florida Rules of Civil Procedure or any other applicable rule or court order.

2. CPH objects to the Requests for Production to the extent that they seek the production of any documents or information protected from discovery by reason of the attorney-client privilege, the work product doctrine, or any other applicable privilege, doctrine, immunity, or rule. CPH reserves the right to assert any and all privileges to which CPH is entitled under the law. CPH will provide a log of documents withheld from production on the basis of the

attorney-client privilege, the work product doctrine, or any other applicable privilege, doctrine, immunity, or rule.

3. CPH objects to Instruction 3 to the extent it purports to require CPH's counsel, consultants, and/or experts in this litigation to produce documents. CPH interprets Instruction No. 3 to exclude CPH's counsel, consultants, and experts in this litigation.

4. CPH objects to Definition No. 7 as vague, ambiguous, and overbroad insofar as it purports to include "where applicable" a party's "officers, directors, employees, partners, corporate parent, subsidiaries or affiliates." CPH will interpret the term "plaintiff" to mean CPH and "defendant" to mean MS&Co.

5. CPH objects to the extent that any Request for Production seeks documents that are in the public domain and accessible to all parties. In responding to the Requests for Production, CPH will produce publicly-available documents to the extent that copies exist in CPH's files of otherwise non-public information responsive to these requests.

6. CPH objects to the definitions of "CPH" and "MAFCO" to the extent they include CPH's and MAFCO's counsel in this litigation. CPH interprets these definitions to exclude Jenner & Block LLP and Searcy Denney Scarola Barnhart & Shipley P.A., and their respective attorneys.

7. By stating that CPH will produce documents responsive to a particular document request, CPH does not represent that any such documents exist. Rather, CPH is responding that to the extent such documents are located, they will be produced.

8. By stating that CPH will produce responsive documents, CPH does not concede the relevance of any of the produced documents to the subject matter of this litigation or to the admissibility of those documents at trial.

9. CPH's objections and responses are based on a good-faith search for documents within CPH's possession, custody, and control. CPH expressly reserves the right to amend and/or modify its objections and responses.

10. CPH will respond to Morgan Stanley's document requests within 30 days of service without waiving the Initial Objections. CPH will incorporate, as though fully set forth therein, these Initial Objections into each of its responses.

FURTHER OBJECTIONS

Request No. 1. All documents not previously produced or provided by CPH that are responsive to any Request for the Production of Documents that Morgan Stanley has served upon CPH in the above captioned cases.

OBJECTION:

Request No. 2. All documents concerning any proposed sale of CPH's interest in Coleman, including without limitation all documents concerning communications with potential buyers and investment bankers, between January 1, 1997 and March 31, 1998.

OBJECTION: CPH objects to this request as overbroad and not reasonably calculated to lead to the discovery of admissible evidence.

Request No. 3. All documents from January 1, 1996 and March 31, 1998 concerning the valuation of Coleman, including without limitation all documents concerning any valuation of Coleman performed by Chase Securities and all studies done to support all valuations.

OBJECTION: CPH objects to this request as not reasonably calculated to lead to the discovery of admissible evidence. CPH further objects to this request overbroad as to the time period requested. CPH further objects to this request as containing an implicit untrue assumption in that CPH is not aware of any valuation of Coleman performed by Chase Securities on behalf of CPH.

Request No. 4. All documents concerning the value of the warrants and other consideration that CPH received from Sunbeam pursuant to the August 12, 1998 Settlement Agreement between CPH and Sunbeam.

OBJECTION: CPH objects to this request to the extent that it calls for the production of documents protected by the attorney-client privilege, work product doctrine, and the accountants' privilege. CPH further objects to this request to the extent that it calls for the production of "all documents" concerning the value of the warrants. CPH further objects to this request as overbroad and as not reasonably calculated to lead to the discovery of admissible evidence to extent that the request is not limited as to time. Only the current valuation of the warrants is relevant. CPH further objects to this request as vague and ambiguous in its use of the term "value," which is susceptible to different meanings. CPH will interpret "value" to mean economic value. CPH further objects to this request as vague and ambiguous to the extent that it refers to "other consideration" received by CPH pursuant to the August 12, 1998 Settlement Agreement.

Dated: November 8, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
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John Scarola
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and federal express to counsel listed below on this 8th day of November, 2004:

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By: _____
Deirdre E. Connell

Document Number: 1171757

FAX TRANSMITTAL

JENNER&BLOCK

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Chicago
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Date: November 9, 2004

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		Voice:	(202) 879-5993
	Joseph Ianno, Jr., Esq.	Fax:	(561) 659-7368
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		Voice:	(202) 326-7900

From: Michael T. Brody
312 923-2711

Employee Number: Client Number: 41198-10003

Important: This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is attorney work product, privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via postal service. Thank you.

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JENNER&BLOCK

November 9, 2004

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VIA FACSIMILE

Thomas A. Clare, Esq.
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Re: ***Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.***
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Tom:

I enclose an amended notice of deposition for Morgan Stanley & Co. pursuant to Rule 1.310. This notice amends our earlier notice of deposition with respect to the value of American Household, Inc. (the topics listed in Exhibit B of our October 18, 2004 notice) and narrows and focuses the topics concerning AHI as to which Morgan Stanley is to testify. We have noticed the deposition for November 23, 2004 based on our understanding that Morgan Stanley plans to designate Mr. Petrick to testify on the topics relating to AHI.

Very truly yours,

Michael T. Brody

MTB/sae
cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.

Document Number: 1177426

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.
MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,
vs.
MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

CASE NO. CA 03-5165 AI

AMENDED NOTICE OF TAKING VIDEOTAPED DEPOSITION

To: Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
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Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
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N.W., Suite 400
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PLEASE TAKE NOTICE that Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following party pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co., Inc. on the topics identified on Exhibit A.	November 23, 2004

The deposition will be conducted at Esquire Deposition Services, 216 East 45th Street, New York, NY 10017 and will begin at 9:30 a.m. The depositions will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until completed.

With respect to the depositions of Morgan Stanley & Co., Inc. ("MS&Co.") identified above, please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List this 8th day of November 2004.

Dated: November 8, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
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(312) 222-9350

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Document Number: 1167384

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West Palm Beach, FL 33401

Exhibit A

CORPORATE DEPOSITION TOPICS

1. Any payments or transfers received from American Household, Inc. by or on behalf of by MS & Co., Morgan Stanley Senior Funding, Inc. ("MSSF"), or any affiliate of MS&Co.

2. The value of any interest of MS&Co., MSSF, or any affiliate of MS&Co. in American Household, Inc. on the following dates: (a) February 6, 2001; and (b) September 20, 2004.

3. Any debts owed by American Household, Inc. to MS&Co., MSSF, or any affiliate of MS&Co., and any agreements concerning an assumption of any such indebtedness in connection with any transaction involving stock in American Household, Inc.

4. Any mark-downs or write-offs taken by MS&Co., MSSF, or any affiliate of MS&Co. in connection with any debt owed by Sunbeam Corporation.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MOTION FOR PROTECTIVE ORDER TO PRECLUDE UNNECESSARY AND DUPLICATIVE RULE 1.310 DEPOSITION TESTIMONY REGARDING FEES AND EXPENSES RECEIVED BY MORGAN STANLEY

Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") requests that this Court enter a protective order pursuant to Fla. R. Civ. P. 1.280(c) that excuses Morgan Stanley from responding to Coleman (Parent) Holdings Inc.'s ("CPH") Amended Notice of Taking Videotaped Deposition dated November 3, 2004. The fee and expense information requested in the Amended Notice has already been provided to CPH in a verified written response compiled by knowledgeable Morgan Stanley employees from Morgan Stanley's financial books and records. A protective order is necessary to protect Morgan Stanley from the annoyance, burden, and expense of providing this same information again in an expensive, time-consuming, and inefficient corporate representative deposition, especially as the parties endeavor to complete discovery within the tight timeframe established by the Court.

In support of its Motion, Morgan Stanley states as follows:

UNDISPUTED FACTS

1. On October 29, 2004, Morgan Stanley provided to CPH a verified written submission describing the revenue, fees, and expenses that Morgan Stanley received from Sunbeam (the "Verified Response") (Ex. 1). By agreement of the parties, the Verified Response

was provided by Morgan Stanley to respond to prior discovery requests served by CPH requesting that information.

2. The Verified Response provides detailed information about the revenue, fees, and expenses that Morgan Stanley received from Sunbeam from all aspects of its engagements for Sunbeam. The Verified Response contains total and line-item information regarding the revenues received by Morgan Stanley from the provision of financial advisory services in connection with Sunbeam's acquisitions of Coleman, First Alert, and Signature Brands, the revenues received by Morgan Stanley in connection with Sunbeam's offering of Zero-Coupon Convertible Debentures, and the revenues received by Morgan Stanley in connection with Morgan Stanley's loan to Sunbeam. (*Id.*)

3. Morgan Stanley controllers compiled the information in the Verified Response from Morgan Stanley's records. Given the broad scope of the revenue information requested by CPH, the Verified Response required input from several controllers, including individuals with coverage responsibility for each of the three types of engagements identified in Paragraph 2.

4. The Verified Response is verified by an officer of Morgan Stanley and is binding on Morgan Stanley in this action. James F. Doyle, a Morgan Stanley Vice President, verified the Verified Response on behalf of Morgan Stanley. (*Id.* at 3.)

5. On November 4, counsel for CPH informed Morgan Stanley's counsel that, despite the comprehensive revenue information contained in the Verified Response, CPH intended to proceed with a Rule 1.310 deposition of a Morgan Stanley corporate representative on the following deposition topic:

> All fees, expenses, other compensation, or assets billed by or otherwise due by Morgan Stanley & Co., Inc. ("MS"), Morgan Stanley Senior Funding ("MSSF"), or any of their affiliates concerning or on behalf of Sunbeam Corp. (including American Household, Inc.) and all fees, expenses, other compensation, or assets

provided by or on behalf of Sunbeam Corp. (including American Household, Inc.) to MS, MSSF, or any of their affiliates.

(Nov. 3, 2004 Am. Notice of Taking Video. Dep. at 4 (Ex. 2); Nov. 4, 2004 Letter from M. Brody to J. Ianno (Ex. 3).) CPH noticed the deposition for November 11, 2004, the date previously discussed by the parties for a deposition on this topic if one was "reasonably necessary" following Morgan Stanley's Verified Response. (Oct. 22, 2004 Letter from T. Clare to M. Brody (Ex. 4).)

6. On November 5, counsel for Morgan Stanley objected to the Amended Notice of Videotaped Deposition. (Nov. 5, 2005 Letter from T. Clare to M. Brody (Ex. 5).) Morgan Stanley further offered, if CPH reasonably required additional information or clarification of any of the information presented in the Verified Response, to provide that information or clarification in a written supplement to the Verified Response. (*Id.*) CPH refused, insisting that the parties proceed with a Rule 1.310 deposition on this topic. This motion follows.

ARGUMENT

The Court's power to protect parties from harassing, duplicative, and cumulative discovery requests is well-established. Florida Rule of Civil Procedure 1.280(c) expressly authorizes the Court to enter "any order" to protect against "annoyance, embarrassment, oppression, or undue burden" during the discovery process, including an order "that the [requested] discovery may be had only by a method of discovery other than that selected by the party seeking discovery." Fla. R. Civ. P. 1.280(c)(3).

CPH's request for a corporate representative on the subject of revenues and fees is cumulative of the information Morgan Stanley has already provided in the Verified Response and — with the discovery cutoff looming in just over two weeks — harassing. The Verified Response contains a complete breakdown of the revenue, fees, and expenses Morgan Stanley

received from Sunbeam. The information contained in the Verified Response was: (1) compiled by knowledgeable Morgan Stanley personnel; (2) compiled from Morgan Stanley's official books and records; and (3) verified under oath by an officer of Morgan Stanley. Clearly, CPH already has all discoverable information regarding the revenues, fees, and expenses Morgan Stanley received from Sunbeam, in a form that — if the information is determined by the Court to be relevant— is binding on Morgan Stanley for presentation at trial.

CPH's after-the-fact efforts to justify a deposition of a corporate representative are makeweight. *First,* CPH claims that a deposition is necessary to "explain the dollar figures contained in the written response," including the "loan revenues" and "the revenue that Morgan Stanley received in connection with the zero coupon convertible debenture offering and the subsequent trading of the debentures." (Nov. 3, 2004 Letter from M. Brody to T. Clare (Ex. 6).) But the Verified Response ***already provides*** a detailed breakdown of the revenues that Morgan Stanley received in connection with its loan to Sunbeam and Sunbeam's zero-coupon debenture offering. (*See* Verified Response.) There is nothing more to explain or provide. If the terms used in the Verified Response are unfamiliar to CPH or a clarification is needed for a particular item, that information can and should easily be provided in a supplement to the written response. Morgan Stanley has repeatedly offered to provide such information.

Second, CPH claims that a deposition is necessary because the Verified Response includes a line item for "selling concessions" that, at least according to CPH, "did not appear to match" the information provided in unspecified debenture trade runs produced by Morgan Stanley. (Nov. 3, 2004 Brody Letter.) This is a non-issue. As described above, the revenue information provided in the Verified Response comes directly from Morgan Stanley's official books and records. The Verified Response reflects the best available information regarding the

revenue ***actually received*** by Morgan Stanley in connection with its underwriting of the Sunbeam debentures. Accordingly, the information in the Verified Response is therefore more definitive than any revenue information that CPH may be attempting to derive from transaction-level trading runs.

Third, CPH claims that a deposition is necessary to "describe the fees and other compensation received by Morgan Stanley in connection with any ***other*** engagements it performed for Sunbeam." (*Id.* (emphasis added).) This is also a non-issue. The Verified Response addresses the fees, revenues, and expenses received by Morgan Stanley in connection with all engagements for Sunbeam. There are no others.

CONCLUSION

At CPH's request and over Morgan Stanley's objection, fact discovery is scheduled to close on November 24, 2004. Too much remains to be completed and there is not enough time remaining in the discovery period for the parties to engage in unnecessary, cumulative and time-consuming depositions on subjects where the discoverable information has already been provided through written discovery.

Having provided all conceivably relevant information in a verified written response, Morgan Stanley should not now be required to designate corporate representative (or potentially multiple corporate representatives) to sit for an expensive, time consuming, and inefficient corporate representative deposition. Accordingly, Morgan Stanley requests that the Court issue a protective order that it is excused from producing a corporate representative for deposition in response to CPH's Notice of Taking Videotaped Deposition.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 9th day of November, 2004.

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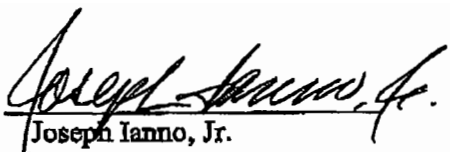
BY: 
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EXHIBIT "1"

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY'S WRITTEN RESPONSES TO RULE 1.310 TOPICS

Pursuant to the agreement of the parties, Morgan Stanley & Co. Incorporated ("Morgan Stanley") provides the following written response to the following corporate deposition topic set forth in the Notice of Deposition issued by Coleman (Parent) Holdings, Inc. The written response is based on current knowledge and a good faith search for information.

Corporate Deposition Topic

All fees, expenses, other compensation, or assets billed by or otherwise due to Morgan Stanley & Co., Inc. ("MS&Co."), Morgan Stanley Senior Funding, Inc. ("MSSF"), or any of the their affiliates concerning or on behalf of Sunbeam Corp. (including American Household, Inc.) and all fees, expenses, other compensation, or assets paid or provided by or on behalf of Sunbeam Corp. (including American Household) to MS&Co., MSSF, or any of their affiliates.

Response

Morgan Stanley earned revenue from Sunbeam in three principal areas: (1) revenues earned through the provision of financial advisory services rendered in connection with Sunbeam's acquisitions of Coleman, First Alert, and Signature Brands ("M&A Revenues"); (2) revenues earned through the underwriting of Sunbeam's offering of Zero-Coupon Convertible Debentures ("Underwriting Revenues"); and (3) revenues earned through Morgan Stanley's loan

to Sunbeam ("Loan Revenues"). In some instances, Morgan Stanley also billed Sunbeam for expenses incurred in connection with these engagements. Each of these three revenue categories are addressed below.

M&A Revenue – Morgan Stanley's records reflect that it earned a total of $13,540,000 from the provision of financial advisory services to Sunbeam in connection with Sunbeam's acquisition of Coleman, First Alert, and Signature Brands. Morgan Stanley recorded $9,369,000 of this M&A Revenue in March 1998, and the remaining $4,171,000 in April 1998. In addition, Morgan Stanley invoiced Sunbeam for $264,863.60 in out-of-pocket expenses incurred in connection with the provision of these M&A services.

Underwriting Revenues – Morgan Stanley's records reflect that it earned a total of $18,178,185 in connection with the services it performed as the underwriter of Sunbeam's Zero-Coupon Convertible Debenture Offering. The Underwriting Revenues earned by Morgan Stanley are summarized in the following table:

Management Fees	$4,501,290
Underwriting Fees	$751,290
Selling Concessions	$13,524,054
Subtotal (gross revenue)	$18,776,634
Less Expenses	($598,449)
Total Net Revenue	$18,178,185

Loan Revenues – Morgan Stanley's records reflect that it earned the following revenues in connection with its loan to Sunbeam:

	1998	1999	2000	2001	2002	2003	9/30/2004
Underwriting Fees	$0	$11,566,667	$3,390,000	$2,485,200	$0	$0	$0
Net Carry	$7,850,778	$13,917,365	$19,415,981	($20,838,136)	($11,716,177)	($14,733,529)	($380,537)
Other Fees	$542,009	$757,895	$867,052	$781,214	$2,795,512	$110,992	$0
	$8,392,788	$26,241,927	$23,673,033	($17,571,722)	($8,920,665)	($14,622,537)	($380,537)

VERIFICATION

I, James F. Doyle, being duly sworn, depose and say that I have read the forgoing Written Responses to Rule 1.310 Topics, and based on information and belief and to the best of my knowledge, the response is true and correct.

James F. Doyle

Sworn to before me this
29th day of October 2004

Notary Public

Notary Public, State of New York
Qualified in New York County
Commission Expires 1/30/2007

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 29th day of October, 2004.

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Mark C. Hansen
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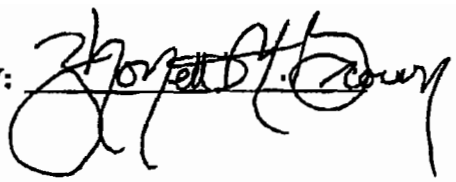
Rebecca A. Beynon
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999

Counsel for
Morgan Stanley & Co. Incorporated

CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368
E-mail: jianno@carltonfields.com

BY: 

SERVICE LIST

Jack Scarola
SEARCY, DENNEY, SCAROLA, BARNHARDT & SHIPLEY, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy
Michael Brody
JENNER & BLOCK, LLC
One IBM Plaza, Suite 400
Chicago, IL 60611

EXHIBIT "2"

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

CASE NO. CA 03-5165 AI

AMENDED NOTICE OF TAKING VIDEOTAPED DEPOSITIONS

TO:

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN,
TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street
N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following parties and witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates, times, and locations set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co., Inc. on the topics identified on Exhibit A.	November 11, 2004 at 9:30 a.m.

All of the deposition will be conducted at Esquire Deposition Services, 216 East 45th Street, New York, NY 10017. The deposition will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The deposition will be taken before a person authorized to administer oaths and will continue day to day until completed.

Please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and federal express to all counsel on the attached Service List this 3rd day of November 2004.

Dated: November 3, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409
(561) 686-6300

SERVICE LIST

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD
& EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W.
Suite 400
Washington, D.C. 20036-3209

Exhibit A

CORPORATE DEPOSITION TOPICS

1. All fees, expenses, other compensation, or assets billed by or otherwise due to Morgan Stanley & Co., Inc. ("MS"), Morgan Stanley Senior Funding, Inc. ("MSSF"), or any of their affiliates concerning or on behalf of Sunbeam Corp. (including American Household, Inc.) and all fees, expenses, other compensation, or assets paid or provided by or on behalf of Sunbeam Corp. (including American Household, Inc.) to MS, MSSF, or any of their affiliates.

EXHIBIT "3"

JENNER&BLOCK

November 4, 2004

Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611
Tel 312-222-9350
www.jenner.com

Chicago
Dallas
Washington, DC

Michael T. Brody
Tel 312 923-2711
Fax 312 840-7711
mbrody@jenner.com

By Telecopy

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Joe:

I write in response to your letter of November 3, 2004 regarding the Rule 1.310 depositions concerning the MSSF loan history.

We believe the deposition should go forward as to Morgan Stanley. Morgan Stanley has no basis to argue that our notice is insufficient to compel Morgan Stanley's attendance. Moreover, we believe the subject matter of the notice of deposition is relevant, at least until Morgan Stanley agrees to the stipulation I propose yesterday.

As to Morgan Stanley Senior Funding, I invite you to enter into the stipulation we proposed yesterday concerning the MSSF depositions. Please advise us of your response to our proposal promptly.

Very truly yours,

Michael T. Brody

MTB:cjg
cc: Thomas A. Clare, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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TOTAL P.02

EXHIBIT "4"

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

655 Fifteenth Street, N.W.
Washington, D.C. 20005

202 879-5000

www.kirkland.com

Facsimile:
202 879-5200

Thomas A. Clare
To Call Writer Directly:
(202) 879-5993
tclare@kirkland.com

October 22, 2004

BY FACSIMILE

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: ***Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.***

Dear Mike:

I write regarding the Rule 1.310 depositions you have noticed regarding fees.

Although we are unable to provide you with a written response in time to reach an agreement on this issue by October 25 (as suggested in your October 20 letter), we propose to provide you with a written response on October 29 and, if a deposition on this topic is still reasonably necessary in light of the written response, to conduct a short Rule 1.310 deposition on this topic on November 11. As originally stated in my August 16 letter, we continue to believe that a written response is the most efficient means to provide the requested information on this topic and that, given the nature of the information requested, a deposition on this topic would be a waste of everyone's time.

Please let me know immediately if my proposal is acceptable, or whether it will be necessary for Morgan Stanley to seek a protective order for the October 27 deposition you have noticed on this topic.

Sincerely,

Thomas A. Clare

Thomas A. Clare

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark C. Hansen, Esq. (by facsimile)

EXHIBIT "5"

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

655 Fifteenth Street, N.W.
Washington, D.C. 20005

202 879-5000

www.kirkland.com

Facsimile:
202 879-5200

Thomas A. Clare
To Call Writer Directly:
(202) 879-5993
tclare@kirkland.com

November 5, 2004

BY FACSIMILE

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: ***Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.***

Dear Mike:

I write in response to your November 3 letter regarding CPH's Rule 1.310 deposition topic relating to the fees and compensation received by Morgan Stanley in connection with its work for Sunbeam.

We do not believe that a corporate deposition is reasonably necessary in light of the written response provided by Morgan Stanley on October 29. Morgan Stanley provided a comprehensive breakdown of the revenue and fees it received from Sunbeam based on information compiled by knowledgeable Morgan Stanley employees from the Company's financial books and records. To the extent any additional information or explanation of a specific line item is reasonably necessary, Morgan Stanley has offered to provide it in a supplemental response. Indeed, our agreement contemplated an opportunity to provide any reasonably necessary follow-up information in a further written response.

The specific questions identified in your letter are already addressed in the written response or, with some additional clarification from you about the information you are seeking, could easily be provided in a short supplement. First, the written response already includes total and line-item information about the revenue Morgan Stanley received from its loan to Sunbeam, from Sunbeam's zero-coupon convertible debenture offering, and Morgan Stanley's trading of the Sunbeam debentures. If any of the line items require additional explanation or clarification, that information or explanation can easily be provided in a written response. Second, as noted above, the information in the written response comes directly from the Company's books and records of the revenue *actually* booked by Morgan Stanley. Accordingly, the revenue information in the written response is more definitive than any revenue information you are attempting to derive from transaction-level trading runs. Finally, the written response addresses the fees and compensation received by Morgan Stanley in connection with all engagements for Sunbeam; there are no others.

I trust this addresses the questions set forth in your letter.

Sincerely,

Thomas A. Clare

Thomas A. Clare

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark C. Hansen, Esq. (by facsimile)

EXHIBIT "6"

JENNER&BLOCK

November 3, 2004

Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611
Tel 312-222-9350
www.jenner.com

Chicago
Dallas
Washington, DC

Michael T. Brody
Tel 312 923-2711
Fax 312 840-7711
mbrody@jenner.com

By Telecopy

Thomas A. Clare, Esq.
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Tom:

I write regarding Coleman (Parent) Holdings' ("CPH") Rule 1.310 deposition topic relating to the fees and other compensation billed or received by Morgan Stanley and its affiliates in connection with the work they performed for Sunbeam.

We have reviewed the written response that Morgan Stanley provided. We believe that there are additional facts that we must explore in a deposition, and therefore we insist upon going forward with the deposition we previously noticed. We appreciate the written response and believe that this written response will streamline the deposition.

For example, and without limitation, the Morgan Stanley witness should be prepared to explain the dollar figures contained in the written response, including the loan revenues described in the response. The witness also should be able to explain the revenue that Morgan Stanley received in connection with the zero coupon convertible debenture offering, and the subsequent trading of the debentures. I note, for example, that the written response contained a line item for selling concessions that did not appear to match the information contained in the trading runs for those debentures produced the same week by Morgan Stanley. The witness should be able to describe the fees and other compensation received by Morgan Stanley in connection with any other engagements it performed for Sunbeam. Finally, as in the case of the Kourakos deposition, the witness should be prepared to provide information known to Morgan Stanley, as well as to MSSF.

You offered us the date of November 11 for this deposition. I enclose an amended notice of deposition for that date.

Very truly yours,

Michael T. Brody

Michael T. Brody

Enclosure

cc: Joseph Iannó, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.
MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

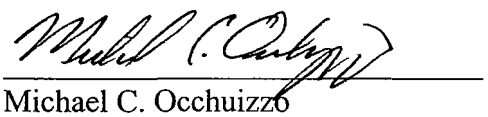
NOTICE OF DEPOSITION SUBPOENA DUCES TECUM OF DONALD R. UZZI

TO: Donald R. Uzzi, 4201 Lomo Alto Drive, Apt. 307, Dallas, TX 75219.

Please take notice that the Morgan Stanley entities in the above-styled cause of action intend to take the oral deposition of Donald R. Uzzi pursuant to Texas Rule of Civil Procedure 201.2 and the Order of the Circuit Court of the Fifteenth Judicial Circuit In and For Palm Beach County, Florida entered on January 21, 2004 and attached hereto. The deposition will take place at 9:30 a.m. on November 24, 2004, at the offices of HAYNES AND BOONE, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202. The deposition will be videotaped and will continue from day to day until completed.

Donald R. Uzzi will also produce documents responsive to the Deposition Subpoena Duces Tecum attached hereto. These documents and materials shall be brought with the witness and produced on November 24, 2004, at HAYNES AND BOONE, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202.

Respectfully submitted,



Michael C. Occhuizzo
KIRKLAND & ELLIS LLP
655 15th Street, N.W. – Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

OF COUNSEL:

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
KIRKLAND & ELLIS LLP
655 15th Street, N.W. – Suite 1200
Washington, D.C. 20005
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Mark C. Hansen
James M. Webster, III
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Joseph Ianno, Jr. (FL Bar # 655351)
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368

Dated: November 9, 2004

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following counsel of record by facsimile and Federal Express on this 9th day of November, 2004:

John Scarola, Esq.
SEARCY, DENNEY, SCAROLA,
BARNHARDT & SHIPLEY, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409

Jerold S. Solovy, Esq.
JENNER & BLOCK, LLC
One IBM Plaza
Suite 4400
Chicago, Illinois 60611

Michael C. Occhuizzo

THE STATE OF TEXAS

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.
MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

DEPOSITION SUBPOENA DUCES TECUM

TO: Any sheriff or constable of the State of Texas or other person authorized to serve and execute subpoenas as provided in Texas Rule of Civil Procedure 176.5.

You are commanded to summon **Donald R. Uzzi**, 4201 Lomo Alto Drive, Apt. 307, Dallas, TX 75219, to appear at the principal offices of HAYNES AND BOONE, LLP, 901 Main Street Suite 3100, Dallas, Texas 75202, on **Wednesday, November 24, 2004 at 9:30 a.m.** to give testimony at a videotaped oral deposition and to permit inspection and copying of documents or tangible things to be used as evidence in this case.

Donald R. Uzzi is commanded to attend the oral deposition and to produce and permit inspection and copying of the following documents or tangible things described in the attached Exhibit 1. These documents and materials shall be brought with the witness and produced prior to the deposition on November 24, 2004, at HAYNES AND BOONE, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202.

Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both. TEX. R. CIV. P. 176.8(a).

DO NOT FAIL to return this writ to the Circuit Court of the Fifteenth Judicial Circuit In and For Palm Beach County, Florida with either the attached officer's return showing the manner of execution or the witness's signed memorandum showing that the witness accepted the subpoena.

ISSUED on November 9, 2004.

By: _____

Sean Trende
Texas State Bar No. 24034176
KIRKLAND & ELLIS LLP,
655 15th Street, N.W., Suite 1200,
Washington, D.C. 20005

This subpoena was issued pursuant to Texas Rule of Civil Procedure 201.2, the Order of the Circuit Court of the Fifteenth Judicial Circuit In and For Palm Beach County, Florida entered on January 21, 2004 and attached hereto as Exhibit 2, and at the request of Defendants' attorneys of record Thomas D. Yannucci, P.C., Lawrence P. Bemis (FL Bar No. 618349), and Thomas A. Clare of KIRKLAND & ELLIS LLP, 655 15th Street, N.W., Suite 1200, Washington, D.C. 20005; Mark C. Hansen, James M. Webster, III, Rebecca A. Beynon of KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C., Sumner Square, 1615 M Street, N.W., Suite 400, Washington, D.C. 20036; Joseph Ianno, Jr. (FL Bar No. 655351), CARLTON FIELDS, P.A., 222 Lakeview Ave., Suite 1400, West Palm Beach, FL 33401.

EXHIBIT 1

DEPOSITION SUBPOENA DUCES TECUM

You are hereby requested to produced the following documents pursuant to the definitions and instructions contained herein:

DOCUMENTS REQUESTED

1. All documents concerning the Coleman Transaction.

2. All documents concerning the Subordinated Debenture Offering.

3. All documents concerning the Bank Facility, or the Credit Agreement.

4. All documents reflecting or concerning any communications between or among any of Sunbeam, CPH, MAFCO, CSFB, Arthur Andersen, MS & Co., MSSF, Davis Polk, Wachtell, or Skadden in 1997 or 1998.

5. All documents provided by you in any Litigation or SEC Administrative Proceeding.

6. All calendars, diaries, timekeeping sheets or records maintained by you concerning any activities related to Coleman Transaction, the Subordinated Debenture Offering, the Bank Facility, the Credit Agreement.

7. All documents related to Sunbeam's Financial Information for all or any portion of 1996, 1997, and 1998, including but not limited to Financial Statements and documents concerning Sunbeam's forecasts and plans for revenue or earnings.

8. All documents related or referring to any cost-reduction or sales program or policy in place at Sunbeam during 1997 and 1998, including but not limited to documents concerning the "early buy" program, "Initiatives for Success", and "bill and hold" sales and the "no returns" policy.

9. All documents concerning returns of Sunbeam goods or product in 1997 and 1998, including but not limited to documents regarding the "no returns" policy and conversations or communications regarding the deletion of return authorizations from the J.D. Edwards system.

10. All documents pertaining to negotiations concerning the acquisition of Coleman, Signature Brands, and First Alert, including but not limited to documents concerning conversations or communications of any kind between or among any of MS & Co., MSSF, CPH or MAFCO personnel or representatives.

11. All documents concerning Synergies that might be achieved from a business combination of Sunbeam, Coleman, Signature Brands, and First Alert, or any combination thereof.

12. All documents related to or supporting the March 16, 1998 Representation Letter provided to Arthur Anderson, including but not limited to any drafts of such letter and any Financial Information used or referenced in writing the letter or drafts.

13. All documents concerning any "comfort letter" pertaining to the Subordinated Debenture offering or the Credit Agreement, including but not limited to Arthur Andersen's letters dated March 19, 1998 and March 25, 1998 and any drafts of such letters.

14. All documents concerning any investigation, analysis, or due diligence conducted by Sunbeam or its Advisors pertaining to the Coleman Transaction, including but not limited to documents and Financial Information pertaining to March 18, 1998 and March 24, 1998 conference calls.

15. All documents related to Sunbeam's March 19, 1998 press release, including but not limited to documents pertaining to the contents or drafting of the press release, the decision to issue the press release, and the decision to include the press release in the Offering memorandum.

16. All documents concerning the March 19, 1998 drafting session and/or meeting that took place at Global Financial Press concerning the Offering Memorandum, including but not limited to documents concerning any conversations or communications of any kind involving MS & Co. or Arthur Andersen personnel.

17. All documents related to the sale of the Subordinated Debenture, including but not limited to documents pertaining to roadshows or other communications with investors or analysts.

DEFINITIONS

1. "Advisors" shall mean financial advisors, legal advisors, accountants, consultants and any other third-party advising or assisting Sunbeam in any way with the Coleman Transaction, including but not limited to Arthur Anderson, Coopers & Lybrand, Llama Company, MS& Co., MSSF, and Skadden.

2. "Arbitrations" shall mean *Albert J. Dunlap and Sunbeam Corporation*, No. 32 160 00088 99 (AAA); and *Russell A. Kersh and Sunbeam Corporation*, No. 32 160 00091 99 (AAA).

3. "Arthur Andersen" shall mean Arthur Andersen LLP and any of its former or present partners, officers, directors, employees, representatives and agents.

4. "Bank Facility" shall mean the Credit Agreement, including amendments, and all funds extended by Lenders to Sunbeam pursuant to the Credit Agreement, including but not limited to Tranche A, Tranche B, and the Revolving Credit Facility.

5. "Communication" shall mean any exchange or transmittal of information by any means of transmission, including, without limitation, face-to-face conversation, mail, overnight delivery, Internet, telephone, electronic mail, or facsimile.

6. The term "concerning" shall mean relating to, referring to, describing, evidencing, or constituting.

7. "Coleman" shall mean Coleman Company, Inc. and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

8. "Coleman Transaction" shall mean Sunbeam's acquisition of Coleman Company, Inc. from CPH and all related communications, agreements, and transactions, including the February 27, 1998 Agreements and the March 30, 1998 closing.

9. "Cooper & Lybrand" shall mean the former Coopers & Lybrand LLP, and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents.

10. "CPH" shall mean Coleman (Parent) Holdings Inc. and any of its former or present officers, directors, employees, representatives and agents.

11. "Credit Agreement" shall mean the agreement entered into by Sunbeam, as borrower with Lenders, dated March 30, 1998 and all amendments thereto.

12. "CSFB" shall mean Credit Suisse First Boston LLC and any of its former or present officers, directors, employees, representatives and agents.

13. "Davis Polk" shall mean Davis Polk & Wardwell and any of its former or present partners, officers, directors, employees, representatives and agents.

14. "Document" shall mean any recording in any tangible form of any information, whether handwritten, typed, printed, stored on computer disks, tapes, or databases, or otherwise reproduced. "Document" or "documents" also includes electronic documents whether stored on

servers or hard drives, e-mail, backup tapes, voicemail and video and audio recordings. A draft or non-identical copy is a separate document within the meaning of this term.

15. "Financial Information" shall mean information concerning the past or present financial condition of Sunbeam or Sunbeam securities.

16. "Financial Statements" shall mean documents reflecting Financial Information, including without limitation quarterly reports, yearly reports, balance sheets, statements of income, earnings, cash flow projections, and sources and applications of funds.

17. "First Alert" shall mean First Alert, Inc., and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

18. The term "identify" (with respect to documents) shall mean to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).

19. "Lenders" shall mean the entities listed on Schedule 2.01 of the Credit Agreement under the heading "Lenders" and any other person that shall have become a party to the Credit Agreement as a Lender pursuant to an assignment and acceptance.

20. "Litigations" shall mean *In re Sunbeam Securities Litigation*, 98-8258-Civ.-Middlebrooks (S.D. Fla); *Camden Asset Management L.P. v. Sunbeam Corporation*, 98-8773-Civ.-Middlebroks and 98-8275-Civ.-Middlebrooks (S.D. Fla); *Krim v. Dunlap*, No. CL 983168AD (15th Jud. Cir., Fla.); *Stapleton v. Sunbeam Corp.*, No. 98-1676-Civ.-King (S.D. Fla); *Sunbeam Corp. v. PricewaterhouseCoopers LLP*, No. CL 005444AN (15th Jud. Cir., Fla.); *In re Sunbeam Corp., Inc.*, No. 01-40291 (AJG) (Bankr. S.D.N.Y.) and any adversary proceedings therein; *SEC v. Dunlap*, No. 01-8437-Civ.-Middlebrooks (S.D. Fla.); *Oaktree Capital Management LLC v. Arthur Andersen LLP*,

No. BC257177 (L.A. Cty., CA); and *Coleman (Parent) Holdings Inc. v. Arthur Andersen LLP*, No. CA 01-06062AN (15th Jud. Cir., Fla.), or other litigation concerning the Coleman Transaction.

21. "Llama Company" shall mean Llama Company and any of its former or present partners, officers, directors, employees, representatives and agents.

22. "MAFCO" shall mean MacAndrews & Forbes Holdings, Inc. and any of its officers, directors, former or present employees, representatives and agents.

23. The "March 19, 1998 Press Release" shall mean the press release issued by Sunbeam on March 19, 1998 concerning the shortfall of first quarter 1998 sales numbers and the reasons for such shortfall.

24. "MS & Co." shall mean Morgan Stanley & Co. Inc. and any of its former or present officers, directors, employees, representatives and agents.

25. "MSSF" shall mean Morgan Stanley Senior Funding, Inc. and any of its former or present officers, directors, employees, representatives and agents.

26. The term "person" shall mean any natural person or any business, legal or governmental entity or association.

27. The term "relating to" shall mean concerning, evidencing, referring to, or constituting.

28. The "Relevant Period," unless otherwise indicated, shall be from January 1, 1996 through the date of service of this subpoena.

29. "SEC" shall mean the Securities and Exchange Commission.

30. "SEC Administrative Proceedings" shall mean *In the Matter of Sunbeam Corp.*, SEC Administrative Proceeding File No. 3-10481, and *In the Matter of David C. Fannin*, SEC Administrative Proceeding File No. 3-10482.

31. "Signature brands" shall mean Signature Brands USA, Inc. and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

32. "Skadden" shall mean Skadden, Arps, Slate, Meagher & Flom, LLP and any of its former or present partners, officers, directors, employees, representatives and agents.

33. "Subordinated Debentures" shall mean the Sunbeam's Zero Coupon Convertible Senior Subordinated Debentures Due 2018.

34. "Subordinated Debenture Offering" shall mean the offering of Sunbeam's Subordinated Debentures.

35. "Sunbeam" shall mean Sunbeam Corporation and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents.

36. "Synergies" shall mean post-acquisition gains through increased revenue and/or decreased cost.

37. "Wachtell" shall mean Wachtell Lipton Rosen & Katz and any of its former or present partners, officers, directors, employees, representatives and agents.

38. The terms "you" or "your" shall mean Donald R. Uzzi and any of Donald R. Uzzi's present and former representatives and agents.

INSTRUCTIONS

1. Documents shall be produced as they are kept in the usual course of business, or organized and labeled to correspond to the categories in this Request. Documents attached to each other should not be separated. Documents consisting of items previously produced in the Litigations, Arbitrations, and/or SEC Administrative Proceedings with Bates numbering shall be produced in Bates number order.

2. All documents shall be produced in the file folder, envelope or other container in which the documents are kept or maintained by you. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks.

3. The relevant period, unless otherwise indicated, shall be from January 1, 1996 through the date of service of this subpoena, and shall include all documents and information which relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received prior or subsequent to that period. Please supplement or correct your responses to these requests if, at any time, you become aware that your responses are incomplete or incorrect in any request.

4. If you claim the attorney-client privilege, or any other privilege or work-product protection for all or any portion of a document, you shall provide a privilege log that describes the withheld material sufficiently to allow Morgan Stanley to test the privilege or protection asserted.

5. The following rules of construction apply:

1. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be outside their scope;

2. The term "including" shall be construed to mean "without limitation"; and

3. The use of the singular form of any word include the plural and vice versa.

Exhibit 2

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

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

AGREED ORDER APPOINTING COMMISSIONERS AND COMMISSIONS

THIS CAUSE, having come before the Circuit Court in and for Palm Beach County, State of Florida, on the agreement of the parties, and

WHEREAS, it appears to the Court that:

1. Defendant Morgan Stanley & Co. Incorporated ("MS & Co.") desires to take the videotaped depositions of and obtain documents from the following witnesses who reside in California, Connecticut, Kansas, Minnesota, New York, Texas, and the District of Columbia and who have knowledge of facts relevant to this case:

Karen Kay Clark
1674 Amarelle Street
Newbury Park, CA 91320

Frank N. Gifford
126 Taconic Road
Greenwich, CT 06831-3139

Robert J. Duffy
16 Saint Nicholas Road
Darien, CT 06820-2823

Joseph P. Page
921 Sheridan Street, Apt. 119
Wichita, KS 67213-1363

William H. Spoor
622 West Ferndale Road
Wayzata, MN 55391

Adam Emmerich
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Steven Cohen
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Steven K. Geller
301 East 79th Street, Apt. 4H
New York, NY 10021-0932

Donald Uzzi
4209 Beverly Dr.
Dallas, TX 75205-3020

Ann Dibble Jordan
2940 Benton Place NW
Washington, DC 20008

2. You are hereby appointed as commissioners to take the videotaped testimony (and obtain the requested documentation) of the above witnesses and other witnesses whose discovery is sought in the commissions' jurisdiction under oath and on oral examination in accordance with the applicable Florida Statutes and Rules of Civil Procedure:

Esquire Santa Ana
2100 North Broadway, Second Floor
Santa Ana, CA 97206

Del Vecchio Reporting
117 Randi Drive
Madison, CT 06443

Harper Court Reporting
P.O. Box 3008
Wichita, KS 67201

Kirby Kennedy & Associates
5200 Wilson Road #219
Minneapolis, MN 55424

Esquire Deposition Services
216 E. 45th Street, 8th FL
New York, New York 10017-3304

Esquire Deposition Services
703 McKinney Avenue #320
Dallas, Texas 75202

Esquire Deposition Services
1020 19th Street NW, #621
Washington, DC 20036

or any person able to administer oaths pursuant to the laws of California, Connecticut, Kansas, Minnesota, New York, Texas, and the District of Columbia and duly authorized by him.

3. This order does not purport to grant the power of the commissioners appointed to subpoena witnesses or documents, but simply the power to administer oaths and transcribe deposition testimony.

DONE AND ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida this ____ day of January, 2004.

SIGNED AND DATED

ELIZABETH T. MAASS
Circuit Court Judge

ELIZABETH T. MAASS

Copies furnished to:

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NEW YORK 10036-6522

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HONG KONG
LONDON
MOSCOW
PARIS
SINGAPORE
SYDNEY
TOKYO
TORONTO
VIENNA

November 10, 2004

BY HAND DELIVERY

Hon. Bernard J. Fried
New York State Supreme Court
New York County
Civil Branch, Commercial Division
60 Centre Street
New York, NY 10007

Re: In the Matter of the application of Coleman (Parent) Holdings Inc. for an order for the issuance of a subpoena *duces tecum* to Skadden, Arps, Slate, Meagher & Flom LLP, Index No. 114428/04

Dear Judge Fried:

I write on behalf of respondent Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden"). We understand that Skadden's motion quash the subpoena *duces tecum* and petitioner Coleman (Parent) Holdings, Inc.'s motion to compel compliance with the subpoena, which was brought on by an order to show cause Your Honor signed on November 4, 2004, are both set for hearing on November 12, 2004. In connection with those motions, we are enclosing courtesy copies of the following papers:

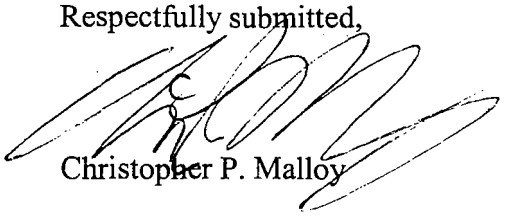
a. Skadden's Notice of Motion to Quash Subpoena *Duces Tecum* or, in the Alternative, for a Protective Order, dated October 29, 2004, with attached supporting affidavit of Christopher P. Malloy;

b. Skadden's memorandum of law in support of its motion to quash, dated October 29, 2004; and

c. Skadden's reply memorandum of law in further support of its motion to quash and in opposition to petitioner's motion to compel, dated November 10, 2004.

Petitioner's counsel has been served with the above papers. Please do not hesitate to contact me with any questions.

Respectfully submitted,



Christopher P. Malloy

Enclosures

cc: Gary I. Lerner, Esq. (w/o encl., by hand delivery)
Cohen Lans LLP
885 Third Avenue
New York, NY 10022

Robert T. Markowsky, Esq. (w/o encl., by Federal Express)
Jenner & Block
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Chicago, IL 60611-7603

Thomas A. Clare, Esq. (w/o encl., by Federal Express)
Kirkland & Ellis LLP
655 Fifteenth Street, N.W., Suite 1200
Washington, D.C. 20005

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

**COLEMAN (PARENT) HOLDINGS INC.'S
MOTION TO COMPEL PRODUCTION OF DOCUMENTS
RESPONSIVE TO ITS SIXTH REQUEST FOR PRODUCTION**

Pursuant to Fla. R. Civ. P. 1.380, Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, respectfully requests that this Court enter an Order directing Morgan Stanley & Co., Inc. ("Morgan Stanley") to produce documents responsive to Request Nos. 5, 7, and 9 in CPH's Sixth Request for Production. In support of this motion, CPH states as follows:

1. This motion arises from Morgan Stanley's failure to produce documents related to American Household, Inc. ("AHI"). AHI is the entity formerly known as Sunbeam Corporation ("Sunbeam") and was created on December 18, 2002, upon Sunbeam's emergence from bankruptcy. MSSF, Morgan Stanley's sister company, is a substantial shareholder in AHI — having received those shares when its loan to Sunbeam was extinguished in the Sunbeam bankruptcy. AHI is soon to be purchased by Jarden Corporation pursuant to a September 19, 2004 Securities Purchase Agreement.

2. On September 27, 2004, CPH served its Sixth Request for Production on Morgan Stanley, requesting several categories of documents relating to AHI, its impending sale to Jarden, and MSSF's relationship to these entities. *See* Ex. A. This motion to compel relates to CPH's request for (1) documents reflecting, fees, monies, or compensation that Morgan Stanley or MSSF may receive from the sale of AHI (Req. No. 5); (2) documents sufficient to disclose the

shareholders of AHI (including MSSF) and their respective interests in the company since December 18, 2002 (Req. No. 7); and (3) documents reflecting any payments made by AHI to MSSF since December 18, 2002 (Req. No. 9). In short, CPH is seeking basic information about how much money MSSF has received from its interest in AHI to date, as well as how much MSSF will receive in connection with the sale of AHI to Jarden.

3. Responses to CPH's document request were due on Wednesday, October 27, 2004. Morgan Stanley, however, did not respond by that date or request or receive an extension of time. Instead, on the evening of October 29, Morgan Stanley sent its written response to CPH, stating that Morgan Stanley objected to the Sixth Request for Production in its entirety and would not produce any documents. *See* Ex. B.

4. Given Morgan Stanley's delinquent and inadequate response, CPH notified Morgan Stanley that CPH considered the objections to be waived as well as unfounded. Nov. 2, 2004 Letter from M. Brody to T. Clare, at 1. In response, Morgan Stanley claimed that it had "advis[ed]" CPH by voicemail — the day after Morgan Stanley's answers were due — that the answers would be tardy, and asserted that the answers were timely because CPH had not "object[ed]" to the voicemail message. Nov. 3, 2004 Letter from T. Clare to M. Brody, at 1.

5. Morgan Stanley has waived its objections to CPH's Sixth Request for Production by failing to timely respond to that request. *See, e.g., Insurance Co. of North Am. v. Noya*, 398 So. 2d 836, 838 (Fla. 5th DCA 1981) (failure to timely object to discovery requests "waives these objections"). Morgan Stanley's assertion that leaving a voicemail message "advising" that it would need extra time to prepare its response is insufficient. The voicemail was left the day after the response was due and the burden was upon Morgan Stanley to request and receive consent for a late response — which Morgan Stanley failed to do.

6. In addition, Morgan Stanley's waiver of its objections aside, CPH's motion should be granted because the documents sought by CPH are relevant to important issues in this litigation, including Morgan Stanley's defense that it was a victim rather than a perpetrator of the Sunbeam fraud, which lost money as a result of that fraud. As Morgan Stanley has asserted, "rather than being a *co-participant* in alleged fraud at Sunbeam, the pleadings demonstrate that MS & Co. was itself a *victim* of that fraud, as its own affiliate invested and lost hundreds of millions of dollars in the same transaction that is the subject of this lawsuit." Morgan Stanley Mot. to Dismiss at 1 (June 25, 2003) (emphasis in original). The requested documents would enable CPH to test whether MSSF's substantial stake in the stock of AHI actually has caused MSSF or Morgan Stanley to incur substantial losses. as Morgan Stanley has asserted.

7. Morgan Stanley's objections to the CPH's Sixth Request for Production, even if they had been timely made, are without merit.

a. Morgan Stanley relies in its document request response to a great extent on the public availability of the September 19, 2004 Securities Purchase Agreement for the sale of AHI to Jarden. That document, however, does not reveal the particular percentage of AHI shares owned by MSSF at any particular time or the revenues MSSF has obtained and will obtain in the future due to its stake in AHI. That information is important to the issues in this case.

b. Morgan Stanley also makes objections of overbreadth and relevance, which not only are insufficient boilerplate, but incorrect. Those objections are impossible to square with Morgan Stanley's refusal to accept CPH's invitation to stipulate that Morgan Stanley will not present any evidence or argument at trial about the alleged injuries that Morgan Stanley or MSSF suffered as a result of the Sunbeam fraud. Morgan Stanley's refusal leads one to ask: if Morgan Stanley will not stipulate that it will not attempt to argue that it lost money as a result of having to accept AHI shares in exchange for the extinguishment in bankruptcy of the loan to

Sunbeam, how can Morgan Stanley argue that CPH's attempt to discover the actual loss or gain is irrelevant and overbroad? Morgan Stanley has yet to provide an answer — because it has no answer.

c. Morgan Stanley's boilerplate objections based on attorney-client privilege and confidentiality likewise do not justify Morgan Stanley's complete refusal to produce responsive documents. To the extent Morgan Stanley claims that certain documents are privileged, Morgan Stanley can provide a privilege log, but it cannot withhold all responsive documents wholesale. As for Morgan Stanley's claim of confidentiality — a claim that is inconsistent with the position Morgan Stanley has taken in this litigation with respect to the documents of others — the Stipulated Confidentiality Order can be invoked to shield any documents as to which Morgan Stanley can make a legitimate claim of confidentiality.

WHEREFORE, because Morgan Stanley's objections to and refusal to produce any documents responsive to CPH's Sixth Request for Production are both waived and baseless, and because CPH seeks documents that could lead to the discovery of admissible evidence, CPH respectfully requests that this Court enter an Order directing Morgan Stanley to produce documents responsive to Request Nos. 5, 7, and 9 of CPH's Sixth Request for Production within seven days.

Dated: November 10, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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SEARCY DENNEY SCAROLA
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(561) 686-6300

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

#1176226

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 10th day of NOV., 2004.

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Florida Bar No.: 169440
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Attorneys for Coleman(Parent)Holdings Inc.
and MacAndrews & Forbes Holdings, Inc.

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

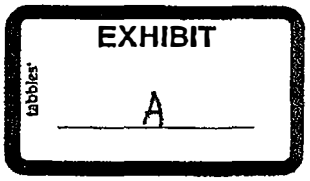
MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

PLAINTIFF COLEMAN (PARENT) HOLDINGS INC.'S SIXTH REQUEST FOR PRODUCTION OF DOCUMENTS TO MORGAN STANLEY & CO., INC.

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys Searcy Denney Scarola Barnhart & Shipley P.A. and Jenner & Block LLP, hereby serves its Sixth Request for Production of Documents upon Morgan Stanley & Co., Inc. ("MS&Co."), and requests responses and the production of documents at the office of Searcy Denney Scarola Barnhart & Shipley P.A., 2139 Palm Beach Lakes Blvd., West Palm Beach, Florida, within thirty (30) days from the date of service.



DEFINITIONS AND INSTRUCTIONS

Except as otherwise provided below, CPH incorporates by reference its Definitions and Instructions set forth in CPH's First Request for Production of Documents, served on MS&Co. on May 9, 2003. In addition, CPH defines the following terms as follows:

1. "Jarden" means Jarden Corporation, or any of its affiliates, subsidiaries, divisions, predecessors, successors, present and former employees, representatives, agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

2. "AHI" means American Household, Inc. or any of its affiliates, subsidiaries, divisions, predecessors, successors, present and former employees, representatives, agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

3. "MSSF" means Morgan Stanley Senior Funding, Inc. or any of its affiliates, subsidiaries, divisions, predecessors, successors, present and former employees, representatives, agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

4. "MS&Co." means Morgan Stanley & Co., Inc. or any of its affiliates, subsidiaries, divisions, predecessors, successors, present and former employees, representatives, agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

5. "The Sale of AHI" means the transaction contemplated by the September 19, 2004 Securities Purchase Agreement By and Among American Household, Inc., the Sellers Identified Herein, and Jarden Corporation.

DOCUMENTS REQUESTED

1. All documents involving, relating to, or referring to the The Sale of AHI, including, but not limited to, all documents relating to communications between or among Jarden,

MSSF, MS&Co., and/or Skadden, and all documents exchanged between or among Jarden, MSSF, MS&Co., and/or Skadden.

2. All documents relating to the value of AHI for the time period beginning December 18, 2002 to the present.

3. All documents referring or relating to any cash payments, consideration, or other item of value that MSSF expects to receive pursuant to the terms of the September 19, 2004 Securities Purchase Agreement By and Among American Household, Inc., the Sellers Identified Herein, and Jarden Corporation or any other agreement related to The Sale of AHI.

4. All documents referring or relating to the accounting or tax treatment for any aspect of The Sale of AHI.

5. All documents reflecting or referring to fees, monies, or other compensation that MSSF, MS&Co., any affiliates of MSSF and MS&Co., and/or Skadden may receive in connection with The Sale of AHI.

6. All minutes of the meetings of AHI's board of directors and all materials distributed to AHI's board of directors in connection with those meetings.

7. Documents sufficient to show the identity of all shareholders or security holders of AHI and the size and nature of their respective interests in AHI from December 18, 2002 to the present.

8. All documents reflecting amounts lent or charged to, or received from or applied to any loans to, Sunbeam or AHI, or any debts payable by Sunbeam or AHI, to MSSF or in which MSSF has participated or held any interest. This request includes without limitation any loan histories and schedules of advances or payments made.

9. All documents reflecting any payments made by AHI to MSSF or any of its affiliates since December 18, 2002, including but not limited to, dividends, fees, principal or interest payments.

Dated: September 27, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a copy of the foregoing has been furnished by U.S. Mail and facsimile to the following counsel of record on this 27th day of September, 2004:

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Deirdre E. Connell

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO: CA 03-5045 AI

MORGAN STANLEY'S RESPONSE TO DEFENDANT COLEMAN (PARENT) HOLDINGS INC.'S SIXTH REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Rules 1.280 and 1.350 of the Florida Rules of Civil Procedure, Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") hereby interposes the following objections and responses to Coleman (Parent) Holdings Inc.'s ("CPH") Sixth Request for Production dated September 27, 2004.

GENERAL OBJECTIONS

Except as otherwise provided below, Morgan Stanley incorporates by reference its Objections to Definitions and Instructions and its General Objections to Plaintiff's First, Second, Third, Fourth, and Fifth Request for Production of Documents.

SPECIFIC RESPONSES AND OBJECTIONS

Request No. 1: All documents involving, relating to, or referring to The Sale of AHI, including, but not limited to, all documents relating to communications between or among Jarden, MSSF, MS&Co., and/or Skadden, and all documents exchanged between or among Jarden, MSSF, MS&Co., and/or Skadden.

Morgan Stanley Response: Morgan Stanley objects to this request on the grounds that the request is overbroad, expressly requests the production of communications that are protected from discovery by the attorney-client privilege, and improperly seeks production of materials

EXHIBIT
tabbies
B

that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to issues framed by the current pleadings in his action. The September 19, 2004 Securities Purchase Agreement relating to The Sale of AHI, which reflects the consideration payable to MSSF upon closing, is publicly available. Morgan Stanley will not produce additional documents responsive to this request.

Request No. 2: All documents relating to the value of AHI for the time period beginning December 18, 2002 to the present.

Morgan Stanley Response: Morgan Stanley objects to this request on the grounds that the request is overbroad, fails to identify with reasonable particularity the documents requested, and improperly seeks production of materials that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to issues framed by the current pleadings in his action. Morgan Stanley will not produce documents responsive to this request.

Request No. 3: All documents referring or relating to any cash payments, consideration, or other item of value that MSSF expects to receive pursuant to the terms of the September 19, 2004 Securities Purchase Agreement By and Among American Household, Inc., the Sellers Identified Herein, and Jarden Corporation or any other agreement related to The Sale of AHI.

Morgan Stanley Response: The September 19, 2004 Securities Purchase Agreement relating to The Sale of AHI, which reflects the consideration payable to MSSF upon closing, is publicly available. Morgan Stanley will not produce additional documents responsive to this request.

Request No. 4: All documents referring or relating to the accounting or tax treatment for any aspect of The Sale of AHI.

Morgan Stanley Response: Morgan Stanley objects to this request on the grounds that the request is overbroad and improperly seeks production of materials that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to issues framed by the current pleadings in his action. Morgan Stanley will not produce documents responsive to this request.

Request No. 5: All documents reflecting or referring to fees, monies, or other compensation that MSSF, MS&Co., any affiliates of MSSF and MS&Co., and/or Skadden may receive in connection with The Sale of AHI.

Morgan Stanley Response: Morgan Stanley objects to this request on the grounds that the request is overbroad and improperly seeks production of materials that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to issues framed by the current pleadings in his action. The September 19, 2004 Securities Purchase Agreement relating to The Sale of AHI, which reflects the consideration payable to MSSF upon closing, is publicly available. Morgan Stanley will not produce additional documents responsive to this request.

Request No. 6: All minutes of the meetings of AHI's board of directors and all materials distributed to AHI's board of directors in connection with those meetings.

Morgan Stanley Response: Morgan Stanley objects to this request on the grounds that the request is overbroad and improperly seeks production of materials that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to issues framed by the current pleadings in his action. Morgan Stanley further objects to this request on the ground that the request seeks materials distributed to AHI's board of directors in their capacity as directors of a privately-held company. To the extent that such materials are relevant, they must be requested

from AHI, which must be given an opportunity to interpose objections to the requested discovery on behalf of AHI. Morgan Stanley will not produce documents responsive to this request.

Request No. 7: Documents sufficient to show the identity of all shareholders or security holders of AHI and the size and nature of their respective interests in AHI from December 18, 2002 to the present.

Morgan Stanley Response: Morgan Stanley objects to this request on the grounds that the request is overbroad and improperly seeks production of materials that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to issues framed by the current pleadings in his action. Morgan Stanley will not produce documents responsive to this request.

Request No. 8: All documents reflecting amounts lent or charged to, or received from or applied to any loans to, Sunbeam or AHI, or any debts payable by Sunbeam or AHI, to MSSF or in which MSSF has participated or held any interest. This request includes without limitation any loan histories and schedules of advances or payments made.

Morgan Stanley Response: Morgan Stanley objects to this request on the grounds that the request is overbroad and improperly seeks production of materials that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to issues framed by the current pleadings in his action. The September 19, 2004 Securities Purchase Agreement relating to The Sale of AHI, which reflects the consideration payable to MSSF upon closing, is publicly available. Morgan Stanley will not produce additional documents responsive to this request.

Request No. 9: All documents reflecting any payments made by AHI to MSSF or any of its affiliates since December 18, 2002, including but not limited to, dividends, fees, principal or interest payments.

Morgan Stanley Response: Morgan Stanley objects to this request on the grounds that the request is overbroad and improperly seeks production of materials that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to issues framed by the current pleadings in his action. The September 19, 2004 Securities Purchase Agreement relating to The Sale of AHI, which reflects the consideration payable to MSSF upon closing, is publicly available. Morgan Stanley will not produce additional documents responsive to this request.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by e-mail on this 29th day of October, 2004.

Thomas D. Yannucci, P.C.
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Counsel for Morgan Stanley & Co. Incorporated

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Facsimile: (561) 659-7368
E-mail: jianno@carltonfields.com

BY: /s/ Thomas A. Clare

SERVICE LIST

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2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy
Michael Brody
JENNER & BLOCK, LLC
One IBM Plaza, Suite 400
Chicago, IL 60611

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL MORGAN STANLEY'S COMPLIANCE WITH DISCOVERY REQUESTS CONCERNING COLEMAN ESCROW CORPORATION NOTES

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, respectfully requests that this Court enter an Order directing Morgan Stanley & Co. Inc. ("Morgan Stanley") to respond to CPH's discovery requests concerning Morgan Stanley's Coleman Escrow Notes. In support of this motion, CPH states as follows:

1. This motion arises from Morgan Stanley's filing of a motion for protective order (*see* Ex. A) in which Morgan Stanley asks to be excused from responding to several discovery requests that seek relevant information relating to Morgan Stanley's purchase and sale of Coleman Escrow Corporation Notes. Three sets of CPH discovery requests are at issue: CPH's Seventh Set of Interrogatories (Ex. B), CPH's Eighth Request for Production of Documents (Ex. C), and CPH's Notice of Taking Videotaped Deposition dated October 21, 2004 (Ex. D).

2. By way of background, before CPH sold its 82% interest in The Coleman Company, Inc. ("Coleman") to Sunbeam Corporation ("Sunbeam"), Coleman Escrow Corporation ("Coleman Escrow") was the corporate holding company wholly owned by CPH that controlled those Coleman shares. Almost a year prior to the March 30, 1998 sale of CPH's

shares to Sunbeam, Coleman Escrow issued debt instruments secured with Coleman stock: first and second priority discount notes that had a maturity date of 2001 ("Escrow Notes").

3. During the October 15, 2004 deposition of former Morgan Stanley associate Karen Eltrich, CPH learned for the first time that Morgan Stanley had made a market in the Escrow Notes. Specifically, Ms. Eltrich testified that Morgan Stanley took a long position on the notes, in expectation that they would go up in value. *See* Ex. E, Eltrich Dep. at 56:25-57:11. Ms. Eltrich also testified that in October 1997 and in January 1998, she published research reports addressing Coleman Escrow. *Id.* at 66:1-24; 99:12-24. The two research reports included information on the historical and projected performance of Coleman, as well as a comprehensive study of the camping industry and Coleman's position within the industry. *Id.* at 57:17-23.

4. After the deposition of Ms. Eltrich, CPH issued three sets of discovery requests concerning the Escrow Notes. CPH requested:

a. Information regarding and documents referring or relating to Morgan Stanley's purchase or sale of Coleman Escrow Notes and the associated purchase or sales price, purchase or sale costs, gains, losses, and amount or rate of return on each purchase or sale. *See* CPH's 7th Set of Interrogs., Interrog. Nos. 1 & 2 (Ex. B); CPH's 8th Req. for Prod. of Docs., Doc. Req. Nos. 1 & 2 (Ex. C); Oct. 21, 2004 Notice of Taking Videotaped Dep., Corp. Dep. Topic Nos. 1 & 3 (Ex. D);

b. Information regarding the reasons for Morgan Stanley's sale or purchase of Escrow Notes. *See* CPH's 7th Set of Interrogs., Interrog. No. 3 (Ex. B); Oct. 21, 2004 Notice of Taking Videotaped Dep., Corp. Dep. Topic No. 2 (Ex. D);

c. Documents referring or relating to the two research reports Karen Eltrich published concerning the Escrow Notes. *See* CPH's 8th Req. for Prod. of Docs., Doc. Req. Nos. 3 & 4 (Ex. C).

5. Information regarding Morgan Stanley's purchase or sale of the Escrow Notes, its reasons for purchasing or selling the Escrow Notes, and its research concerning the Escrow Notes plainly could lead to the discovery of admissible evidence. Throughout this litigation, Morgan Stanley has indicated that it intends to argue in defense to CPH's claims that Morgan Stanley was a victim of the Sunbeam fraud because it (or its sister company) lost money in the transaction by which CPH sold its interest in Company to Sunbeam. Information concerning the amount of profit that Morgan Stanley made in the purchase and sale of Coleman Notes, and the underlying data necessary to confirm the accuracy of those figures, is relevant to test Morgan Stanley's defense.

6. The fact that Morgan Stanley Senior Funding voluntarily dismissed its claims against CPH and MAFCO does not alter the relevance of Morgan Stanley's purchase and sale of the Escrow Notes. If Morgan Stanley persists in claiming that it (or its sister company) was a victim of fraud that lost money, information relating to Morgan Stanley's profits stemming from the Coleman transaction will continue to be relevant.

7. Morgan Stanley complains in its motion for protective order that the discovery requests at issue were served after the October 14, 2004 pre-trial hearing. The timing of these discovery requests, however, was wholly dependent on the timing of Ms. Eltrich's October 15, 2004 deposition — at which the relevance of the Coleman Escrow documents first became known to CPH's counsel. In any event, this Court has denied Morgan Stanley's motion for protective order to bar discovery served after October 14 (Ex. F), so this argument is moot.

8. Morgan Stanley also has objected that the requested discovery is irrelevant and harassing, but those objections are mere boilerplate, made without any showing to back them up. Nonetheless, CPH would be willing to forego the discovery requested herein, if Morgan Stanley would agree to stipulate that it will not attempt to introduce any evidence or argument at trial to the effect that it (or MSSF or any other affiliated company) lost money or was otherwise injured as a result of the Sunbeam fraud. Absent such a stipulation, however, CPH's discovery should be allowed to proceed.

WHEREFORE, CPH respectfully requests that this Court direct Morgan Stanley to produce within seven days the documents and interrogatory answers responsive to CPH's Seventh Set of Interrogatories and Eighth Request for Production. CPH further requests that this Court direct a Morgan Stanley corporate representative to appear within 14 days of the Court's Order for a Rule 1.310 deposition relating to the Coleman Escrow Notes topics set forth in the attached deposition notice.

Dated: November 10, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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#1176234

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 10th day of Nov., 2004.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INC.,
Defendant.
_____/

MOTION FOR PROTECTIVE ORDER
CONCERNING MORGAN STANLEY'S COLEMAN ESCROW NOTES

Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") requests that this Court enter a protective order pursuant to Fla. R. Civ. P. 1.280(c) that excuses Morgan Stanley from responding to Coleman (Parent) Holdings Inc.'s ("CPH") Seventh Set of Interrogatories, Eighth Request for Production of Documents, and Notice of Taking Videotaped Deposition dated October 21, 2004. These requests, which were never the subject of the multiple hearings to set a trial date, seek discovery of Morgan Stanley's research concerning, and purchase or sale of Coleman Escrow Corporation Notes. This discovery is not relevant to the single case pending before this Court — CPH's claims that Morgan Stanley made false representations to CPH about Sunbeam. In support of this Motion, Morgan Stanley states as follows:

UNDISPUTED FACTS

1. This case arises out of the March 1998 acquisition transaction in which CPH sold its 82% interest in The Coleman Company, Inc. ("Coleman") to Sunbeam Corporation. Morgan Stanley served as financial advisor to Sunbeam for parts of the acquisition transaction and served as lead underwriter for a $750,000,000 debenture offering that Sunbeam used to finance the acquisition. Morgan Stanley Senior Funding, Inc. ("MSSF") and other lenders provided senior

EXHIBIT
tabbies
A

secured financing to Sunbeam in connection with Sunbeam's acquisition of Coleman and two smaller companies.

2. CPH filed this action on May 8, 2003. CPH's complaint alleges claims against Morgan Stanley for fraudulent misrepresentation, negligent misrepresentation, aiding and abetting fraud, and conspiracy. (May 8, 2003 Compl., Counts I - IV.) [1] Specifically, CPH's claims are all based on representations allegedly made by Morgan Stanley during the course of "face-to-face discussions" that occurred over a period of four months, between December 1997 and March 1998. (*Id.* ¶ 39.)

3. MSSF filed a second action (Civil Action No. CA 03-5165 AI) on May 12, 2003. MSSF's complaint, which was in the nature of a counterclaim, alleged claims against CPH and its parent company MacAndrews & Forbes Holdings Inc. ("MAFCO") for fraudulent misrepresentation and negligent misrepresentation. In particular, MSSF alleged that CPH had misrepresented Coleman's financial condition and the "synergies" that could be accomplished through a transaction with Sunbeam.

4. The two actions were consolidated on February 20, 2004, and proceeded as such until October 22, 2004.

5. On October 22, 2004, MSSF filed a Notice of Voluntary Dismissal Without Prejudice dismissing its action against CPH and MAFCO. Morgan Stanley — the only defendant in the remaining action — is not asserting any claim for relief against CPH.

---

[1] Based on this Court's Order determining that New York law applies to the fraud and negligent misrepresentation claims, the legal sufficiency of these counts to state a cause of action is extremely doubtful.

6. Between Coleman and its ultimate corporate parent, Mafco Holdings Inc., were a number of corporate holding companies, each of which was owned 100 percent by the parent holding company:

- The Coleman Company, Inc.
- Coleman Worldwide Corporation (owned 82% of The Coleman Company, Inc.)
- Coleman Escrow Corporation, *renamed* CLN Holding Inc. (owned 100% of Coleman Worldwide Corporation)
- Coleman (Parent) Holdings Inc. (owned 100% of Coleman Worldwide Corporation)
- "MAFCO" (owned 100% of Coleman (Parent) Holding Company Inc.)
- Mafco Holdings Inc. (owned 100% of MAFCO)
- Ronald O. Perelman (owns 100% of Mafco Holdings Inc.)

7. In approximately May 1997, Coleman Escrow issued debt instruments — 1st and 2nd Priority Discount Notes ("Escrow Notes") — through various underwriters. The Escrow Notes had a maturity date of 2001.

8. On October 9, 1997 and January 26, 1998, Karen Eltrich, an associate at Morgan Stanley Dean Witter, published research reports addressing the Escrow Notes (Oct. 9, 1997 Global High Yield Investment Research, CPH 272 (Ex. 1); Jan. 26, 1998 High Yield Industry Review, CPH 275 (Ex. 2).) Because the Escrow Notes were secured with Coleman stock, the research reports looked closely at the historical and projected performance of Coleman, the industry in which Coleman operated, and comparable company transactions.

9. During her deposition on October 15, 2004, Ms. Eltrich testified that Morgan Stanley had made a market in the Escrow Notes and had also taken a long position in the Notes.

She further testified that eventually the High Yield Group had made a profit on the Escrow Notes.

10. On October 21, 2004, before MSSF dismissed its lawsuit, CPH served three sets of discovery requests addressing the Escrow Notes. In particular, CPH sought:

a. All documents related to the two research reports Karen Eltrich authored concerning the Escrow Notes (*see* Oct. 21, 2004 CPH 8th Req. for Prod., Reqs. 3-4 (Ex. 3));

b. The reasons for Morgan Stanley's sale or purchase of Escrow Notes (*see* Oct. 21, 2004 CPH Notice of Video. Dep., Topic 2 (Ex. 4); Oct. 21, 2004 CPH 7th Set of Interrogs., Interog. 3 (Ex. 5));

c. Documents and information concerning any purchase or sale by Morgan Stanley of the Escrow Notes, and the associated prices, costs, gains or losses (*see* CPH 8th Req. for Prod., Reqs. 1-2; CPH Notice of Video. Dep., Topics 1 & 3; CPH 7th Set of Interrogs., Interrogs. 1 & 2).

11. CPH did not disclose this intended discovery at any of the hearings before the Court to schedule a trial date, the most recent of which was October 14, 2004. During these hearings, there was extended argument by counsel on the volume of remaining discovery and the time the parties would require to complete that discovery. CPH represented to the Court that all remaining discovery could be completed by November 1, 2004.

ARGUMENT

CPH's discovery is irrelevant and — with the discovery cutoff looming in just over three weeks — harassing. Ms. Eltrich's late 1997 and early 1998 research reports discuss extensively the financial history of Coleman and the return of Mr. Jerry W. Levin to Coleman to bring the company back to profitability. The reports provide detailed discussions of the "turnaround"

alleged to be occurring at Coleman. Morgan Stanley's reasons for buying or selling the Escrow Notes may have related to Morgan Stanley's knowledge or expectation of Coleman's performance. While the MSSF action was pending, CPH could have argued that its discovery requests related either to Morgan Stanley's own knowledge of Coleman's finances or the probability of certain synergies in the Sunbeam/Coleman Transaction.

But that argument is gone. With the filing of its Notice of Voluntary Dismissal Without Prejudice, MSSF has dismissed all of its claims against CPH and MAFCO. The representations that CPH and MAFCO made to Sunbeam and MSSF concerning Coleman are no longer at issue. MSSF's ability to reasonably rely on CPH and MAFCO's representations and Morgan Stanley's or MSSF's knowledge concerning Coleman are no longer an issue.

CPH's requests are neither relevant, nor likely to lead to the discovery of admissible evidence. Fla. R. Civ. P. 1.280. The Morgan Stanley High Yield Group's research concerning, or purchase or sale of, Coleman Escrow Notes is not relevant to the representations that the Morgan Stanley Investment Banking Division made to CPH concerning Sunbeam.

CONCLUSION

CPH's action has been pending since May 2003 — nearly eighteen months. Over Morgan Stanley's objection, the Court ordered that fact discovery close November 24, 2004. This is not the time to explore new theories through a fishing expedition. Morgan Stanley respectfully requests that the Court issue a protective order that Morgan Stanley does not need to respond to CPH's Seventh Set of Interrogatories, Eighth Request for Production of Documents, and Notice of Taking Videotaped Deposition dated October 21, 2004.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 1st day of November, 2004.

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S SEVENTH SET OF INTERROGATORIES TO MORGAN STANLEY & CO., INC.

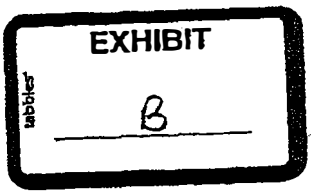
Pursuant to Florida Rules of Civil Procedure 1.280 and 1.340 and the Court's October 14, 2004 Order, Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, hereby requests that Morgan Stanley & Co., Inc. answer the following Interrogatories within fourteen (14) days from the date of service.

DEFINITION

1. "MS&Co." means Morgan Stanley & Co., Inc. or any of its affiliates, subsidiaries, divisions, predecessors, and successors.

2. "Coleman Escrow Notes" means the Coleman Escrow Corp. Senior Secured First and Second Priority Discount Notes due 2001 that are described in CPH 0473148-CPH 0473165 and Morgan Stanley Confidential 0001575-0001579.

3. "Security" has the same meaning as provided in 15 U.S.C. 77b(a)(1).



INSTRUCTIONS

1. MS&Co.'s obligation to undertake a reasonable investigation in responding these interrogatories includes making inquiry of its current personnel and any former personnel to the extent that those former personnel are under Morgan Stanley's control or being represented or advised by Morgan Stanley's counsel in this litigation.

2. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of each Interrogatory all responses that might otherwise be construed to be outside the scope.

3. The use of the singular form of any word includes the plural and vice versa.

INTERROGATORIES

INTERROGATORY NO. 1: For the time period January 1, 1996 to the present, identify each purchase or sale by MS&Co. of Coleman Escrow Notes and any other Security, or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc., and for each purchase or sale identify the MS&Co. entity, fund, or affiliate that made the purchase or sale.

RESPONSE:

INTERROGATORY NO. 2: For each purchase or sale identified in response to Interrogatory No. 1, state the purchase price, other costs in connection with the purchase, sales price, other revenue in connection with the sale, gains, losses, and the amount or rate of return on each such purchase or sale.

RESPONSE:

INTERROGATORY NO. 3: For each purchase or sale identified in response to Interrogatory No. 1, identify all reasons why MS&Co. purchased or sold the Security and the person(s) and/or committee(s) that made the decision to purchase or sell the Security.

RESPONSE:

Dated: October 21, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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Counsel for Plaintiff Coleman (Parent) Holdings Inc.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

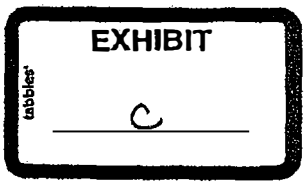
vs.

MACANDREWS & FORBES HOLDINGS INC. and
COLEMAN (PARENT) HOLDINGS INC.,
Defendants.
_____/

CASE NO. CA 03-5165 AI

COLEMAN (PARENT) HOLDINGS INC.'S
EIGHTH REQUEST FOR PRODUCTION OF DOCUMENTS
TO MORGAN STANLEY & CO., INC.

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys Searcy Denney Scarola Barnhart & Shipley P.A. and Jenner & Block LLP, hereby serves its Eighth Request for Production of Documents upon Morgan Stanley & Co., Inc. ("MS&Co."), and requests responses and the production of documents at the office of Searcy Denney Scarola Barnhart & Shipley P.A., 2139 Palm Beach Lakes Blvd., West Palm Beach, Florida, within fourteen (14) days from the date of service pursuant to the Court's October 14, 2004 Order.



DEFINITIONS AND INSTRUCTIONS

CPH incorporates by reference its Definitions and Instructions set forth in CPH's First Request for Production of Documents, served on MS&Co. on May 9, 2003. In addition, the following definitions apply:

1. "MS&Co." means Morgan Stanley & Co., Inc. or any of its affiliates, subsidiaries, divisions, predecessors, and successors.

2. "Coleman Escrow Notes" means the Coleman Escrow Corp. Senior Secured First and Second Priority Discount Notes due 2001 that are described in CPH 0473148-CPH 0473165 and Morgan Stanley Confidential 0001575-0001579.

3. "Security" has the same meaning as provided in 15 U.S.C. 77b(a)(1).

DOCUMENTS REQUESTED

1. For the time period January 1, 1996 to the present, all documents referring or relating to MS&Co.'s purchase or sale of Coleman Escrow Notes and any other Security, or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc.

2. For the time period January 1, 1996 to the present, documents sufficient to show MS&Co.'s purchase price, other costs in connection with the purchase, sales price, other costs in connection with the sale, gains, losses, and amount or rate of return on each purchase or sale of Coleman Escrow Notes and any other Security, or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc.

3. All documents referring or relating to the October 9, 1997 "Global High Yield Investment Research" report on The Coleman Company, Inc. and the Coleman Escrow Notes, including all documents used in creating that report.

4. All documents referring or relating to the January 26, 1998 "High Yield Industry Review" report on The Coleman Company, Inc. and the Coleman Escrow Notes, including all documents used in creating that report.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to all counsel on the attached Service List, this 21st day of October, 2004.

COLEMAN (PARENT) HOLDINGS INC.

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One of Its Attorneys

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,
vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,
vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITION

To:

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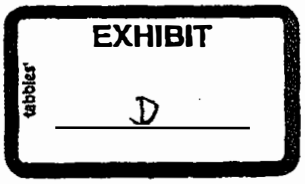
PLEASE TAKE NOTICE that Coleman (Parent) Holdings, Inc. will take the deposition upon oral examination of the following parties and witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co., Inc. on topics identified on Exhibit A.	November 5, 2004, at 9:30 a.m.

The deposition will be conducted at Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017. The deposition will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until completed.

Please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.



I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to all counsel on the attached Service List this 21st day of October 2004.

Dated: October 21, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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Exhibit A

CORPORATE DEPOSITION TOPICS

1. For the time period January 1, 1996 to the present, any purchase or sale by MS&Co. (or any of its affiliates, subsidiaries, divisions, predecessors, and successors) of Coleman Escrow Corp. Senior Secured First and Second Priority Discount Notes due 2001, which are described in CPH 0473148-CPH 0473165 and Morgan Stanley Confidential 0001575-0001579, and any other Security (as defined in 15 U.S.C. 77b(a)(1)), or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc.

2. For the time period January 1, 1996 to the present, all reasons why MS&Co. (or any of its affiliates, subsidiaries, divisions, predecessors, and successors) purchased or sold the Coleman Escrow Notes described in Topic No. 1, and any other Security (as defined in 15 U.S.C. 77b(a)(1)), or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc., and the identity of the person(s) and/or committee(s) that made the decision to purchase or sell the Coleman Escrow Notes and the Securities.

3. For the time period January 1, 1996 to the present, MS&Co.'s (or any of its affiliates', subsidiaries', divisions', predecessors', and successors') purchase price, other costs in connection with the purchase, sales price, other costs in connection with the sale, gains, losses, and amount or rate of return on any purchase or sale of Coleman Escrow Corp. Notes described in Topic No. 1, and any other Security (as defined in 15 U.S.C. 77b(a)(1)), or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc.

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.
MORGAN STANLEY & CO., INC.,
Defendant(s).

Case No. CA 03-5045 AI

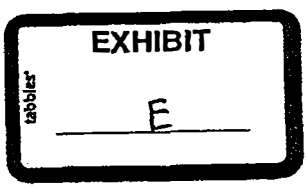
MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendants(s)

VIDEOTAPED DEPOSITION OF KAREN HAYCOX-ELTRICH

New York, New York

Friday, October 15, 2004

Reported by:
JOAN WARNOCK
JOB NO. 166116



Page 54

be published.
Q. Was there a person that you dealt with?
A. I don't recall.
Q. Do you remember if there was a person or a function responsible for reviewing those research reports?
A. It was all done by my secretary, so I really don't know.
Q. Do you remember if you showed your report to Mr. Foley before it issued?
A. I probably did, but I couldn't tell you exactly.
Q. Now, once coverage is initiated, did you continue to monitor the performance of those bonds?
A. Yes. We did quarterly updates. And if we had the opportunity to see the company on a one-off basis, we would publish on that.
Q. You're going to have to -- there is a lot of terminology that goes with this field, and I think I got most of it, but you're going to have to describe it. Now, you said you would do quarterly updates of your research?

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A. Basically when they report numbers, and we would report on how they did versus our estimates.
Q. And then I think you also referred to a one-off?
A. For example, Coleman presented at our high yield conference I believe it was in 1997, so we would do a written update on that.
Q. Did there come a time when you stopped covering the bonds?
A. I stopped covering the bonds when the Sunbeam deal was announced. I immediately became restricted.
Q. What do you mean by that?
A. Meaning Morgan Stanley was handling the deal, and so, consequently, we will not publish research when we're involved on the investment banking side.
Q. Got it. Would you then issue something saying, hey, we're not going to cover it anymore?
A. No. We just stop publishing. The client base -- our client base is private clients. Sorry. Are institutional clients. So they understand.

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Q. You're aware that the reports that you issued could have an effect on the market for the securities?
MS. BROWN: Object to form. Foundation.
A. I disagree with that. As I just said, our clients, our institutional clients, they're extremely sophisticated, and they use our work to help them make their decision, but we don't actually make their decisions for them. It's very rare that a high yield research report will move markets unless they have some truly new information.
Q. Did you ever personally buy or sell any securities in Coleman?
A. I did not.
Q. I don't know if you were allowed to. Were you allowed to under the Morgan Stanley rules?
A. No, I was not.
Q. But I believe you testified that Morgan Stanley and its traders took positions in the Coleman bonds?
A. Morgan Stanley trading did, yes.
Q. Did Morgan Stanley make a market --

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A. Yes, we did.
Q. -- in these bonds?
A. Yes, we did.
Q. In addition to making a market, did it take a long position in the bonds?
A. Yes, we did.
Q. And by taking a long position, that means that Morgan Stanley held them expecting them to go up in value so they could make money on the bonds?
A. Yes.
Q. Now, when you do a coverage report, what information do you typically consider?
MS. BROWN: Object to form.
A. It varies so much company by company and it varies by how much information was already out there. In the case of Coleman, we obviously did what we thought -- you know, we gave the company's investment strengths, weaknesses. The report also included a very comprehensive study of the camping industry and its potential growth and how we felt Coleman was a leader. But there is no template whatsoever to a research report.
Q. Okay. I guess I'm not asking the

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question right. I'm trying to get at the types of information you would consider rather than what the report would look like. Were there types of information you typically considered?

MS. BROWN: Object to form.

A. As a high yield research analyst, your number one consideration is their ability, as I said, to pay the coupons. So every research report will include a capital structure, your amortization schedule, your model, financial forecast, your free cash flow. That's much more of the financial consideration which every report will contain, but then everything else is far more subjective in terms of, okay, we know this is what they have to pay down their bonds, what is the likelihood based on the fundamentals of the company that they can do that.

Q. I guess I'm not asking the question right.

A. Okay.

Q. I'm focusing less on what the report looks like and more on the information, the raw material that you would use to generate

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it. You would look at financial statements, for example; correct?

A. We look at publicly filed SEC filings, yes.

Q. Okay. What else?

A. We actually went to the -- I can't remember the name now, but we went to some park conservation, national wildlife park to see what their camping numbers were. We commissioned a study from one group to see what camping demand was and the quality of the Coleman name. But I obviously primarily look at financial statements, and, ideally, if you can, you talk to retailers and say, okay, what is the quality of this brand for you.

Q. Do you remember if you did talk to retailers about Coleman?

A. No, I did not. I did not have those contacts at that time. For us it was more going into the retail channels and seeing the shelf space that they had.

Q. And you did that?

A. Yes.

Q. How did you do that? Do you do that yourself, or do you have --

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A. You go to a Target. You go to a Wal-Mart.

Q. So you would go and look?

A. Yes.

Q. Did you ever buy any of their products?

A. I live in New York City, unfortunately not a big occasion for camping.

Q. Hey, people in New York camp, too. I know it happens. Would you participate in conference calls with management?

A. Yes.

Q. Would you talk to management aside from the regularly scheduled conference calls?

A. Only Mark Shiffman.

Q. And Mr. Shiffman was the director of investor relations?

A. He was. And he was extremely well-informed and very accessible, so he worked -- he was very, very good in that function.

Q. Did you speak to other analysts, other people that were covering Coleman?

A. Only on the buy side, not on the sell side.

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Q. Okay. You're going to have to explain what that means.

A. Meaning clients who were investing in the bonds, buying bonds from us, versus other shops that were potentially selling the bonds in the secondary.

Q. So you would talk to people who were interested in buying the bonds?

A. Correct.

Q. To see what they were looking for or looking -- what they saw to be value in Coleman?

A. No. It's the reverse. They were asking me why I saw value in Coleman.

Q. Did you read the reports of other analysts?

A. No, I did not.

Q. Of Goldman Sachs or someone else?

A. No, I did not.

Q. Do you know if other people covered the Coleman bonds?

A. I don't recall.

Q. Did you track related companies, that is, other companies in the same field?

A. Yes, I did.

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Q. What companies?
A. Well, within consumer products, but no other camping companies.
Q. Okay. And you obviously tracked consumer product companies for other purposes. Did you track them for purposes of comparing them to Coleman?
A. There is two answers to that is yes, on the bond spread basis, and, second, we would look at where equity comparables were trading on a total enterprise value, TEV, to EBITDA basis to get a downside multiple valuation for Coleman in the event they went bankrupt.
Q. Okay. We're going to do those one step at a time. You said you would look at the bond spread?
A. Meaning I would look at what total debt to EBITDA, EBITDA to interest and yield was for varying companies within the sector.
Q. Do you remember what companies you looked at?
A. No, I do not.
Q. Okay. And on the equity side you said you looked at the ratio between total

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enterprise value --
A. Total enterprise value to EBITDA.
Q. How would you determine total enterprise value?
A. That's total debt plus the market equity cap.
Q. And you would compare that to the company's EBITDA?
A. You would divide -- you would put that over EBITDA, yes.
Q. And you would compare Coleman's ratio to the ratio of other companies?
A. No. I would see what the ratio of other companies were, and I would see what Coleman's total debt to EBITDA was, and see what my recovery value was for the bonds.
Q. Okay. In the event of bankruptcy?
A. In the event of bankruptcy.
Q. Now, in connection with the work you did looking into Coleman, did you ever talk to Mr. Levin?
A. I don't recall. I mean obviously I heard him on the conference calls, but I don't recall if I ever had a one on one meeting with him.

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Q. Did you ever speak to Mr. Page?
A. I don't recall.
Q. Do you know Joe Page, or do you know who he is?
A. Don't recall.
Q. Did you ever speak to Mr. Shapiro?
A. I don't recall. The name is vaguely familiar, but I don't recall.
Q. I believe you identified Mr. Shiffman. Do you remember anyone else at Coleman that you spoke with?
A. No, I don't.
Q. And you're aware that 82 percent of the common stock of Coleman was owned by a MacAndrews & Forbes entity?
A. Yes, I was aware.
Q. Did you speak with anyone at MacAndrews & Forbes about Coleman?
A. No, I did not.
Q. In connection with the coverage you did of Coleman, did you ever visit a Coleman facility?
A. No, I did not.
Q. And I believe you said you went to the retail outlets and looked how their

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products were placed; is that correct?
A. Yes, it is.
Q. Did you talk to retailers?
A. No, I did not. I did not have those connections.
MS. BROWN: Let's take a break before we start using the exhibits.
MR. BRODY: Yes. That's fine. We can take a break now.
VIDEOGRAPHER: The time on the monitor is now 10:35, and we are off the record.
(Recess)
(Initiation of coverage for Coleman marked CPH Exhibit 272 for identification, as of this date.)
(Document Bates stamped Morgan Stanley Confidential 23225-23229 marked CPH Exhibit 273 for identification, as of this date.)
VIDEOGRAPHER: The time on the monitor is 10:44, and we're back on the record.
Q. While we were off the record, Ms. Eltrich, we marked two exhibits, and I'm

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going to show you the first of the two. It's been marked as Exhibit 272. Do you recognize that document?
A. Yes, I do.
Q. And what is it?
A. I believe it was my initiation of coverage for Coleman.
Q. And this is a document that you wrote?
A. Yes, it is.
Q. Did you prepare this document in the ordinary course of your business at Morgan Stanley?
A. Yes, I did.
Q. It's dated October 9th, 1997. Is that the date on or about the time you created it?
A. I couldn't recall.
Q. Did you issue this document on or about October 9th, 1997?
A. It was published on October 9th.
Q. Okay. "Published" is the word you prefer?
A. Yes.
Q. And then thereafter was a copy of

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this document kept in the files of Morgan Stanley?
MS. BROWN: Object to foundation.
A. I don't know.
Q. Did you keep a copy of it?
A. I believe I kept a copy with my own personal files.
Q. When you prepared this document, were you acting within the scope of your authority at Morgan Stanley?
MS. BROWN: Object to the extent he's calling for a legal conclusion.
MR. BRODY: I'm not.
A. To my knowledge, I was.
Q. And I would also like to show you what has been marked as Exhibit 273. Do you recognize that document?
A. I don't recall.
Q. Your name appears at the top. Do you see that?
A. Yes, I do.
Q. Do you recognize this as a document faxed to you or faxed from you?
A. Faxed to me. It basically looks like a second quarter earnings update, but I

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can't recall the details.
Q. And it's dated August 7, 1997; is that correct?
A. It appears to be, yes.
Q. And that would be about the time that a company like Coleman would issue its second quarter earnings?
A. It would appear so, yes.
Q. Is Exhibit 273, the earnings document, one of the documents you considered in connection with issuing the report that is shown as 272?
A. I don't recall specifically, but I would assume so.
Q. In any event, though, you would have read earnings announcements such as Exhibit 273 before doing the research report or as part of doing your work?
A. Yes, I would.
Q. Now, at the time you issued your first research report in October of 1997, did you understand that Coleman was in the process of a turnaround?
MS. BROWN: Object to form.
A. To the best of my knowledge, that

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was my assumption.
Q. What did you understand that to mean?
A. To the best of my recollection, it was that the numbers had been extremely disappointing, the company had become highly leveraged, but under new management I felt that the company could regain its bearings and service its debt.
Q. Did you understand that the company had adopted a strategy to improve its financial performance?
MS. BROWN: Object to form.
A. To the best of my recollection, yes, they had.
Q. If you look at Exhibit 273, the earnings announcement that shows that it was sent to you, the first paragraph refers to success in its turnaround strategy; correct?
A. Yes, it does.
Q. And that's the sort of thing that you would have read and analyzed in connection with doing a research report?
A. One part of it, yes.
Q. Of course. Other things as well. I

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Q. And it shows that it was sent to you?
A. Yes, it was.
Q. Is this an earnings report from Coleman?
A. It appears to be, yes.
Q. Were you on a regular circulation list that you would receive these documents?
MS. BROWN: Object. Foundation.
A. To my knowledge, I was.
Q. Do you know how that happened, how you got to be on that?
A. I requested to be on their distribution list.
Q. You requested that of Coleman?
A. Yes, I did.
Q. If you turn to the fourth page of this document, there are some financial numbers, and on the bottom there appears to be some handwriting?
A. Um- hmm.
Q. Do you recognize the handwriting?
A. It may be mine, but I'm not sure.
Q. Do you have any understanding as to what it refers to?

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A. No, I don't.
Q. After you received this report, did you modify the research that you put out there?
A. I couldn't recall.
MR. BRODY: Mark this, please, as Exhibit 275.
(Research report dated January 26 issued by Ms. Eltrich marked CPH Exhibit 275 for identification, as of this date.)
Q. Ms. Eltrich, I'm showing you what has been marked as Exhibit 275. Do you recognize that as another research report that you issued?
A. Yes, I do.
Q. That you published?
A. Yes, I do.
Q. And it's dated January 26th?
A. Yes.
Q. Now, the prior one was dated October 9th, 1997. Are you aware of any research reports between those two dates?
A. I can't recollect.
Q. And can you recall any research

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reports after this date?
A. I can't recollect.
Q. If I were to tell you that the acquisition of Coleman by Sunbeam, Sunbeam being a Morgan Stanley client, was publicly announced at the beginning of March 1998, would you believe that you would have done another research report after this one?
A. No, I would not have been allowed to.
Q. So if the facts I just told you are correct, and I believe them to be, you believe this to be your final research report?
A. I can't recollect.
MS. BROWN: Object to form.
Q. Looking at Exhibit 275, is that a document that you drafted?
A. I believe so, yes.
Q. And at the time you drafted it, you did so in the course of your responsibilities at Morgan Stanley?
A. I believe so, yes.
Q. And the document was published by Morgan Stanley to the recipients of its research reports, its high yield research

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reports?
MS. BROWN: Object to form.
A. It was distributed on a distribution list to our clients.
Q. Okay. That's a better way of stating it. And it was sent to those clients in the ordinary course of Morgan Stanley's business?
A. To my knowledge, yes.
Q. Did you keep a copy of this document in your file?
A. I don't recall.
Q. Do you believe you did?
A. Probably not.
Q. It wasn't your practice to keep copies of research reports that you issued?
A. It was kept in my computer, not on file.
Q. So it was kept in electronic form?
A. Correct.
Q. And was it the ordinary course of your business to keep copies of the research reports you issued in electronic form on your computer?
A. It was the firm's practice, yes.

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER ON MOTION FOR PROTECTIVE ORDER CONCERNING DISCOVERY SERVED BY COLEMAN (PARENT) HOLDINGS, INC. AFTER OCTOBER 14, 2004 AND TO EXTEND PRETRIAL DEADLINES

THIS CAUSE came before the Court November 4, 2004 on Morgan Stanley & Co. Incorporated's Motion for Protective Order Concerning Discovery Served by Coleman (Parent) Holdings. Inc. After October 14, 2004 and to Extend Pretrial Deadlines. with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Morgan Stanley & Co. Incorporated's Motion for Protective Order Concerning Discovery Served by Coleman (Parent) Holdings, Inc. After October 14, 2004 and to Extend Pretrial Deadlines is Denied.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 4 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

EXHIBIT
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RECEIVED NOV 2004

16div-008334

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL MORGAN STANLEY'S COMPLIANCE WITH RULE 1.310 DEPOSITION NOTICE CONCERNING SUBORDINATED DEBENTURE TRANSACTIONS

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, respectfully requests that this Court enter an Order directing Morgan Stanley & Co., Inc. ("Morgan Stanley") to provide a corporate representative to testify pursuant to Rule 1.310 concerning the subordinated debenture-related topics set forth in the deposition notice attached hereto as Exhibit A. In support of this motion, CPH states as follows:

1. This motion arises from Morgan Stanley's most recent refusal to produce a witness for a previously noticed deposition. In fact, following this Court's denial of Morgan Stanley's request that all discovery served by CPH after October 14 be barred, Morgan Stanley has helped itself to the identical relief by repeatedly refusing to produce deposition witnesses pursuant to notices served by CPH. For example, CPH had noticed one deposition to take place last week and three depositions to take place this week, but Morgan Stanley refused to produce any of those witnesses — and either filed motions for a protective order just before the depositions were to be taken or indicated its intention to file such a motion. The deposition at issue in this motion, which was to take place on November 12, is the last of the depositions that Morgan Stanley has refused to proceed with this week: on November 10, two days before the deposition was to take place, Morgan Stanley wrote advising that it would not produce a Rule

1.310 witness as scheduled and would be filing a motion for a protective order instead. *See* Ex. B.

2. The Rule 1.310 deposition at issue in this motion asks Morgan Stanley to produce a corporate representative to testify about the following topics: (1) all transactions involving subordinated debentures, including all transactions in which Morgan Stanley bought or sold subordinated debentures, all communications with Morgan Stanley customers or counterparties to any subordinated debenture trades involving Morgan Stanley as a broker or principal, any market for subordinated debentures, and the purchase prices and costs associated with the purchase or sale of subordinated debentures; (2) Morgan Stanley's gains, losses, and amount or rate of return in connection with the purchase or sale of subordinated debentures; and (3) the authenticity of certain subordinated debenture-related documents produced by Morgan Stanley.

3. The information requested by CPH's Rule 1.310 deposition notice would reveal the losses or gains realized by Morgan Stanley in its capacity as the underwriter of the subordinated debenture offering used to fund Sunbeam's acquisition of The Coleman Company, Inc. and other entities. This information is relevant to test Morgan Stanley's contention that it was a victim of the Sunbeam fraud and lost money as a result of that fraud. Morgan Stanley therefore should produce a Rule 1.310 witness to testify about the topics set forth in notice attached as Exhibit A without further delay.

Dated: November 10, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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#1177740

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 10th day of JAN., 2004.

JACK SCAROLA
Florida Bar No.: 169440
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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,
vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,
vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITION

To:
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PLEASE TAKE NOTICE that Coleman (Parent) Holdings, Inc. ("CPH") will take the deposition upon oral examination of the following party pursuant to Florida Rule of Civil Procedure 1.310 on the date set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co., Inc. on the topic identified on Exhibit A.	November 12, 2004, at 9:30 a.m.

The deposition will be conducted at Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017. The deposition will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until completed.

Please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

EXHIBIT
A

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to all counsel on the attached Service List this 3rd day of November 2004.

Dated: November 3, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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Exhibit A

CORPORATE DEPOSITION TOPIC

1. All transactions involving Subordinated Debentures (as defined in the Definitions and Instructions set forth in CPH's First Request for Production of Documents served on May 9, 2003), including but not limited to: (i) all transactions in which Morgan Stanley bought or sold any Subordinated Debentures or any interest therein; (ii) all communications with any Morgan Stanley customer or counter-party to any trade involving Morgan Stanley as a broker or principal relating to the Subordinated Debentures; (iii) any market for the Subordinated Debentures; and (iv) the purchase price, other costs in connection with the purchase, sales price, other costs in connection with the sale, gains, losses, and amount or rate of return on any purchase or sale of Subordinated Debentures or any interest therein.

2. Morgan Stanley's gains, losses, and amount or rate of return in connection with the purchase or sale of Subordinated Debentures or any interest therein.

3. The documents produced by Morgan Stanley at Morgan Stanley Confidential 0096879 to 0096972 and Morgan Stanley Confidential 0102880 to 0103433, including but not limited to: (1) the authenticity, source, creation, use, maintenance and business purpose of the documents; and (2) the explanation of the documents and the information contained therein.

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

655 Fifteenth Street, N.W.
Washington, D.C. 20005

202 879-5000

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Zhonette M. Brown
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November 10, 2004

BY FACSIMILE

Michael Brody, Esq.
Jenner & Block, LLP
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*
MSSF v. MacAndrews & Forbes Holdings Inc. et al.

Dear Mike:

I write in response to the Notice of Taking Videotaped Deposition that CPH served on November 3, 2004 regarding the Subordinated Debenture transactions. In the next few days Morgan Stanley will file a motion for protective order addressing the Notice. Therefore, Morgan Stanley will not be producing a witness on Friday, November 12, 2004 to address the topics identified in the Notice.

Sincerely,

Zhonette M. Brown

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark C. Hansen, Esq. (by facsimile)

EXHIBIT
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#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC., Case No. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

MORGAN STANLEY SENIOR FUNDING, INC., Case No. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

_____/

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: November 16, 2004

TIME: 8:45 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

(1) Coleman (Parent) Holdings Inc.'s Motion to Compel Morgan Stanley's Compliance with Discovery Requests Concerning Coleman Escrow Corporation Notes.

(2) Coleman (Parent) Holdings Inc.'s Motion to Compel Production of Documents Responsive to its Sixth Request for Production.

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

(3) Coleman (Parent) Holdings Inc.'s Motion to Compel Morgan Stanley's Compliance with Rule 1.310 Deposition Notice Concerning Subordinated Debenture Transactions.

(4) Morgan Stanley's Motion for Protective Order to Preclude Unnecessary and Duplicative Rule 1.310 Deposition Testimony Regarding Fees and Expenses Received By Morgan Stanley.

Moving counsel certifies that he or she contacted opposing counsel and attempted to resolve the discovery dispute without hearing.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to all Counsel on the attached list, this 10th day of Nov., 2004.

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Attorney for CPH and MAFCO

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

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Date	Number of Pages (this page included)
November 10, 2004	3
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Message:

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November 10, 2004

Re: **Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.**

Clark C. Johnson, Esq.
Jenner & Block
One IBM Plaza
Chicago, IL 60611-7603

Dear Clark:

As per our recent discussions, enclosed please find the time entry that will serve as Exhibit A to the Stipulation Concerning Davis Polk & Wardwell's Time Record, entered by the Court on November 2, 2004 in this matter.

This will also confirm that Davis Polk has previously produced all drafts of any comfort letters that relate to the transaction at issue that are in its possession, custody or control.

Please feel free to contact me if you have any questions regarding the foregoing.

Sincerely yours,

James E. Murray

Enclosure

cc: Tom Clare

11/10/2004 17:20 FAX 212 450 5577 DPW 30-44 003

14013 MS
984 SUNBEAM ZERO COUPON CONVERTS DUE 2018

Lurie JM	1998032313790001	03/18/98	9.5	b	Review-AA & KPMG comfort letters, calls Bernstein, MS & Skadden; conference calls W/same re various matters; conference call re PA changes, call W/other accts re comfort; conference calls re O/W/Co; meetings W/FJH, AD, JS
GRAND TOTAL			9.5		

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November 10, 2004

VIA FEDERAL EXPRESS

The Honorable Elizabeth T. Maass
Palm Beach County Courthouse
205 North Dixie Highway, Room 11.1208
West Palm Beach, Florida 33401

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Incorporated*
Case No. CA 03-5045 AI

Dear Judge Maass:

I am writing to address two specific issues you raised with me at the November 5 Case Management Conference: (1) whether a defendant may submit evidence at a section 768.72, Fla. Stat., hearing; and (2) whether there are any additional "public wrong" cases that are analogous to the action before the Court.

Section 768.72

The court in *Surrey Place of Ocala v. Goodwin*, 861 So. 2d 1291 (Fla. 5th DCA 2004) held by implication that a court could consider evidence offered by the defendant in response to a section 768.72 motion to amend. In *Surrey Place* the defendants petitioned the Fifth District Court of Appeal for a writ of certiorari to quash an order of the trial court permitting the plaintiff to state a claim for punitive damages. The defendants argued that the trial court failed to conduct a hearing before granting the plaintiff's motion for leave to amend. The District Court affirmed, stating that in response to the plaintiff's Motion to Amend, the defendant filed "a detailed and thorough response . . . , provided an affidavit of a physician and filed numerous medical records in an effort to undermine the respondent's punitive damage proffer." *Id.* at 1291. In the order granting the plaintiff's motion, the trial court observed that its decision to grant the motion was "[b]ased upon a review of the file and the respective documents filed by each party." *Id.* (internal quotations omitted). The court of appeals found no error.

Public Wrong

Your Honor asked a number of questions about the boundaries of New York's requirement that the plaintiff plead and prove a "public wrong" as an element of a claim for punitive damages in a fraud action. In cases involving sophisticated, commercial parties

engaged in arm's length business negotiations, such as here, the plaintiff's punitive damage claim is generally dismissed *along with* its underlying claim of fraud. As a result, the punitive damages analysis is bypassed completely. *See, e.g.*, *Grumman Allied Indus. v. Rohr Indus.*, 748 F.2d 729 (2d Cir. 1984) (affirming summary judgment dismissal of fraudulent misrepresentation claim, thus mooting punitive damages consideration); *DynCorp v. GTE Corp.*, 215 F. Supp. 2d 308 (S.D.N.Y. 2002) (dismissing prayer for punitive damages as well as claims for fraud and negligent misrepresentation); *Riverside Holdings, Inc. v. Arkansas Best Corp.*, No. 90 Civ. 5492 (LMM), 1996 WL 191595 (S.D.N.Y. Apr. 22, 1996) (dismissing fraud claim on summary judgment, thus prayer for punitive damages also dismissed).

I specifically referred the Court to *Merrill Lynch & Co. v. Allegheny Energy, Inc.*, No. 02 Civ. 7689(HB), 2003 WL 22795650 (S.D.N.Y. Nov. 25, 2003) as one authority supporting Morgan Stanley's argument that CPH's claims do not amount to a public wrong. I did not refer the Court to *Walker v. Sheldon*, 179 N.E.2d 497 (N.Y. 1961)—New York's seminal case addressing the availability of punitive damages in fraud and deceit actions—although the case is cited in Morgan Stanley's memorandum of law.[1]

In *Walker*, the issue was whether the court should allow punitive damages, notwithstanding the rule in New York that punitive damages were not recoverable in the "ordinary" fraud and deceit case. The court ultimately held that there may be a recovery of punitive damages in fraud and deceit actions, but only "where the fraud, aimed at the public generally, is gross and involves high moral culpability." *Id.* at 499.

The individual plaintiff in *Walker* alleged that she had been induced into entering a contract by the defendant publishing company's fraudulent representations. She alleged that the misrepresentations were made "in the regular course of (defendants') business, and as the basis of their business knowing the plaintiff would, as others similarly situated had in the past, act upon said representations." *Id.* at 498 (internal quotations omitted). Addressing the "public wrong" requirement, the New York Court of Appeals stated: "The pleading charges that defrauding the general public into entering publishing contracts, such as the one involved in the present case, was the very basis of the defendants' business. What is asserted is not an isolated transaction incident to an otherwise legitimate business, but a gross and wanton fraud upon the public." *Id.* at 500. Or as the dissent put it, the defendants were accused of running a "racket." *Id.*

---

[1] The New York Court of Appeals has continually relied on *Walker*'s holding since it was decided in 1961. *See, e.g.*, *New York Univ. v. Continental Ins. Co.*, 662 N.E.2d 763 (N.Y. 1995); *Rocanova v. Equitable Life Assurance Soc'y*, 634 N.E.2d 940 (N.Y. 1994).

Thus, in *Walker* the defendants' fraudulent scheme was not only aimed at the public at large, the scheme could be repeated time after time, the only limit being the market for publishing contracts. And although the *Walker* plaintiff's actual damages totaled only $1,380, the court found that the prospect of a punitive damages award provided the incentive needed to vindicate a public right. *Id.* at 498; *see also Koufakis v. Carvel*, 425 F.2d 892, 908 (2d Cir. 1970) (holding that issue of punitive damages may not be submitted to jury on retrial because case did not involve a "public wrong" *and* was not "one where the possibility of punitive damages is necessary to induce suit to right a wrong which otherwise would go unpunished"); *accord Newburger, Loeb & Co. v. Gross*, 563 F.2d 1057, 1080 (2d Cir. 1977).

The record before the Court demonstrates that Morgan Stanley had only one client—Sunbeam—that was looking to make an acquisition, and only one company—Coleman—was interested in making a deal that involved Sunbeam common stock. CPH's allegations involve a single transaction between two sophisticated, commercial parties worth billions of dollars, who were being advised by respected investment banks. This case does not involve conduct directed at the public at large, nor does it implicate a public right. Moreover, CPH is not a member of the general public, and surely the plaintiff needs no further incentive to bring suit against Morgan Stanley beyond the prospect of compensatory damages, which are alleged to be $485 million. There is no injury to the public here.

While *Merrill Lynch & Co. v. Allegheny Energy, Inc.*, No. 02 Civ. 7689(HB), 2003 WL 22795650 (S.D.N.Y. Nov. 25, 2003), is a more recent statement of the boundaries of New York's "public wrong" requirement, *Walker v. Sheldon*—New York's seminal case addressing the availability of punitive damages in fraud and deceit actions—is the case that best addresses Your Honor's questions. Morgan Stanley respectfully submits *Walker* for the Court's review.

Respectfully,

Lawrence P. Bemis

LPB/rmt
Enclosure

cc: Jack Scarola (by federal express w/out encl.)
Jerold Solovy (by federal express w/out encl.)

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INC.,

Defendant.
_____/

MORGAN STANLEY'S ANSWERS TO COLEMAN (PARENT) HOLDINGS INC.'S SIXTH SET OF INTERROGATORIES TO MORGAN STANLEY & CO., INC.

Defendant Morgan Stanley & Co. Inc. ("Morgan Stanley"), by and through its undersigned attorneys, pursuant to Florida Rule of Civil Procedure 1.340, provides the following answers to Coleman (Parent) Holdings Inc.'s ("CPH") Sixth Set of Interrogatories to Morgan Stanley & Co., Inc. dated October 12, 2004 ("Interrogatories").

GENERAL OBJECTIONS

1. Morgan Stanley objects to the Interrogatories to the extent that they seek information protected from disclosure by the attorney-client privilege, the attorney-work-product doctrine, the common-interest privilege, or any other applicable constitutional, statutory, or common-law privilege, doctrine, immunity, or rule.

2. Morgan Stanley objects to the Interrogatories to the extent that they seek information that is neither relevant nor likely to lead to the discovery of evidence related to a matter at issue among the parties.

3. Morgan Stanley's answers and objections are based on a good-faith investigation. Morgan Stanley reserves the right to amend and/or modify its answers and objections.

4. Morgan Stanley incorporates each of these General Objections into each of the Answers and Specific Objections set forth below, as though each General Objection is fully set forth therein.

ANSWERS AND SPECIFIC OBJECTIONS

INTERROGATORY NO. 1: For each of CPH's Fifth Set of Requests for Admission that Morgan Stanley has denied, in whole or in part, state each fact that supports the denial. If Morgan Stanley's denial is related to its objection to CPH's definition of the term "Morgan Stanley" in the Fifth Set of Requests for Admission, state how Morgan Stanley's response to the Request for Admission would change if Morgan Stanley applied CPH's definition.

RESPONSE: Morgan Stanley did not deny any of the requests contained in CPH's Fifth Set of Requests for Admission; therefore, no response to this Interrogatory is necessary.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 10th day of November, 2004.

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Coleman v. Morgan Stanley & Co., Inc.

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INC.,

Defendant.
_____/

MORGAN STANLEY & CO. INC.'S RESPONSES AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC.'S FIFTH SET OF REQUESTS FOR ADMISSION

Defendant, Morgan Stanley & Co Inc. ("Morgan Stanley"), by and through its undersigned attorneys, pursuant to Fla. R. Civ. P. Rules 1.280(c) and 1.370, provides the following Responses and Objections to Plaintiff Coleman (Parent) Holdings Inc.'s ("CPH") Fifth Set of Requests for Admission ("Fifth Requests") served via facsimile on Morgan Stanley on October 11, 2004.

GENERAL OBJECTIONS

1. Morgan Stanley objects to the Fifth Requests to the extent they seek information protected from disclosure by the attorney-client privilege, the attorney-work-product doctrine, the common-interest privilege, or any other applicable constitutional, statutory, or common-law privilege, doctrine, immunity, or rule.

2. Morgan Stanley objects to the Fifth Requests to the extent they seek information that is neither relevant nor likely to lead to the discovery of evidence related to a matter at issue among the parties.

3. Morgan Stanley objects to the Fifth Requests to the extent they seek to impose obligations different from, or in addition to, those provided in the Florida Rules of Civil Procedure, discovery guidelines of this Court, and applicable case law.

4. Morgan Stanley's answers and objections are based on a good-faith investigation. Morgan Stanley reserves the right to amend and/or modify its answers and objections.

5. Morgan Stanley incorporates each of these General Objections into each of the Responses set forth below, as though each General Objection is fully set forth therein.

6. Morgan Stanley objects to the Fifth Requests to the extent they seek information from Morgan Stanley Senior Funding, Inc., Plaintiff in *Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings, Inc.*, Case No. CA 03-5165-AI, previously consolidated with the instant action and voluntarily dismissed by Morgan Stanley Senior Funding, Inc. on October 22, 2004.

ANSWERS AND SPECIFIC OBJECTIONS

REQUEST FOR ADMISSION NO. 1: The opinions reflected in documents bates-numbered Morgan Stanley Confidential 0084771 through 0085783 and Morgan Stanley Confidential 0094003 through 0094032 are not capable of being expressed as fact.

RESPONSE: A party may serve on another party a request for an admission that relates "to statements or opinions of fact or of the application of law to fact . . . " Fla. R. Civ. P. 1.370(a). Requests for admissions, however, may not seek an answer that calls for a conclusion of law. *Pandol Brothers, Inc. v. NCNB Nat'l Bank of Florida*, 450 So.2d 592, 594 (Fla. 4th DCA 1984) *citing Salazar v. Valle*, 360 So.2d 132, 134 (Fla. 3d DCA 1978) (discussing application of Fla. R. Civ. P. 1.370 following the 1972 amendment thereto). Federal decisions construing the nearly identical rule governing discovery are highly persuasive. *Delta Rent-A-Car, Inc. v. Rihl,*

218 So.2d 467, 468 (Fla. 4th DCA 1969) (concerning depositions); *McKean v. Kloeppel Hotels, Inc.*, 171 So.2d 552, 555 (Fla. 1st DCA 1965) (concerning requests for admissions). Although requests for admissions may seek answers to applications of law to fact, they may not "be used to compel an admission of a conclusion of law." *Carney v. IRS*, 258 F.3d 415, 419 (5th Cir. 2001).

This request seeks an admission from Morgan Stanley that the opinions contained in the bates-numbered documents are "not being capable of being expressed as fact." The referenced documents are personnel evaluations of Morgan Stanley employees. Morgan Stanley is not being asked to make an "application of law to fact" under the Rules of Civil Procedure; rather, it is being asked to use the rules of evidence to make an evidentiary determination regarding an opinion of an employee evaluating other employees. This is precisely the type of conclusion that the court must come to when balancing and interpreting §§ 90.104, 90.403, and 90.701, Fla. Stat. Under such a circumstance, however, a court would have the benefit of an evidentiary hearing to determine the appropriateness of their conclusion of law. CPH is asking Morgan Stanley to make a conclusion of law, without an evidentiary hearing, and invade the province of the court. Morgan Stanley therefore objects to this Request.

REQUEST FOR ADMISSION NO. 2: The opinions reflected in documents bates-numbered Morgan Stanley Confidential 0084771 through 0085783 and Morgan Stanley Confidential 0094003 through 0094032 do not require special knowledge, skill, experience, or training.

RESPONSE: A party may serve on another party a request for an admission that relates "to statements or opinions of fact or of the application of law to fact . . . " Fla. R. Civ. P. 1.370(a). Requests for admissions, however, may not seek an answer that calls for a conclusion of law. *Pandol Brothers,* 450 So.2d at 594, *supra*. Federal decisions construing the nearly

identical rule governing discovery are highly persuasive. *Delta Rent-A-Car,* 218 So.2d at 468, *supra*; *McKean,* 171 So.2d at 555, *supra*. Although requests for admissions may seek answers to applications of law to fact, they may not "be used to compel an admission of a conclusion of law." *Carney,* 258 F.3d at 419.

This request seeks an admission from Morgan Stanley that the opinions contained in the bates-numbered documents are "do not require special knowledge, skill, experience, or training." The referenced documents are personnel evaluations of Morgan Stanley employees. Morgan Stanley is not being asked to make an "application of law to fact" under the Rules of Civil Procedure; rather, it is being asked to use the rules of evidence to make an evidentiary determination regarding an opinion of an employee evaluating other employees, using the very language of Fla. Stat. § 90.701. This is precisely the type of conclusion that the court must come to when balancing and interpreting §§ 90.104, 90.403, and 90.701, Fla. Stat. Under such a circumstance, however, a court would have the benefit of an evidentiary hearing to determine the appropriateness of their conclusion of law. CPH is asking Morgan Stanley to make a conclusion of law, without an evidentiary hearing, and invade the province of the court. Morgan Stanley therefore objects to this Request.

REQUEST FOR ADMISSION NO. 3: The authors of the documents bates-numbered Morgan Stanley Confidential 0084771 through 0085783 and Morgan Stanley Confidential 0094003 through 0094032 could not readily, and with equal accuracy and adequacy, communicate the perceptions reflected in documents bates-numbered Morgan Stanley Confidential 0084771 through 0085783 and Morgan Stanley Confidential 0094003 through 0094032 without communicating in terms of opinions.

RESPONSE: A party may serve on another party a request for an admission that relates "to statements or opinions of fact or of the application of law to fact . . . " Fla. R. Civ. P. 1.370(a). Requests for admissions, however, may not seek an answer that calls for a conclusion of law. *Pandol Brothers,* 450 So.2d at 594, *supra.* Federal decisions construing the nearly identical rule governing discovery are highly persuasive. *Delta Rent-A-Car,* 218 So.2d at 468, *supra*; *McKean,* 171 So.2d at 555, *supra*.. Although requests for admissions may seek answers to applications of law to fact, they may not "be used to compel an admission of a conclusion of law." *Carney,* 258 F.3d at 419.

This request seeks an admission from Morgan Stanley that authors "readily, and with equal accuracy and adequacy, communicate the perceptions reflected in [personnel evaluations of Morgan Stanley employees] without communicating in terms of opinions." Morgan Stanley is not being asked to make an "application of law to fact" under the Rules of Civil Procedure; rather, it is being asked to use the rules of evidence to make an evidentiary determination as to whether a set of perceptions are of "equal accuracy and adequacy" not rendered in terms of an opinion. Once again, the language of the Request tracks the language of Fla. Stat. § 90.701. Once again, this is the type of conclusion that the court must come to when balancing and interpreting §§ 90.104, 90.403, and 90.701, Fla. Stat. Under such a circumstance, however, a court would have the benefit of an evidentiary hearing to determine the appropriateness of their conclusion of law. CPH is asking Morgan Stanley to make a conclusion of law, without an evidentiary hearing, and invade the province of the court. Morgan Stanley therefore objects to this Request.

REQUEST FOR ADMISSION NO. 4: Documents bates-numbered Morgan Stanley Confidential 0084771 through 0085783 and Morgan Stanley Confidential 0094003 through

0094032 were created within twelve months of the performance of the employees discussed therein.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 5: Documents bates-numbered Morgan Stanley Confidential 0084771 through 0085783 and Morgan Stanley Confidential 0094003 through 0094032 were prepared by MS&Co. employees with knowledge of the matters discussed therein.

RESPONSE:

Morgan Stanley objects to this Request. In this Request, Morgan Stanley is being asked to admit that each and every statement contained in 1,044 pages of documents, some of which contain multiple statements, were made by Morgan Stanley employees who had "knowledge of the matters" in the document. The Request imposes an overbroad and undue burden on Morgan Stanley by requiring Morgan Stanley to review each document, to identify every statement made in the document, and then to interview each employee to determine whether or not they had "knowledge" of the statement made in the document.

Finally, depending upon the response of the interviewed employee, Morgan Stanley would have to make a determination as to whether or not each statement contained either hearsay or an inadmissible opinion, and object individually to each statement that fell into either category. Thus, Morgan Stanley is not being asked to make an "application of law to fact" under the Rules of Civil Procedure; rather, it is being asked to use the rules of evidence to make an evidentiary determination as to whether the statements contained in the referenced documents contain hearsay or an inadmissible opinion. This is the type of conclusion that the court must come to when balancing and interpreting §§ 90.104, 90.403, and 90.701, Fla. Stat. Morgan Stanley therefore objects to this Request on the grounds that it is overbroad, unduly burdensome,

not stated with reasonable particularity, and requests Morgan Stanley to improperly form conclusions of law.

REQUEST FOR ADMISSION NO. 6: The statements reflected in documents bates-numbered Morgan Stanley Confidential 0084771 through 0085783 and Morgan Stanley Confidential 0094003 through 0094032 were made by MS&Co. employees.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 7: The statements reflected in documents bates-numbered Morgan Stanley Confidential 0084771 through 0085783 and Morgan Stanley Confidential 0094003 through 0094032 were made by MS&Co. employees during the course of their employment by MS&Co.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 8: The statements reflected in documents bates-numbered Morgan Stanley Confidential 0084771 through 0085783 and Morgan Stanley Confidential 0094003 through 0094032 were made by MS&Co. employees while acting within the scope of their employment.

RESPONSE: Admitted.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 10th day of November, 2004.

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL MORGAN STANLEY'S COMPLIANCE WITH DISCOVERY REQUESTS CONCERNING COLEMAN ESCROW CORPORATION NOTES

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, respectfully requests that this Court enter an Order directing Morgan Stanley & Co. Inc. ("Morgan Stanley") to respond to CPH's discovery requests concerning Morgan Stanley's Coleman Escrow Notes. In support of this motion, CPH states as follows:

1. This motion arises from Morgan Stanley's filing of a motion for protective order (*see* Ex. A) in which Morgan Stanley asks to be excused from responding to several discovery requests that seek relevant information relating to Morgan Stanley's purchase and sale of Coleman Escrow Corporation Notes. Three sets of CPH discovery requests are at issue: CPH's Seventh Set of Interrogatories (Ex. B), CPH's Eighth Request for Production of Documents (Ex. C), and CPH's Notice of Taking Videotaped Deposition dated October 21, 2004 (Ex. D).

2. By way of background, before CPH sold its 82% interest in The Coleman Company, Inc. ("Coleman") to Sunbeam Corporation ("Sunbeam"), Coleman Escrow Corporation ("Coleman Escrow") was the corporate holding company wholly owned by CPH that controlled those Coleman shares. Almost a year prior to the March 30, 1998 sale of CPH's

shares to Sunbeam, Coleman Escrow issued debt instruments secured with Coleman stock: first and second priority discount notes that had a maturity date of 2001 ("Escrow Notes").

3. During the October 15, 2004 deposition of former Morgan Stanley associate Karen Eltrich, CPH learned for the first time that Morgan Stanley had made a market in the Escrow Notes. Specifically, Ms. Eltrich testified that Morgan Stanley took a long position on the notes, in expectation that they would go up in value. *See* Ex. E, Eltrich Dep. at 56:25-57:11. Ms. Eltrich also testified that in October 1997 and in January 1998, she published research reports addressing Coleman Escrow. *Id.* at 66:1-24; 99:12-24. The two research reports included information on the historical and projected performance of Coleman, as well as a comprehensive study of the camping industry and Coleman's position within the industry. *Id.* at 57:17-23.

4. After the deposition of Ms. Eltrich, CPH issued three sets of discovery requests concerning the Escrow Notes. CPH requested:

a. Information regarding and documents referring or relating to Morgan Stanley's purchase or sale of Coleman Escrow Notes and the associated purchase or sales price, purchase or sale costs, gains, losses, and amount or rate of return on each purchase or sale. *See* CPH's 7th Set of Interrogs., Interrog. Nos. 1 & 2 (Ex. B); CPH's 8th Req. for Prod. of Docs., Doc. Req. Nos. 1 & 2 (Ex. C); Oct. 21, 2004 Notice of Taking Videotaped Dep., Corp. Dep. Topic Nos. 1 & 3 (Ex. D);

b. Information regarding the reasons for Morgan Stanley's sale or purchase of Escrow Notes. *See* CPH's 7th Set of Interrogs., Interrog. No. 3 (Ex. B); Oct. 21, 2004 Notice of Taking Videotaped Dep., Corp. Dep. Topic No. 2 (Ex. D);

c. Documents referring or relating to the two research reports Karen Eltrich published concerning the Escrow Notes. *See* CPH's 8th Req. for Prod. of Docs., Doc. Req. Nos. 3 & 4 (Ex. C).

5. Information regarding Morgan Stanley's purchase or sale of the Escrow Notes, its reasons for purchasing or selling the Escrow Notes, and its research concerning the Escrow Notes plainly could lead to the discovery of admissible evidence. Throughout this litigation, Morgan Stanley has indicated that it intends to argue in defense to CPH's claims that Morgan Stanley was a victim of the Sunbeam fraud because it (or its sister company) lost money in the transaction by which CPH sold its interest in Company to Sunbeam. Information concerning the amount of profit that Morgan Stanley made in the purchase and sale of Coleman Notes, and the underlying data necessary to confirm the accuracy of those figures, is relevant to test Morgan Stanley's defense.

6. The fact that Morgan Stanley Senior Funding voluntarily dismissed its claims against CPH and MAFCO does not alter the relevance of Morgan Stanley's purchase and sale of the Escrow Notes. If Morgan Stanley persists in claiming that it (or its sister company) was a victim of fraud that lost money, information relating to Morgan Stanley's profits stemming from the Coleman transaction will continue to be relevant.

7. Morgan Stanley complains in its motion for protective order that the discovery requests at issue were served after the October 14, 2004 pre-trial hearing. The timing of these discovery requests, however, was wholly dependent on the timing of Ms. Eltrich's October 15, 2004 deposition — at which the relevance of the Coleman Escrow documents first became known to CPH's counsel. In any event, this Court has denied Morgan Stanley's motion for protective order to bar discovery served after October 14 (Ex. F), so this argument is moot.

8. Morgan Stanley also has objected that the requested discovery is irrelevant and harassing, but those objections are mere boilerplate, made without any showing to back them up. Nonetheless, CPH would be willing to forego the discovery requested herein, if Morgan Stanley would agree to stipulate that it will not attempt to introduce any evidence or argument at trial to the effect that it (or MSSF or any other affiliated company) lost money or was otherwise injured as a result of the Sunbeam fraud. Absent such a stipulation, however, CPH's discovery should be allowed to proceed.

WHEREFORE, CPH respectfully requests that this Court direct Morgan Stanley to produce within seven days the documents and interrogatory answers responsive to CPH's Seventh Set of Interrogatories and Eighth Request for Production. CPH further requests that this Court direct a Morgan Stanley corporate representative to appear within 14 days of the Court's Order for a Rule 1.310 deposition relating to the Coleman Escrow Notes topics set forth in the attached deposition notice.

Dated: November 10, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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#1176234

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 10th day of Nov., 2004.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INC.,
Defendant.
_____/

MOTION FOR PROTECTIVE ORDER
CONCERNING MORGAN STANLEY'S COLEMAN ESCROW NOTES

Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") requests that this Court enter a protective order pursuant to Fla. R. Civ. P. 1.280(c) that excuses Morgan Stanley from responding to Coleman (Parent) Holdings Inc.'s ("CPH") Seventh Set of Interrogatories, Eighth Request for Production of Documents, and Notice of Taking Videotaped Deposition dated October 21, 2004. These requests, which were never the subject of the multiple hearings to set a trial date, seek discovery of Morgan Stanley's research concerning, and purchase or sale of Coleman Escrow Corporation Notes. This discovery is not relevant to the single case pending before this Court — CPH's claims that Morgan Stanley made false representations to CPH about Sunbeam. In support of this Motion, Morgan Stanley states as follows:

UNDISPUTED FACTS

1. This case arises out of the March 1998 acquisition transaction in which CPH sold its 82% interest in The Coleman Company, Inc. ("Coleman") to Sunbeam Corporation. Morgan Stanley served as financial advisor to Sunbeam for parts of the acquisition transaction and served as lead underwriter for a $750,000,000 debenture offering that Sunbeam used to finance the acquisition. Morgan Stanley Senior Funding, Inc. ("MSSF") and other lenders provided senior

EXHIBIT
tabbies
A

secured financing to Sunbeam in connection with Sunbeam's acquisition of Coleman and two smaller companies.

2. CPH filed this action on May 8, 2003. CPH's complaint alleges claims against Morgan Stanley for fraudulent misrepresentation, negligent misrepresentation, aiding and abetting fraud, and conspiracy. (May 8, 2003 Compl., Counts I - IV.) [1] Specifically, CPH's claims are all based on representations allegedly made by Morgan Stanley during the course of "face-to-face discussions" that occurred over a period of four months, between December 1997 and March 1998. (*Id.* ¶ 39.)

3. MSSF filed a second action (Civil Action No. CA 03-5165 AI) on May 12, 2003. MSSF's complaint, which was in the nature of a counterclaim, alleged claims against CPH and its parent company MacAndrews & Forbes Holdings Inc. ("MAFCO") for fraudulent misrepresentation and negligent misrepresentation. In particular, MSSF alleged that CPH had misrepresented Coleman's financial condition and the "synergies" that could be accomplished through a transaction with Sunbeam.

4. The two actions were consolidated on February 20, 2004, and proceeded as such until October 22, 2004.

5. On October 22, 2004, MSSF filed a Notice of Voluntary Dismissal Without Prejudice dismissing its action against CPH and MAFCO. Morgan Stanley — the only defendant in the remaining action — is not asserting any claim for relief against CPH.

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[1] Based on this Court's Order determining that New York law applies to the fraud and negligent misrepresentation claims, the legal sufficiency of these counts to state a cause of action is extremely doubtful.

6. Between Coleman and its ultimate corporate parent, Mafco Holdings Inc., were a number of corporate holding companies, each of which was owned 100 percent by the parent holding company:

- The Coleman Company, Inc.
- Coleman Worldwide Corporation (owned 82% of The Coleman Company, Inc.)
- Coleman Escrow Corporation, *renamed* CLN Holding Inc. (owned 100% of Coleman Worldwide Corporation)
- Coleman (Parent) Holdings Inc. (owned 100% of Coleman Worldwide Corporation)
- "MAFCO" (owned 100% of Coleman (Parent) Holding Company Inc.)
- Mafco Holdings Inc. (owned 100% of MAFCO)
- Ronald O. Perelman (owns 100% of Mafco Holdings Inc.)

7. In approximately May 1997, Coleman Escrow issued debt instruments — 1st and 2nd Priority Discount Notes ("Escrow Notes") — through various underwriters. The Escrow Notes had a maturity date of 2001.

8. On October 9, 1997 and January 26, 1998, Karen Eltrich, an associate at Morgan Stanley Dean Witter, published research reports addressing the Escrow Notes (Oct. 9, 1997 Global High Yield Investment Research, CPH 272 (Ex. 1); Jan. 26, 1998 High Yield Industry Review, CPH 275 (Ex. 2).) Because the Escrow Notes were secured with Coleman stock, the research reports looked closely at the historical and projected performance of Coleman, the industry in which Coleman operated, and comparable company transactions.

9. During her deposition on October 15, 2004, Ms. Eltrich testified that Morgan Stanley had made a market in the Escrow Notes and had also taken a long position in the Notes.

She further testified that eventually the High Yield Group had made a profit on the Escrow Notes.

10. On October 21, 2004, before MSSF dismissed its lawsuit, CPH served three sets of discovery requests addressing the Escrow Notes. In particular, CPH sought:

a. All documents related to the two research reports Karen Eltrich authored concerning the Escrow Notes (*see* Oct. 21, 2004 CPH 8th Req. for Prod., Reqs. 3-4 (Ex. 3));

b. The reasons for Morgan Stanley's sale or purchase of Escrow Notes (*see* Oct. 21, 2004 CPH Notice of Video. Dep., Topic 2 (Ex. 4); Oct. 21, 2004 CPH 7th Set of Interrogs., Interog. 3 (Ex. 5));

c. Documents and information concerning any purchase or sale by Morgan Stanley of the Escrow Notes, and the associated prices, costs, gains or losses (*see* CPH 8th Req. for Prod., Reqs. 1-2; CPH Notice of Video. Dep., Topics 1 & 3; CPH 7th Set of Interrogs., Interrogs. 1 & 2).

11. CPH did not disclose this intended discovery at any of the hearings before the Court to schedule a trial date, the most recent of which was October 14, 2004. During these hearings, there was extended argument by counsel on the volume of remaining discovery and the time the parties would require to complete that discovery. CPH represented to the Court that all remaining discovery could be completed by November 1, 2004.

ARGUMENT

CPH's discovery is irrelevant and — with the discovery cutoff looming in just over three weeks — harassing. Ms. Eltrich's late 1997 and early 1998 research reports discuss extensively the financial history of Coleman and the return of Mr. Jerry W. Levin to Coleman to bring the company back to profitability. The reports provide detailed discussions of the "turnaround"

alleged to be occurring at Coleman. Morgan Stanley's reasons for buying or selling the Escrow Notes may have related to Morgan Stanley's knowledge or expectation of Coleman's performance. While the MSSF action was pending, CPH could have argued that its discovery requests related either to Morgan Stanley's own knowledge of Coleman's finances or the probability of certain synergies in the Sunbeam/Coleman Transaction.

But that argument is gone. With the filing of its Notice of Voluntary Dismissal Without Prejudice, MSSF has dismissed all of its claims against CPH and MAFCO. The representations that CPH and MAFCO made to Sunbeam and MSSF concerning Coleman are no longer at issue. MSSF's ability to reasonably rely on CPH and MAFCO's representations and Morgan Stanley's or MSSF's knowledge concerning Coleman are no longer an issue.

CPH's requests are neither relevant, nor likely to lead to the discovery of admissible evidence. Fla. R. Civ. P. 1.280. The Morgan Stanley High Yield Group's research concerning, or purchase or sale of, Coleman Escrow Notes is not relevant to the representations that the Morgan Stanley Investment Banking Division made to CPH concerning Sunbeam.

CONCLUSION

CPH's action has been pending since May 2003 — nearly eighteen months. Over Morgan Stanley's objection, the Court ordered that fact discovery close November 24, 2004. This is not the time to explore new theories through a fishing expedition. Morgan Stanley respectfully requests that the Court issue a protective order that Morgan Stanley does not need to respond to CPH's Seventh Set of Interrogatories, Eighth Request for Production of Documents, and Notice of Taking Videotaped Deposition dated October 21, 2004.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 1st day of November, 2004.

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S SEVENTH SET OF INTERROGATORIES TO MORGAN STANLEY & CO., INC.

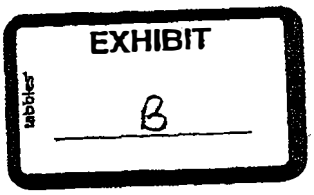
Pursuant to Florida Rules of Civil Procedure 1.280 and 1.340 and the Court's October 14, 2004 Order, Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, hereby requests that Morgan Stanley & Co., Inc. answer the following Interrogatories within fourteen (14) days from the date of service.

DEFINITION

1. "MS&Co." means Morgan Stanley & Co., Inc. or any of its affiliates, subsidiaries, divisions, predecessors, and successors.

2. "Coleman Escrow Notes" means the Coleman Escrow Corp. Senior Secured First and Second Priority Discount Notes due 2001 that are described in CPH 0473148-CPH 0473165 and Morgan Stanley Confidential 0001575-0001579.

3. "Security" has the same meaning as provided in 15 U.S.C. 77b(a)(1).



INSTRUCTIONS

1. MS&Co.'s obligation to undertake a reasonable investigation in responding these interrogatories includes making inquiry of its current personnel and any former personnel to the extent that those former personnel are under Morgan Stanley's control or being represented or advised by Morgan Stanley's counsel in this litigation.

2. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of each Interrogatory all responses that might otherwise be construed to be outside the scope.

3. The use of the singular form of any word includes the plural and vice versa.

INTERROGATORIES

INTERROGATORY NO. 1: For the time period January 1, 1996 to the present, identify each purchase or sale by MS&Co. of Coleman Escrow Notes and any other Security, or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc., and for each purchase or sale identify the MS&Co. entity, fund, or affiliate that made the purchase or sale.

RESPONSE:

INTERROGATORY NO. 2: For each purchase or sale identified in response to Interrogatory No. 1, state the purchase price, other costs in connection with the purchase, sales price, other revenue in connection with the sale, gains, losses, and the amount or rate of return on each such purchase or sale.

RESPONSE:

INTERROGATORY NO. 3: For each purchase or sale identified in response to Interrogatory No. 1, identify all reasons why MS&Co. purchased or sold the Security and the person(s) and/or committee(s) that made the decision to purchase or sell the Security.

RESPONSE:

Dated: October 21, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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Counsel for Plaintiff Coleman (Parent) Holdings Inc.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

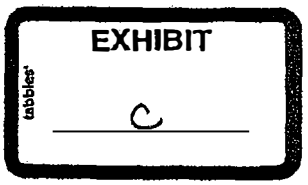
vs.

MACANDREWS & FORBES HOLDINGS INC. and
COLEMAN (PARENT) HOLDINGS INC.,
Defendants.
_____/

CASE NO. CA 03-5165 AI

COLEMAN (PARENT) HOLDINGS INC.'S
EIGHTH REQUEST FOR PRODUCTION OF DOCUMENTS
TO MORGAN STANLEY & CO., INC.

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys Searcy Denney Scarola Barnhart & Shipley P.A. and Jenner & Block LLP, hereby serves its Eighth Request for Production of Documents upon Morgan Stanley & Co., Inc. ("MS&Co."), and requests responses and the production of documents at the office of Searcy Denney Scarola Barnhart & Shipley P.A., 2139 Palm Beach Lakes Blvd., West Palm Beach, Florida, within fourteen (14) days from the date of service pursuant to the Court's October 14, 2004 Order.



DEFINITIONS AND INSTRUCTIONS

CPH incorporates by reference its Definitions and Instructions set forth in CPH's First Request for Production of Documents, served on MS&Co. on May 9, 2003. In addition, the following definitions apply:

1. "MS&Co." means Morgan Stanley & Co., Inc. or any of its affiliates, subsidiaries, divisions, predecessors, and successors.

2. "Coleman Escrow Notes" means the Coleman Escrow Corp. Senior Secured First and Second Priority Discount Notes due 2001 that are described in CPH 0473148-CPH 0473165 and Morgan Stanley Confidential 0001575-0001579.

3. "Security" has the same meaning as provided in 15 U.S.C. 77b(a)(1).

DOCUMENTS REQUESTED

1. For the time period January 1, 1996 to the present, all documents referring or relating to MS&Co.'s purchase or sale of Coleman Escrow Notes and any other Security, or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc.

2. For the time period January 1, 1996 to the present, documents sufficient to show MS&Co.'s purchase price, other costs in connection with the purchase, sales price, other costs in connection with the sale, gains, losses, and amount or rate of return on each purchase or sale of Coleman Escrow Notes and any other Security, or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc.

3. All documents referring or relating to the October 9, 1997 "Global High Yield Investment Research" report on The Coleman Company, Inc. and the Coleman Escrow Notes, including all documents used in creating that report.

4. All documents referring or relating to the January 26, 1998 "High Yield Industry Review" report on The Coleman Company, Inc. and the Coleman Escrow Notes, including all documents used in creating that report.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to all counsel on the attached Service List, this 21st day of October, 2004.

COLEMAN (PARENT) HOLDINGS INC.

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One of Its Attorneys

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,
vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,
vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITION

To:

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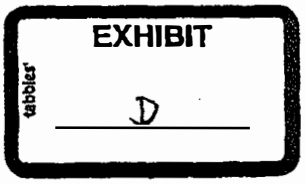
PLEASE TAKE NOTICE that Coleman (Parent) Holdings, Inc. will take the deposition upon oral examination of the following parties and witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co., Inc. on topics identified on Exhibit A.	November 5, 2004, at 9:30 a.m.

The deposition will be conducted at Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017. The deposition will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until completed.

Please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.



I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to all counsel on the attached Service List this 21st day of October 2004.

Dated: October 21, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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Exhibit A

CORPORATE DEPOSITION TOPICS

1. For the time period January 1, 1996 to the present, any purchase or sale by MS&Co. (or any of its affiliates, subsidiaries, divisions, predecessors, and successors) of Coleman Escrow Corp. Senior Secured First and Second Priority Discount Notes due 2001, which are described in CPH 0473148-CPH 0473165 and Morgan Stanley Confidential 0001575-0001579, and any other Security (as defined in 15 U.S.C. 77b(a)(1)), or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc.

2. For the time period January 1, 1996 to the present, all reasons why MS&Co. (or any of its affiliates, subsidiaries, divisions, predecessors, and successors) purchased or sold the Coleman Escrow Notes described in Topic No. 1, and any other Security (as defined in 15 U.S.C. 77b(a)(1)), or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc., and the identity of the person(s) and/or committee(s) that made the decision to purchase or sell the Coleman Escrow Notes and the Securities.

3. For the time period January 1, 1996 to the present, MS&Co.'s (or any of its affiliates', subsidiaries', divisions', predecessors', and successors') purchase price, other costs in connection with the purchase, sales price, other costs in connection with the sale, gains, losses, and amount or rate of return on any purchase or sale of Coleman Escrow Corp. Notes described in Topic No. 1, and any other Security (as defined in 15 U.S.C. 77b(a)(1)), or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc.

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.
MORGAN STANLEY & CO., INC.,
Defendant(s).

Case No. CA 03-5045 AI

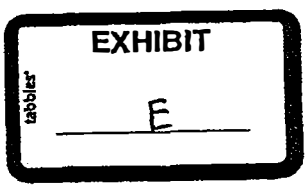
MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendants(s)

VIDEOTAPED DEPOSITION OF KAREN HAYCOX-ELTRICH

New York, New York

Friday, October 15, 2004

Reported by:
JOAN WARNOCK
JOB NO. 166116



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be published.
Q. Was there a person that you dealt with?
A. I don't recall.
Q. Do you remember if there was a person or a function responsible for reviewing those research reports?
A. It was all done by my secretary, so I really don't know.
Q. Do you remember if you showed your report to Mr. Foley before it issued?
A. I probably did, but I couldn't tell you exactly.
Q. Now, once coverage is initiated, did you continue to monitor the performance of those bonds?
A. Yes. We did quarterly updates. And if we had the opportunity to see the company on a one-off basis, we would publish on that.
Q. You're going to have to -- there is a lot of terminology that goes with this field, and I think I got most of it, but you're going to have to describe it. Now, you said you would do quarterly updates of your research?

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A. Basically when they report numbers, and we would report on how they did versus our estimates.
Q. And then I think you also referred to a one-off?
A. For example, Coleman presented at our high yield conference I believe it was in 1997, so we would do a written update on that.
Q. Did there come a time when you stopped covering the bonds?
A. I stopped covering the bonds when the Sunbeam deal was announced. I immediately became restricted.
Q. What do you mean by that?
A. Meaning Morgan Stanley was handling the deal, and so, consequently, we will not publish research when we're involved on the investment banking side.
Q. Got it. Would you then issue something saying, hey, we're not going to cover it anymore?
A. No. We just stop publishing. The client base -- our client base is private clients. Sorry. Are institutional clients. So they understand.

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Q. You're aware that the reports that you issued could have an effect on the market for the securities?
MS. BROWN: Object to form. Foundation.
A. I disagree with that. As I just said, our clients, our institutional clients, they're extremely sophisticated, and they use our work to help them make their decision, but we don't actually make their decisions for them. It's very rare that a high yield research report will move markets unless they have some truly new information.
Q. Did you ever personally buy or sell any securities in Coleman?
A. I did not.
Q. I don't know if you were allowed to. Were you allowed to under the Morgan Stanley rules?
A. No, I was not.
Q. But I believe you testified that Morgan Stanley and its traders took positions in the Coleman bonds?
A. Morgan Stanley trading did, yes.
Q. Did Morgan Stanley make a market --

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A. Yes, we did.
Q. -- in these bonds?
A. Yes, we did.
Q. In addition to making a market, did it take a long position in the bonds?
A. Yes, we did.
Q. And by taking a long position, that means that Morgan Stanley held them expecting them to go up in value so they could make money on the bonds?
A. Yes.
Q. Now, when you do a coverage report, what information do you typically consider?
MS. BROWN: Object to form.
A. It varies so much company by company and it varies by how much information was already out there. In the case of Coleman, we obviously did what we thought -- you know, we gave the company's investment strengths, weaknesses. The report also included a very comprehensive study of the camping industry and its potential growth and how we felt Coleman was a leader. But there is no template whatsoever to a research report.
Q. Okay. I guess I'm not asking the

question right. I'm trying to get at the types of information you would consider rather than what the report would look like. Were there types of information you typically considered?

MS. BROWN: Object to form.

A. As a high yield research analyst, your number one consideration is their ability, as I said, to pay the coupons. So every research report will include a capital structure, your amortization schedule, your model, financial forecast, your free cash flow. That's much more of the financial consideration which every report will contain, but then everything else is far more subjective in terms of, okay, we know this is what they have to pay down their bonds, what is the likelihood based on the fundamentals of the company that they can do that.

Q. I guess I'm not asking the question right.

A. Okay.

Q. I'm focusing less on what the report looks like and more on the information, the raw material that you would use to generate

it. You would look at financial statements, for example; correct?

A. We look at publicly filed SEC filings, yes.

Q. Okay. What else?

A. We actually went to the -- I can't remember the name now, but we went to some park conservation, national wildlife park to see what their camping numbers were. We commissioned a study from one group to see what camping demand was and the quality of the Coleman name. But I obviously primarily look at financial statements, and, ideally, if you can, you talk to retailers and say, okay, what is the quality of this brand for you.

Q. Do you remember if you did talk to retailers about Coleman?

A. No, I did not. I did not have those contacts at that time. For us it was more going into the retail channels and seeing the shelf space that they had.

Q. And you did that?

A. Yes.

Q. How did you do that? Do you do that yourself, or do you have --

A. You go to a Target. You go to a Wal-Mart.

Q. So you would go and look?

A. Yes.

Q. Did you ever buy any of their products?

A. I live in New York City, unfortunately not a big occasion for camping.

Q. Hey, people in New York camp, too. I know it happens. Would you participate in conference calls with management?

A. Yes.

Q. Would you talk to management aside from the regularly scheduled conference calls?

A. Only Mark Shiffman.

Q. And Mr. Shiffman was the director of investor relations?

A. He was. And he was extremely well-informed and very accessible, so he worked -- he was very, very good in that function.

Q. Did you speak to other analysts, other people that were covering Coleman?

A. Only on the buy side, not on the sell side.

Q. Okay. You're going to have to explain what that means.

A. Meaning clients who were investing in the bonds, buying bonds from us, versus other shops that were potentially selling the bonds in the secondary.

Q. So you would talk to people who were interested in buying the bonds?

A. Correct.

Q. To see what they were looking for or looking -- what they saw to be value in Coleman?

A. No. It's the reverse. They were asking me why I saw value in Coleman.

Q. Did you read the reports of other analysts?

A. No, I did not.

Q. Of Goldman Sachs or someone else?

A. No, I did not.

Q. Do you know if other people covered the Coleman bonds?

A. I don't recall.

Q. Did you track related companies, that is, other companies in the same field?

A. Yes, I did.

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Q. What companies?
A. Well, within consumer products, but no other camping companies.
Q. Okay. And you obviously tracked consumer product companies for other purposes. Did you track them for purposes of comparing them to Coleman?
A. There is two answers to that is yes, on the bond spread basis, and, second, we would look at where equity comparables were trading on a total enterprise value, TEV, to EBITDA basis to get a downside multiple valuation for Coleman in the event they went bankrupt.
Q. Okay. We're going to do those one step at a time. You said you would look at the bond spread?
A. Meaning I would look at what total debt to EBITDA, EBITDA to interest and yield was for varying companies within the sector.
Q. Do you remember what companies you looked at?
A. No, I do not.
Q. Okay. And on the equity side you said you looked at the ratio between total

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enterprise value --
A. Total enterprise value to EBITDA.
Q. How would you determine total enterprise value?
A. That's total debt plus the market equity cap.
Q. And you would compare that to the company's EBITDA?
A. You would divide -- you would put that over EBITDA, yes.
Q. And you would compare Coleman's ratio to the ratio of other companies?
A. No. I would see what the ratio of other companies were, and I would see what Coleman's total debt to EBITDA was, and see what my recovery value was for the bonds.
Q. Okay. In the event of bankruptcy?
A. In the event of bankruptcy.
Q. Now, in connection with the work you did looking into Coleman, did you ever talk to Mr. Levin?
A. I don't recall. I mean obviously I heard him on the conference calls, but I don't recall if I ever had a one on one meeting with him.

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Q. Did you ever speak to Mr. Page?
A. I don't recall.
Q. Do you know Joe Page, or do you know who he is?
A. Don't recall.
Q. Did you ever speak to Mr. Shapiro?
A. I don't recall. The name is vaguely familiar, but I don't recall.
Q. I believe you identified Mr. Shiffman. Do you remember anyone else at Coleman that you spoke with?
A. No, I don't.
Q. And you're aware that 82 percent of the common stock of Coleman was owned by a MacAndrews & Forbes entity?
A. Yes, I was aware.
Q. Did you speak with anyone at MacAndrews & Forbes about Coleman?
A. No, I did not.
Q. In connection with the coverage you did of Coleman, did you ever visit a Coleman facility?
A. No, I did not.
Q. And I believe you said you went to the retail outlets and looked how their

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products were placed; is that correct?
A. Yes, it is.
Q. Did you talk to retailers?
A. No, I did not. I did not have those connections.
MS. BROWN: Let's take a break before we start using the exhibits.
MR. BRODY: Yes. That's fine. We can take a break now.
VIDEOGRAPHER: The time on the monitor is now 10:35, and we are off the record.
(Recess)
(Initiation of coverage for Coleman marked CPH Exhibit 272 for identification, as of this date.)
(Document Bates stamped Morgan Stanley Confidential 23225-23229 marked CPH Exhibit 273 for identification, as of this date.)
VIDEOGRAPHER: The time on the monitor is 10:44, and we're back on the record.
Q. While we were off the record, Ms. Eltrich, we marked two exhibits, and I'm

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going to show you the first of the two. It's been marked as Exhibit 272. Do you recognize that document?
A. Yes, I do.
Q. And what is it?
A. I believe it was my initiation of coverage for Coleman.
Q. And this is a document that you wrote?
A. Yes, it is.
Q. Did you prepare this document in the ordinary course of your business at Morgan Stanley?
A. Yes, I did.
Q. It's dated October 9th, 1997. Is that the date on or about the time you created it?
A. I couldn't recall.
Q. Did you issue this document on or about October 9th, 1997?
A. It was published on October 9th.
Q. Okay. "Published" is the word you prefer?
A. Yes.
Q. And then thereafter was a copy of

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this document kept in the files of Morgan Stanley?
MS. BROWN: Object to foundation.
A. I don't know.
Q. Did you keep a copy of it?
A. I believe I kept a copy with my own personal files.
Q. When you prepared this document, were you acting within the scope of your authority at Morgan Stanley?
MS. BROWN: Object to the extent he's calling for a legal conclusion.
MR. BRODY: I'm not.
A. To my knowledge, I was.
Q. And I would also like to show you what has been marked as Exhibit 273. Do you recognize that document?
A. I don't recall.
Q. Your name appears at the top. Do you see that?
A. Yes, I do.
Q. Do you recognize this as a document faxed to you or faxed from you?
A. Faxed to me. It basically looks like a second quarter earnings update, but I

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can't recall the details.
Q. And it's dated August 7, 1997; is that correct?
A. It appears to be, yes.
Q. And that would be about the time that a company like Coleman would issue its second quarter earnings?
A. It would appear so, yes.
Q. Is Exhibit 273, the earnings document, one of the documents you considered in connection with issuing the report that is shown as 272?
A. I don't recall specifically, but I would assume so.
Q. In any event, though, you would have read earnings announcements such as Exhibit 273 before doing the research report or as part of doing your work?
A. Yes, I would.
Q. Now, at the time you issued your first research report in October of 1997, did you understand that Coleman was in the process of a turnaround?
MS. BROWN: Object to form.
A. To the best of my knowledge, that

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was my assumption.
Q. What did you understand that to mean?
A. To the best of my recollection, it was that the numbers had been extremely disappointing, the company had become highly leveraged, but under new management I felt that the company could regain its bearings and service its debt.
Q. Did you understand that the company had adopted a strategy to improve its financial performance?
MS. BROWN: Object to form.
A. To the best of my recollection, yes, they had.
Q. If you look at Exhibit 273, the earnings announcement that shows that it was sent to you, the first paragraph refers to success in its turnaround strategy; correct?
A. Yes, it does.
Q. And that's the sort of thing that you would have read and analyzed in connection with doing a research report?
A. One part of it, yes.
Q. Of course. Other things as well. I

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Q. And it shows that it was sent to you?
A. Yes, it was.
Q. Is this an earnings report from Coleman?
A. It appears to be, yes.
Q. Were you on a regular circulation list that you would receive these documents?
MS. BROWN: Object. Foundation.
A. To my knowledge, I was.
Q. Do you know how that happened, how you got to be on that?
A. I requested to be on their distribution list.
Q. You requested that of Coleman?
A. Yes, I did.
Q. If you turn to the fourth page of this document, there are some financial numbers, and on the bottom there appears to be some handwriting?
A. Um- hmm.
Q. Do you recognize the handwriting?
A. It may be mine, but I'm not sure.
Q. Do you have any understanding as to what it refers to?

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A. No, I don't.
Q. After you received this report, did you modify the research that you put out there?
A. I couldn't recall.
MR. BRODY: Mark this, please, as Exhibit 275.
(Research report dated January 26 issued by Ms. Eltrich marked CPH Exhibit 275 for identification, as of this date.)
Q. Ms. Eltrich, I'm showing you what has been marked as Exhibit 275. Do you recognize that as another research report that you issued?
A. Yes, I do.
Q. That you published?
A. Yes, I do.
Q. And it's dated January 26th?
A. Yes.
Q. Now, the prior one was dated October 9th, 1997. Are you aware of any research reports between those two dates?
A. I can't recollect.
Q. And can you recall any research

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reports after this date?
A. I can't recollect.
Q. If I were to tell you that the acquisition of Coleman by Sunbeam, Sunbeam being a Morgan Stanley client, was publicly announced at the beginning of March 1998, would you believe that you would have done another research report after this one?
A. No, I would not have been allowed to.
Q. So if the facts I just told you are correct, and I believe them to be, you believe this to be your final research report?
A. I can't recollect.
MS. BROWN: Object to form.
Q. Looking at Exhibit 275, is that a document that you drafted?
A. I believe so, yes.
Q. And at the time you drafted it, you did so in the course of your responsibilities at Morgan Stanley?
A. I believe so, yes.
Q. And the document was published by Morgan Stanley to the recipients of its research reports, its high yield research

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reports?
MS. BROWN: Object to form.
A. It was distributed on a distribution list to our clients.
Q. Okay. That's a better way of stating it. And it was sent to those clients in the ordinary course of Morgan Stanley's business?
A. To my knowledge, yes.
Q. Did you keep a copy of this document in your file?
A. I don't recall.
Q. Do you believe you did?
A. Probably not.
Q. It wasn't your practice to keep copies of research reports that you issued?
A. It was kept in my computer, not on file.
Q. So it was kept in electronic form?
A. Correct.
Q. And was it the ordinary course of your business to keep copies of the research reports you issued in electronic form on your computer?
A. It was the firm's practice, yes.

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER ON MOTION FOR PROTECTIVE ORDER CONCERNING DISCOVERY SERVED BY COLEMAN (PARENT) HOLDINGS, INC. AFTER OCTOBER 14, 2004 AND TO EXTEND PRETRIAL DEADLINES

THIS CAUSE came before the Court November 4, 2004 on Morgan Stanley & Co. Incorporated's Motion for Protective Order Concerning Discovery Served by Coleman (Parent) Holdings. Inc. After October 14, 2004 and to Extend Pretrial Deadlines. with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Morgan Stanley & Co. Incorporated's Motion for Protective Order Concerning Discovery Served by Coleman (Parent) Holdings, Inc. After October 14, 2004 and to Extend Pretrial Deadlines is Denied.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 4 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

EXHIBIT
tabbies
F

RECEIVED NOV 2004

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL MORGAN STANLEY'S COMPLIANCE WITH RULE 1.310 DEPOSITION NOTICE CONCERNING SUBORDINATED DEBENTURE TRANSACTIONS

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, respectfully requests that this Court enter an Order directing Morgan Stanley & Co., Inc. ("Morgan Stanley") to provide a corporate representative to testify pursuant to Rule 1.310 concerning the subordinated debenture-related topics set forth in the deposition notice attached hereto as Exhibit A. In support of this motion, CPH states as follows:

1. This motion arises from Morgan Stanley's most recent refusal to produce a witness for a previously noticed deposition. In fact, following this Court's denial of Morgan Stanley's request that all discovery served by CPH after October 14 be barred, Morgan Stanley has helped itself to the identical relief by repeatedly refusing to produce deposition witnesses pursuant to notices served by CPH. For example, CPH had noticed one deposition to take place last week and three depositions to take place this week, but Morgan Stanley refused to produce any of those witnesses — and either filed motions for a protective order just before the depositions were to be taken or indicated its intention to file such a motion. The deposition at issue in this motion, which was to take place on November 12, is the last of the depositions that Morgan Stanley has refused to proceed with this week: on November 10, two days before the deposition was to take place, Morgan Stanley wrote advising that it would not produce a Rule

1.310 witness as scheduled and would be filing a motion for a protective order instead. *See* Ex. B.

2. The Rule 1.310 deposition at issue in this motion asks Morgan Stanley to produce a corporate representative to testify about the following topics: (1) all transactions involving subordinated debentures, including all transactions in which Morgan Stanley bought or sold subordinated debentures, all communications with Morgan Stanley customers or counterparties to any subordinated debenture trades involving Morgan Stanley as a broker or principal, any market for subordinated debentures, and the purchase prices and costs associated with the purchase or sale of subordinated debentures; (2) Morgan Stanley's gains, losses, and amount or rate of return in connection with the purchase or sale of subordinated debentures; and (3) the authenticity of certain subordinated debenture-related documents produced by Morgan Stanley.

3. The information requested by CPH's Rule 1.310 deposition notice would reveal the losses or gains realized by Morgan Stanley in its capacity as the underwriter of the subordinated debenture offering used to fund Sunbeam's acquisition of The Coleman Company, Inc. and other entities. This information is relevant to test Morgan Stanley's contention that it was a victim of the Sunbeam fraud and lost money as a result of that fraud. Morgan Stanley therefore should produce a Rule 1.310 witness to testify about the topics set forth in notice attached as Exhibit A without further delay.

Dated: November 10, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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#1177740

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 10th day of JAN., 2004.

JACK SCAROLA
Florida Bar No.: 169440
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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,
vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,
vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITION

To:
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PLEASE TAKE NOTICE that Coleman (Parent) Holdings, Inc. ("CPH") will take the deposition upon oral examination of the following party pursuant to Florida Rule of Civil Procedure 1.310 on the date set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co., Inc. on the topic identified on Exhibit A.	November 12, 2004, at 9:30 a.m.

The deposition will be conducted at Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017. The deposition will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until completed.

Please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

EXHIBIT
A

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to all counsel on the attached Service List this 3rd day of November 2004.

Dated: November 3, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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Exhibit A

CORPORATE DEPOSITION TOPIC

1. All transactions involving Subordinated Debentures (as defined in the Definitions and Instructions set forth in CPH's First Request for Production of Documents served on May 9, 2003), including but not limited to: (i) all transactions in which Morgan Stanley bought or sold any Subordinated Debentures or any interest therein; (ii) all communications with any Morgan Stanley customer or counter-party to any trade involving Morgan Stanley as a broker or principal relating to the Subordinated Debentures; (iii) any market for the Subordinated Debentures; and (iv) the purchase price, other costs in connection with the purchase, sales price, other costs in connection with the sale, gains, losses, and amount or rate of return on any purchase or sale of Subordinated Debentures or any interest therein.

2. Morgan Stanley's gains, losses, and amount or rate of return in connection with the purchase or sale of Subordinated Debentures or any interest therein.

3. The documents produced by Morgan Stanley at Morgan Stanley Confidential 0096879 to 0096972 and Morgan Stanley Confidential 0102880 to 0103433, including but not limited to: (1) the authenticity, source, creation, use, maintenance and business purpose of the documents; and (2) the explanation of the documents and the information contained therein.

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

655 Fifteenth Street, N.W.
Washington, D.C. 20005

202 879-5000

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Zhonette M. Brown
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November 10, 2004

BY FACSIMILE

Michael Brody, Esq.
Jenner & Block, LLP
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*
MSSF v. MacAndrews & Forbes Holdings Inc. et al.

Dear Mike:

I write in response to the Notice of Taking Videotaped Deposition that CPH served on November 3, 2004 regarding the Subordinated Debenture transactions. In the next few days Morgan Stanley will file a motion for protective order addressing the Notice. Therefore, Morgan Stanley will not be producing a witness on Friday, November 12, 2004 to address the topics identified in the Notice.

Sincerely,

Zhonette M. Brown

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark C. Hansen, Esq. (by facsimile)

EXHIBIT
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#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC., Case No. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

MORGAN STANLEY SENIOR FUNDING, INC., Case No. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

_____/

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: November 16, 2004

TIME: 8:45 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

(1) Coleman (Parent) Holdings Inc.'s Motion to Compel Morgan Stanley's Compliance with Discovery Requests Concerning Coleman Escrow Corporation Notes.

(2) Coleman (Parent) Holdings Inc.'s Motion to Compel Production of Documents Responsive to its Sixth Request for Production.

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

(3) Coleman (Parent) Holdings Inc.'s Motion to Compel Morgan Stanley's Compliance with Rule 1.310 Deposition Notice Concerning Subordinated Debenture Transactions.

(4) Morgan Stanley's Motion for Protective Order to Preclude Unnecessary and Duplicative Rule 1.310 Deposition Testimony Regarding Fees and Expenses Received By Morgan Stanley.

Moving counsel certifies that he or she contacted opposing counsel and attempted to resolve the discovery dispute without hearing.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to all Counsel on the attached list, this 10th day of Nov., 2004.

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Case No.: 2003 CA 005045 AI
Notice of Hearing

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED
Defendant.
_____/

MORGAN STANLEY'S MOTION TO COMPEL RULE 1.310 DEPOSITIONS AND OPPOSITION TO COLEMAN (PARENT) HOLDING INC.'S MOTION FOR PROTECTIVE ORDER

Coleman (Parent) Holdings Inc. ("CPH") has moved for a protective order barring Morgan Stanley & Co. Incorporated ("Morgan Stanley") from taking the deposition of a corporate representative on Topics Two and Five set out in the notice of deposition:

> All gains and/or losses experienced by CPH as a result of CPH's investment in The Coleman Company, including the value of all payments, consideration, and other financial benefits received by CPH, directly or indirectly, as a result of that investment.
>
> The balances due and available under any Mafco Finance Corp. (or Marvel IV Holdings Inc.) Credit Agreement or Mafco Holdings, Inc. Guaranty (including any Amendments or Restatements) in the first and second quarters of 1998.

(Nov. 3, 2004 Am. Notice of Dep. (Ex. 1 to Nov. 8, 2004 CPH Mot. for Protective Order ("CPH Mot.")).)

The only objection interposed by CPH in opposition to the deposition(s) on these two narrow topics is relevance. Both topics are highly relevant to the pending action. CPH as a plaintiff has sued Morgan Stanley asking for hundreds of millions of dollars in damages related to the sale of its interest in Coleman. Yet CPH refuses to provide discovery regarding its overall gains and losses on its investment in Coleman and the relevant financial obligations that existed when CPH sold Coleman. This information is required for Morgan Stanley (and the jury) to put

CPH's damage claims in context and to understand the circumstances surrounding CPH's sale of Coleman. CPH's motion should therefore be denied.

FACTS

1. Ronald O. Perelman bought The Coleman Company, Inc. ("Coleman") in March 1989 for approximately $524 million.

2. In the nine years that Perelman owned Coleman, he extracted significant value out of the company directly and indirectly. Indeed, "[l]ong before selling Coleman to Sunbeam, [Perelman] had more than recovered his original $500 million purchase price through various refinancings and asset sales." Jonathan R. Laing, Now It's Ron's Turn: Sunbeam shareholders, beware, Barron's, Oct. 12, 1998, at 31 (available at 1998 WL-BARRONS 12709743).

3. At the time of the Transaction, however, Coleman was in the midst of a restructuring and was not performing well.

4. Mr. Perelman financed his operations, in part, through large, complicated credit facilities.

5. These credit facilities required significant periodic payments. Additionally, under the credit facilities and after a certain threshold, an influx of cash such as the one Mr. Perelman would have received from an all-cash sale of his interest in Coleman could have triggered provisions that required him to make additional payments on the credit facility.

6. The credit facilities required a large payment in the spring of 1998.

7. On February 27, 1998, Mr. Perelman approved Sunbeam's purchase of his approximately 82% interest in Coleman. The amount of cash that Mr. Perelman received for his interest in Coleman was just below the threshold that would otherwise have triggered additional credit facility payments.

ARGUMENT

Morgan Stanley is entitled to obtain discovery of "any matter, not privileged, that is relevant to the subject matter of the pending action," whether the discovery would be admissible at trial, or is merely "reasonably calculated to lead to the discovery of admissible evidence." Fla. R. Civ. P. 1.280(b)(1). CPH bears the burden of establishing a "good cause" predicate for the issuance of a protective order pursuant to Florida Rule 1.280(c). *Bush v. Schiavo*, 866 So. 2d 136, 138 (Fla. 2d DCA 2004) (citing *City of Oldsmar v. Kimmins Contracting Corp.*, 805 So. 2d 1091, 1093 (Fla. 2d DCA 2002)); *Medina v. Yoder Auto Sales, Inc.*, 743 So. 2d 621, 623 (Fla. App. 2d DCA 1999) (reversing trial court's issuance of a protective order where the burden was mistakenly placed on the party resisting the protective order to make a sufficient showing to warrant the requested discovery).

The discovery sought by Morgan Stanley is indisputably "relevant to the subject matter of the pending action." Topic No. 2 — CPH's gains and losses as a result of CPH's investment in Coleman — will help explain to the jury why CPH was willing to sell Coleman, why it was willing to accept the consideration offered by Sunbeam as a mix of cash, stock and debt assumption, and why CPH was willing to accept the Sunbeam shares as consideration for Coleman without performing due diligence to verify the value of the Sunbeam shares. Since CPH had already profited on its investment in Coleman and Coleman wasn't performing well, CPH elected to assume the risk of accepting Sunbeam stock as consideration for Coleman even though some of Coleman's top executives internally questioned Sunbeam's financials and advocated accepting cash instead. Topic No. 2 is therefore highly relevant to both liability and damages in the present action.

Similarly, Topic No. 5 — MacAndrews & Forbes' ("MAFCO") credit status at the time of the Transaction — is likewise relevant to CPH's motivation for rushing to unload Coleman without performing adequate due diligence and for accepting stock as part of the consideration for Coleman. At the time of the Transaction, MAFCO was suffering from a "credit crunch" that made it necessary for CPH to either sell Coleman as soon as possible or risk defaulting on its loans. Additionally, if MAFCO had accepted more cash — reducing or eliminating the stock consideration — MAFCO would not have had the benefit of the use of all of the additional cash because it would triggered payments to its creditors. MAFCO's credit status influenced the structure of the Transaction, which is relevant not just for liability purposes but also for damages.

With the discovery deadline approaching, Morgan Stanley has been forced to make difficult decisions and prioritize the depositions that Morgan Stanley believes to be most relevant to the pending action. Both Topics No. 2 and No. 5 are central to Morgan Stanley's liability and damages theories, and Morgan Stanley has therefore chosen to prioritize them. Neither deposition is expected to be prolonged and CPH has not claimed that they would be unduly burdensome. CPH's motion should be denied.

CONCLUSION

For the foregoing reasons, Morgan Stanley requests that the Court deny CPH's Motion for Protective Order in its entirety.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 12th day of November, 2004.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO. INCORPORATED
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_____/

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FACTS

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ARGUMENT

Morgan Stanley is entitled to obtain discovery of "any matter, not privileged, that is relevant to the subject matter of the pending action," whether the discovery would be admissible at trial, or is merely "reasonably calculated to lead to the discovery of admissible evidence." Fla. R. Civ. P. 1.280(b)(1). CPH bears the burden of establishing a "good cause" predicate for the issuance of a protective order pursuant to Florida Rule 1.280(c). *Bush v. Schiavo*, 866 So. 2d 136, 138 (Fla. 2d DCA 2004) (citing *City of Oldsmar v. Kimmins Contracting Corp.*, 805 So. 2d 1091, 1093 (Fla. 2d DCA 2002)); *Medina v. Yoder Auto Sales, Inc.*, 743 So. 2d 621, 623 (Fla. App. 2d DCA 1999) (reversing trial court's issuance of a protective order where the burden was mistakenly placed on the party resisting the protective order to make a sufficient showing to warrant the requested discovery).

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CONCLUSION

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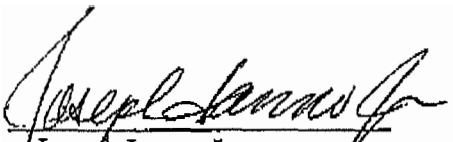
BY: 
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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
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COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED
Defendant.
_____/

MOTION FOR PROTECTIVE ORDER CONCERNING THE NOTICE OF DEPOSITIONS, SERVED BY COLEMAN (PARENT) HOLDINGS INC. ON OCTOBER 26, 2004

Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") requests that this Court enter a protective order pursuant to Fla. R. Civ. P. 1.280(c) preventing Coleman (Parent) Holdings Inc.'s ("CPH")'s last-minute depositions of ***four more*** senior executive officers of Morgan Stanley. These deponents possess either no or minimal personal knowledge about Morgan Stanley's engagement with Sunbeam. Moreover, CPH noticed the depositions for the purpose of preventing Morgan Stanley from completing its discovery by November 24, 2004. In support of this motion, Morgan Stanley states as follows:

UNDISPUTED FACTS

1. At the Case Management Conference on October 14, 2004, counsel for CPH argued that discovery could be completed by November 1, 2004, and—over Morgan Stanley's repeated argument to the contrary—that "the number of depositions that need to be taken have been exaggerated." (Oct. 14, 2004 Hrg. Tr. at 83.) Yet, despite the large number of depositions scheduled or requested (43) by the parties as of October 14, 2004, CPH never told opposing counsel or this Court that CPH would, mere days later, seek additional depositions of senior

Morgan Stanley officers who had never been identified as possible deponents in any earlier party communications, as well as ***fourteen*** other discovery requests.

2. On October 26, 2004, CPH served a Notice of Taking Videotaped Depositions ("Deposition Notice") for Robert G. Scott, Joseph R. Perella, Tarek Abdel-Meguid, and Bruce Fiedorek. The depositions are noticed to take place on four successive days from November 16, 2004 to November 19, 2004. (Oct. 26, 2004 Notice of Taking Video. Deps. (Ex. 1).)

3. On September 2, 2003, CPH served its responses to Morgan Stanley's first set of interrogatories, identifying Bruce Fiedorek as an individual who may possess discoverable information regarding CPH's allegations. (Sept. 2, 2003 CPH's Resp. to Morgan Stanley's 1st Set of Interrogs., Interrog 1 ("CPH Interrog. Resp.").)

4. On October 6, 2003, Morgan Stanley informed CPH that Tarek F. Abdel-Meguid was a member of the Leveraged Finance Commitment Committee during the time of the Coleman Transaction. (Oct. 6, 2003 MSSF's Resp. to CPH's 1st Set of Interrogs., Interrog. 6 ("MSSF Interrog. Resp.").)

5. On April 1, 2004, pursuant to this Court's March 15, 2004 Order, Morgan Stanley produced the employee evaluations for Morgan Stanley employees involved with the Sunbeam engagement, including the evaluations of William Strong.

A. Robert G. Scott

6. At the time of the Coleman transaction, Mr. Scott was member of the Board of Directors for Morgan Stanley. He led the Morgan Stanley team that structured the merger with Dean Witter Discover in 1997 and served as Chief Financial Officer of the merged organization before he was named President of Morgan Stanley in 2001. Mr. Scott served as President of Morgan Stanley from early 2001 until December 1, 2003, remaining a Director of Morgan Stanley until the Spring of 2004. He is now an Advisory Director for Morgan Stanley. In these

capacities, he had no actual responsibility for Morgan Stanley's engagement with Sunbeam and took no part in the decisions at issue in this case. He served as an Evaluation Director for William Strong's 1993, 1995, and 1996 evaluations, as well as providing his own evaluations of Mr. Strong during those years.

B. Joseph R. Perella

7. Since September 2000, Mr. Perella has served as the Chairman of the Institutional Securities Group and as a member of Morgan Stanley's Management Committee. At the time of the Coleman transaction, Mr. Perella was the Head of the Investment Banking Division. In this capacity, he had no actual responsibility for Morgan Stanley's engagement with Sunbeam and took no part in the decisions at issue in this case. He served as an Evaluation Director for William Strong's 1995-1998 evaluations, as well as providing his own evaluations of Mr. Strong during those years.

C. Tarek F. Abdel-Meguid

8. Mr. Abdel-Meguid is currently the Head of the Morgan Stanley's Investment Banking Division and a member of the firm's Management Committee. At the time of the Coleman transaction, Mr. Abdel-Meguid was the Deputy Head of the Investment Banking Division and served on the Leveraged Finance Commitment Committee. In this capacity, he had no responsibility for Morgan Stanley's engagement with Sunbeam, but may have participated in the internal decision to loan Sunbeam funds.[1] Mr. Abdel-Meguid evaluated William Strong in 1996-1998 as part of Morgan Stanley's employee evaluation program.

D. Bruce Fiedorek

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[1] To date, CPH has taken the depositions of four members of the Leveraged Finance Commitment Committee. Additional depositions would be duplicative and harassing.

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9. At the time of the Coleman transaction, Mr. Fiedorek was the Managing Director in the Mergers & Acquisition group. At the request of William Strong, he attended Morgan Stanley's initial April 4, 1997 meeting with Sunbeam, and was subsequently listed in the working group lists that circulated during the Coleman transaction. Testimony by witnesses established that Mr. Fiedorek's involvement was very limited.[2] Mr. Fiedorek also evaluated William Strong in 1995 and 1997.

ARGUMENT

10. The Court's power to set discovery cutoffs and trial dates is well-established. *See, e.g.*, Fla. R. Civ. P. 1.440(c). Correspondingly, the Court has the power to protect parties from harassing, duplicative, and cumulative discovery requests as that case proceeds to trial. Florida Rule of Civil Procedure 1.280(c) expressly authorizes the Court to enter "any order" to protect against "annoyance, embarrassment, oppression, or undue burden" during the discovery process. CPH's eleventh-hour Deposition Notice of four senior Morgan Stanley executives who possess minimal to no knowledge about the issues in CPH's complaint triggers concerns implicating both powers.

11. A mere twelve days before issuing the Deposition Notice, CPH stood before this Court and represented that the parties could complete discovery by November 1, 2004. At the

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[2] James Stynes, one of the senior Morgan Stanley employees on the Sunbeam engagement testified to Mr. Fiedorek's limited involvement:

> Q: Jumping back to Mr. Fiedorek, other than the initial meeting, did he have any connection with this engagement?
> A. Not that I know of.
> Q. Was he kept apprised of the progress of the engagement?
> A. Ah, probably very generally, but not much more than that.

(July 13, 2004 J. Stynes Dep. at 102 (Ex. 2).)

same time, CPH dismissed as "exaggerated" Morgan Stanley's arguments that the number of remaining depositions made completion of discovery by that date impossible. (Oct. 14, 2004 Hrg. Tr. at 83.) Indeed, Morgan Stanley argued that a discovery cutoff should be no earlier than December 17, 2004.

12. CPH is now significantly and unnecessarily adding to the burden on the parties to meet the Court's November 24, 2004 fact discovery cutoff. CPH's attempts to harass and burden Morgan Stanley with last-minute depositions on irrelevant topics constitutes "good cause" for the issuance of a protective order. *See, e.g., Leonhardt v. Cammack*, 327 So. 2d 848, 849 (Fla. 4th DCA 1976) (finding error in denying a protective order where "the discovery sought inquiry or production of documents on matters not relevant to the [remaining claim]").

13. CPH has long been aware of any possible need to depose these witnesses regarding the allegations made in its complaint. Indeed, ***over a year ago***, CPH, in response to Morgan Stanley's very first set of interrogatories, identified Mr. Fiedorek as an individual who may possess discoverable information regarding CPH's allegations. (CPH Interrog. Resp., Interrog. 1.) Likewise, on October 6, 2003—***over one year before CPH requested his deposition***—Mr. Abdel-Meguid was identified by Morgan Stanley as a member of the Leveraged Finance Commitment Committee. (MSSF Interrog. Resp., Interrog. 6.)

14. Moreover, Morgan Stanley produced Mr. Strong's employee evaluations on April 1, 2004. Thus, CPH has known the comments made by ***all four*** officers regarding Mr. Strong for over ***seven*** months, yet CPH never broached with counsel for Morgan Stanley the possibility of these depositions until CPH unilaterally served the Deposition Notice on October 26, 2004—only twelve days after it stood before this Court and represented a November 1, 2004 discovery cutoff was reasonable and Morgan Stanley's arguments to the contrary were exaggerated.

15. CPH noticed these depositions—not because the witnesses had knowledge of the Sunbeam engagement or actions of the Leveraged Finance Committee—but to impede Morgan Stanley's ability to complete fact discovery by November 24 and to harass senior officers of Morgan Stanley.

16. This last-minute request for depositions comes during an extremely full month as the parties seek to complete fact discovery by the Court's November 24, 2004 deadline. Over the same ***four*** days as CPH's Deposition Notice, Morgan Stanley is scheduled to take ***five*** depositions and defend ***two*** others in Florida, New York, and London.[3] These seven depositions were all requested ***before*** CPH's sudden need to take the depositions of four more senior Morgan Stanley officers. CPH's conduct smacks of gamesmanship.

17. The depositions also will not lead to the discovery of admissible evidence relevant to the issues in this case. In its November 3, 2004 Response in Opposition to Morgan Stanley's Motion for Protective Order, CPH clearly states that they seek these depositions because these particular individuals "provided various personnel evaluations," and that the depositions are necessary to overcome Morgan Stanley's hearsay objection to the introduction of personnel records. (Nov. 3, 2004 CPH Resp. in Opp. to Morgan Stanley's Mot. for Protective Order Concerning Disc. Served By CPH After Oct. 14, 2004 & to Extend Pretrial Deadlines at 5 (Ex. 3).)[4] Much of CPH's concerns over authenticity of the documents have been addressed by this

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[3] Presently, Morgan Stanley has confirmed the depositions of Ronald Perelman on November 17-18, 2004, Glenn Dickes and Lawrence Winoker on November 18, 2004, and Howard Gittis on November 19, 2004. Additionally, Morgan Stanley has noticed the deposition of Phil Harlow for November 17, 2004. CPH has noticed the depositions of Simon Rankin on November 16, 2004 and Johannes Groeller on November 17, 2004, both in London, England.

4 CPH made no mention that depositions were necessary to question Mr. Abdel-Meguid regarding the Leveraged Finance Commitment Committee or Mr. Fiedorek's involvement with the Sunbeam engagement in its (Continued...)

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Court through the stipulations of counsel during the Case Management Conference on November 5, 2004.

18. Putting aside whether these depositions could cure the hearsay and "double hearsay" problems arising from the introduction of snippets from Mr. Strong's employee evaluations, CPH's intended use of these comments renders them inadmissible. CPH is arguing that: "The [evaluations] demonstrate that, prior to assigning Strong to the Sunbeam deal, Morgan Stanley senior management was well aware of Strong's ***propensity*** to engage in questionable business practices and ***unethical*** behavior to achieve the fee objectives demanded of him." (Oct. 10, 2004 CPH Mot. for a Determination of the Admissibility of Morgan Stanley Performance Evaluations at 3 (emphasis added).) But Florida law is clear: "[e]vidence of a person's character or a trait of character is inadmissible to prove action in conformity with it on a particular occasion...." Fla. R. Evid. § 90.404(1). CPH simply cannot use unrelated statements in Mr. Strong's employee evaluations to show that he acted in conformity with a particular trait during the Sunbeam engagement. Further, Mr. Strong's evaluations are inadmissible under Florida law because CPH is offering the evidence as "relevant solely to prove bad character or propensity" of Mr. Strong. *Id.* § 90.404(2)(a); *see, e.g.*, *Midtown Enters., Inc. v. Local Contractors, Inc.*, 785 So. 2d 578, 581 (Fla. 3d DCA 2001) (holding that evidence regarding bad acts was not relevant or essential to prove a material fact and served only to demonstrate bad character and propensity) (citing *Smith v. Hooligan's Pub & Oyster Bar, Ltd.*, 753 So. 2d 596, 600 (Fla. 3d DCA 2000)).

Nov. 3, 2004 Response. This Court should hold CPH to its proffered justification for Mr. Abdel-Meguid's and Mr. Fiedorek's depositions.

19. Finally, Morgan Stanley has previously advised the Court that the "raw" evaluations are not provided to the employee; they are kept anonymous. The employee receives only a final summary evaluation. Accordingly, Mr. Strong never saw the evaluation comments which are the intended subject of the depositions and, thus, such comments could not have influenced Mr. Strong's behavior during the course of the Sunbeam transactions.[5] CPH's depositions are intended to inquire into the raw evaluations. They are irrelevant to the four claims set forth CPH's complaint, and the depositions CPH seeks would not lead to the discovery of admissible evidence. The only possible relevance to the raw materials is that they might lead to discoverable evidence on CPH's "negligent entrustment" theory, which counsel announced to the Court on November 4, 2004. That "theory" is not, however, pled and the pleadings are closed.

20. Subjecting senior officers of Morgan Stanley, who had limited involvement with Morgan Stanley's engagement to Sunbeam, to a deposition about employee evaluations that are ***irrelevant*** and ***inadmissible*** to the claims pled is an abuse of the discovery process. The depositions are just one more example of CPH's efforts to keep Morgan Stanley from completing its fact discovery by the November 24, 2004 cutoff.

CONCLUSION

Morgan Stanley requests that this Court enter a protective order prohibiting the depositions of Tarek F. Abdel-Meguid, Robert G. Scott, Joseph R. Perella, and Bruce Fiedorek. Alternatively, if the Court permits the discovery, Morgan Stanley requests that the Court extend the discovery cutoff to no earlier than December 17, 2004, to the end that the discovery CPH's

5 *See* Apr. 9, 2004 Mot. for Protective Order re the Use Of Confidential Personnel Evaluations at 3-4.

did not disclose to the Court on October 14, 2004, will not deprive Morgan Stanley of the right to complete the discovery Morgan Stanley ***disclosed*** to the Court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 12th day of November, 2004.

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EXHIBIT "1"

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
et al.,
Defendants.
_____/

CASE NO. CA 03-5165 AI

NOTICE OF TAKING VIDEOTAPED DEPOSITIONS

To: Thomas A. Clare, Esq.
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Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates and times set forth below:

DEPONENT	DATE AND TIME
Tarek Abdel-Meguid	November 16, 2004 at 9:30 a.m.
Joseph Perella	November 17, 2004 at 9:30 a.m.
Robert Scott	November 18, 2004 at 9:30 a.m.
Bruce Fiedorek	November 19, 2004 at 9:30 a.m.

The deposition will be conducted at Esquire Deposition Services, 216 East 45th Street, New York, NY 10017. The deposition will be recorded by videotape and stenographic means.

The videographer will be Esquire Deposition Services. The deposition will be taken before a person authorized to administer oaths and will continue day to day until completed.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and federal express to all counsel on the attached Service List this 26th day of October 2004.

Dated: October 26, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

VS.

MORGAN STANLEY & CO., INC.,

Defendant.

VIDEOTAPED CONFIDENTIAL DEPOSITION
OF JAMES STYNES
New York, New York
Tuesday, July 13, 2004

COPY

Reported by:
Robert X. Shaw, CSR
CSR NO. 817
JOB NO. 162719

MR. CLARE: Objection. Calls for speculation.

A. I don't recall any specific contact that he had.

Q. Jumping back to Mr. Fiedorek, other than the initial meeting, did he have any connection with this engagement?

A. Not that I know of.

Q. Was he kept apprised of the progress of the engagement?

A. Ah, probably very generally, but not much more than that.

Q. Did he have a supervisory role over you and Mr. Kitts?

A. He ran the M&A department.

Q. That's a Yes, I take it?

A. That's a Yes. Yes.

Q. You, ultimately, rendered the opinion that the acquisition of Coleman was fair to Sunbeam; correct?

A. Yes.

Q. Okay. As you sit here today, do you have a different opinion?

MR. CLARE: Objection to form.

A. Again, I don't remember all of the

EXHIBIT "2"

EXHIBIT "3"

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

CC L:MAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,

vs.

M DI:GAN STANLEY & CO., I C.,
Defendant.
_____/

M O RGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,

vs.

M CANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE IN OPPOSITION TO MORGAN STANLEY'S MOTION FOR PROTECTIVE ORDER CONCERNING DISCOVERY SERVED BY CPH AFTER OCTOBER 14, 2004 AND TO EXTEND PRETRIAL DEADLINES

Morgan Stanley has sought to bar any discovery served by CPH (but, unsurprisingly, not by Morgan Stanley) after October 14, 2004, and to extend the discovery cutoff to December 17, 2004 — which is the identical deadline that Morgan Stanley advocated and this Court rejected at the October 14 case management conference. The grounds for Morgan Stanley's motion fall into two basic categories: (1) Morgan Stanley contends that following the case management conference on October 14, CPH served a wave of new discovery, discovery that Morgan Stanley (which now is represented by three law firms) apparently believes it would be unfair to have to answer; and (2) Morgan Stanley contends that, at the same time, CPH began a campaign of

refusing to agree to deposition dates, the issuance of commissions, and the procedures for conducting depositions. The grounds for Morgan Stanley's motion are baseless. [1]

Last-minute discovery of the type complained of by Morgan Stanley is both proper and common. Moreover, in this case, the primary causes for CPH's recent discovery efforts and the other conduct addressed in Morgan Stanley's motion are decisions made by Morgan Stanley itself: (1) MSSF has voluntarily dismissed its lawsuit, requiring us to re-serve discovery in this case; (2) Morgan Stanley has refused so far to stipulate to the authenticity of documents, requiring us to take additional discovery on this issue; and (3) Morgan Stanley has refused to share time equitably in the conduct of third party depositions, compelling us to object to those depositions, although this Court recently resolved this dispute by establishing a protocol to ensure that both sides have sufficient time to examine witnesses. Because the recent discovery and other conduct of CPH not only is proper, but the product of Morgan Stanley's own litigation decisions, Morgan Stanley's motion should be denied.

1. **The So-Called "New" Discovery Served By CPH Is Both Authorized And Legitimate.**

Morgan Stanley accuses CPH of acting unfairly by serving new discovery after October 14 even though fact discovery does not close until November 24. Morgan Stanley's argument is without merit.

First, the discovery that CPH has served is timely and in full compliance with the Florida Rules of Civil Procedure. Morgan Stanley does not suggest otherwise.

---

[1] Morgan Stanley filed, but did not schedule, its motion for a hearing. In the meantime, Morgan Stanley has advised CPH that depositions noticed for next week will not go forward pending the resolution of this motion. Morgan Stanley has made a practice of filing protective order motions to avoid discovery — without scheduling the motions to be resolved by this Court. *See e.g.*, Morgan Stanley's 10/19/04 Motion for Protective Order; Morgan Stanley's 10/22/04 Motion for Protective Order Concerning the CPH Deposition Notice of 10/18/04; Morgan Stanley's 10/22/04 Motion for Protective Order Concerning the MAFCO Deposition Notice of 10/18/04; Morgan Stanley's 11/1/04 Motion for Protective Order Concerning Morgan Stanley's Coleman Escrow Notes.

Second, CPH's recent discovery is in accordance with the Orders of this Court. This Court's October 14, 2004 Order establishing the pretrial schedule expressly contemplates that the parties will continue to serve additional discovery. In the Order, the Court shortened the time for the parties to serve objections to discovery to 14 days. Indeed, the service of discovery near the discovery deadline is common and often necessary in litigation of this sort, as this Court's Order recognizes.

Third, each of the specific discovery requests complained of in Morgan Stanley's motion is proper, as the following chart confirms:

DATE SERVED	DESCRIPTION
October 18, 2004	*Second Set of Interrogatories to MSSF* These interrogatories seek information regarding the money disbursed and received by MSSF on its loan. With the dismissal of MSSF's case, Morgan Stanley has advised us that it does not intend to respond. If Morgan Stanley agrees to stipulate that it will not attempt at trial to raise the purported fact that MSSF lost money on the loan or to disclose the amount of the alleged loss, the interrogatories may not need to be answered.
October 20, 2004	*Rule 1.310 Deposition Notice to Morgan Stanley* *Rule 1.310 Deposition Notice to MSSF* These identical notices request a corporate representative of Morgan Stanley and MSSF to testify about the money disbursed and received by MSSF on the loan to Sunbeam. If Morgan Stanley agrees to stipulate that it will not attempt at trial to raise the purported fact that MSSF lost money on the loan or to disclose the amount of the alleged loss, the deposition may not need to go forward.

October 21, 2004	*Eighth Requests for Production to Morgan Stanley* *Seventh Set of Interrogatories to Morgan Stanley* *Rule 1.310 Deposition Notice to Morgan Stanley* These requests ask Morgan Stanley to provide information concerning Morgan Stanley's investment in securities issued by an affiliate of Coleman. Morgan Stanley has separately moved for a protective order as to these requests.
October 21, 2004	*Subpoena to AHI for Documents* Several months ago, we sought documents from AHI pursuant to an informal letter request. Morgan Stanley did the same. With the discovery cutoff fast approaching, we decided to serve a subpoena — which seeks exactly the same documents we had previously requested by letter — so that there would be no dispute as to the form of our request. The subpoena poses no significant burden on Morgan Stanley because the subpoena is directed to a third party.
October 22, 2004	*Subpoena to AHI for Deposition* This request seeks testimony from AHI as to the foundation of various documents. We hope to resolve this matter by stipulation. But even if we do not, there is no significant burden on Morgan Stanley, because this discovery is directed to a third party and concerns routine matters of foundation.
October 22, 2004	*Rule 1.310 Deposition Notice to Morgan Stanley* This request seeks testimony from Morgan Stanley to establish the foundation of various documents. Morgan Stanley has served a similar deposition notice on CPH. We hope to resolve this issue by stipulation. But even if we do not, there is no significant burden on Morgan Stanley because this deposition concerns routine matters of foundation.
October 22, 2004	*Rule 1.310 Deposition Notice to MSSF* On October 22, we served a notice of deposition, which requests no new information; it only changes the location of the depositions of witnesses (Messrs. Rankin and Petrick) we requested long ago. Morgan Stanley since has confirmed dates for the witnesses we have requested.

October 22, 2004	*Ninth Request for Production to Morgan Stanley* *Eight Set of Interrogatories to Morgan Stanley* These requests seek no new information. When MSSF suddenly dismissed its case after the last case management conference, we served these discovery requests, asking Morgan Stanley to provide the responses called for by our prior requests upon MSSF.
October 22, 2004	*Subpoena to Arthur Andersen for Deposition* This request seeks testimony to support the foundation of various Andersen documents. We hope to resolve this matter by stipulation. But even if we do not, there is no significant burden on Morgan Stanley, because this discovery is directed to a third party and concerns routine matters of foundation.
October 22, 2004	*Sixth Set of Requests for Admission to Morgan Stanley* These requests seek admissions as to the foundation of various documents. Morgan Stanley has served similar requests upon CPH. We hope to resolve this matter by stipulation.
October 26, 2004	*Deposition Notices for Tarek Abdel-Meguid, Joseph Perrella, Robert Scott, Bruce Fidorek* These four individuals provided various personnel evaluations that we intend to present at trial. Morgan Stanley has objected to the introduction of the written evaluations as hearsay.

Fourth, in accusing CPH of improperly serving discovery after October 14, Morgan Stanley avoids mentioning that it served a considerable amount of discovery after that date. For example, on October 26, Morgan Stanley served a notice for a two-day deposition of Phillip Harlow, a third party witness. And, the day before, on October 25, Morgan Stanley served a new set of document requests, a new set of interrogatories, and new deposition notice with five topics, and a new set of requests for admission. Many of these discovery requests are onerous. One of the interrogatories asks us to explain the denials made in three separate sets of responses to requests for admission. And the new requests for admission that Morgan Stanley served seek

admissions concerning literally thousands of pages of documents. Thus, Morgan Stanley's complaint that we filed too much discovery too late is disingenuous, to say the least.

In sum, Morgan Stanley's challenge to the discovery served by CPH after October 14 is baseless because: (1) that discovery is authorized by the Florida Rules of Civil Procedure; (2) the discovery is permitted by the Orders of this Court and is common in this type of litigation; (3) the discovery is proper in every respect; and (4) Morgan Stanley itself has served an abundance of discovery requests since October 14.

2. CPH Has Cooperated Reasonably To Schedule The Six Depositions Addressed In Morgan Stanley's Motion.

Morgan Stanley's other argument for the relief it seeks (at 3-4) is that, following the last case management conference, counsel for CPH supposedly threw all of the previously agreed protocols out the window and began "refus[ing] to agree to deposition dates, issuance of commissions and conduct of depositions" — with the effect being that "Morgan Stanley has been able to conduct only a single deposition between October 14, 2004 and November 1, 2004." In fact, at the October 14 case management conference, it was Morgan Stanley's counsel who announced that all protocols were off. *See* 10/14/04 Tr. 96:13-99:13.

Following the October 14 hearing, Morgan Stanley refused CPH's request that Morgan Stanley split the examination time at depositions of third party witnesses. This Court resolved that dispute at a November 2 hearing on a motion for out-of-state deposition commissions. At the hearing, the Court granted Morgan Stanley's request for commissions, but also ruled that: (1) the parties are to cooperate in the completion of the third party depositions; (2) it will be Morgan Stanley's responsibility to secure additional deposition time with the witnesses if both sides have not completed their examinations; and (3) Morgan Stanley will be barred from using the third party depositions at trial unless it succeeds in securing enough time to complete the depositions.

This Court's resolution of the dispute concerning the depositions of third parties disposes of most of Morgan Stanley's complaints, which relate to the purported difficulties supposedly associated with the scheduling of six depositions: the deposition of Jerry Levin, the former CEO of Coleman and the current CEO of AHI (Sunbeam's successor); the depositions of Allison Amorison and Blaine Fogg, two Skadden Arps attorneys; the deposition of Donald Uzzi, another third party; and the depositions of Ronald Perelman and Howard Gittis, two corporate officers of CPH. Moreover, as is shown below, Morgan Stanley's contentions about these six witnesses have no basis in any event.

Mr. Levin. Morgan Stanley complains that we have interfered with the scheduling of Mr. Levin's deposition. That is incorrect. We advised Morgan Stanley and Mr. Levin's counsel that we were willing to agree to any reasonable schedule, with the sole condition that we be granted one-half of the deposition time to cross-examine Mr. Levin. Mr. Levin agreed to our request but Morgan Stanley refused to split the time. Mr. Levin filed a motion for protective order as a result of Morgan Stanley's refusal, and while this Court was out of town, that motion was granted by Judge Crow. Morgan Stanley now apparently is blaming CPH because Judge Crow ruled Mr. Levin's motion to be well-founded. In any event, this Court's November 2 ruling concerning third party depositions has put this issue to rest.

Ms. Amorison and Mr. Fogg. Morgan Stanley complains that we supposedly have interfered with the depositions of Skadden Arps attorneys Allison Amorison and Blaine Fogg. We have not. We have made only two requests relating to these depositions. First, we have sought documents from Skadden, which we believe should be produced prior to the depositions. Skadden has opposed our document requests, and as a result, we have filed a motion in New York to compel production of the documents. Second, we have requested that the time available for deposing the witnesses be divided equally. Given the Court's commission ruling earlier this

week, which related to these very depositions, an appropriate rule of fairness now has been set for the conduct of the depositions.

Mr. Uzzi. Morgan Stanley complains that we have somehow interfered with the deposition of Mr. Uzzi and has requested that we provide any contact information we have for him. We have no idea where Mr. Uzzi is — as we have advised Morgan Stanley previously. Nor have we interfered with Morgan Stanley's efforts to take Mr. Uzzi's deposition. The only thing we have done with regard to this deposition is ask Morgan Stanley if it has served Mr. Uzzi yet. As for Morgan Stanley's attempt to issue a new commission for Mr. Uzzi, as indicated above, the Court has adopted a protocol for the parties to follow.

Mr. Perelman and Mr. Gittis. Morgan Stanley last asserts that we have interfered with the depositions of Mr. Perelman and Mr. Gittis. What Morgan Stanley does not disclose, however, is that we have offered multiple alternative dates for these individuals on the assumption that the depositions would go forward in New York — where Kirkland & Ellis has an office and where Kirkland & Ellis has taken many depositions. Morgan Stanley has advised us that many of the dates we have offered are acceptable. Morgan Stanley, however, recently has announced that it will not go forward with the depositions on the dates we have proposed unless Mr. Perelman and Mr. Gittis travel to Florida to be deposed. Mr. Perelman and Mr. Gittis, however, cannot be in Florida on the dates previously offered.

Because of Morgan Stanley's new insistence on taking depositions in Florida, we have offered dates when Mr. Perelman can be here for his deposition, and we will be proposing dates for Mr. Gittis' deposition in Florida shortly. Morgan Stanley has not yet responded to our offer of dates for Mr. Perelman.

In sum, each of Morgan Stanley's complaints about the six witnesses just discussed is unfounded. CPH has acted reasonably in attempting to schedule the depositions of parties and

nonparties alike. In contrast, Morgan Stanley has refused to provide dates for depositions requested by CPH, and has filed motions for protective orders without noticing them for hearings — thereby further obstructing and delaying the discovery process. By its conduct, Morgan Stanley obviously is attempting to prevent CPH from meeting the discovery cutoff, and to force CPH to ask for an extension — which CPH has no intention of doing. Morgan Stanley has thrown up every obstacle it can think of to prevent discovery from being completed, and has looked for any excuse to jeopardize the pretrial schedule set by this Court. This Court should not reward Morgan Stanley's improper tactics by limiting CPH's timely discovery requests.

Conclusion

Morgan Stanley's motion for a protective order concerning discovery served by CPH after October 14, 2004, and to extend the pretrial deadlines, should be denied.

Dated: November 3, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this _____ day of _____, 2004.

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VIA FACSIMILE 561-659-7368
November 12, 2004

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Joseph Ianno, Jr., Esquire
Carlton Fields, et al.
222 Lakeview Avenue, Suite1400
West Palm Beach, FL 33401

Re: Coleman(Parent)Holdings Inc. v. Morgan Stanley & Co., Inc.
Matter No.: 029986-230580

Dear Joe:

Enclosed is a copy of CPH's Motion to Compel Compliance with Deposition Notice Directed at Four Morgan Stanley Executives. Also enclosed is our Notice of Hearing on the motion for November 17, 2004.

If there is a possibility of resolving any of the issues raised in the motion without the necessity of court intervention, please call me. Since my schedule often makes it difficult to reach me by phone during regular business hours, I invite you, if necessary, to call me at home in the evening at 561-575-2427.

Sincerely,

JACK SCAROLA
JS/mm
Enc.

cc: Thomas Clare, Esq. (Via Fax)
Jenner & Block LLP (Via Fax)
Mark Hansen, Esq. (Via Fax)

#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

/

Case No. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

/

Case No. CA 03-5165 AI

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: November 17, 2004

TIME: 8:45 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

Coleman (Parent) Holdings Inc.'s Motion to Compel Compliance with Deposition Notice Directed at Four Morgan Stanley Executives

Moving counsel certifies that he or she contacted opposing counsel and attempted to resolve the discovery dispute without hearing.

Coleman Holdings, Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to all Counsel on the attached list, this 12th day of Nov., 2004.

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Coleman Holdings, Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL COMPLIANCE WITH DEPOSITION NOTICE DIRECTED AT FOUR MORGAN STANLEY EXECUTIVES

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, respectfully requests that this Court enter an Order directing Morgan Stanley & Co., Inc. ("Morgan Stanley") to comply with the deposition notice served on October 26, 2004 that seeks the depositions of four Morgan Stanley executives: Terek Abdel-Meguid, Joseph Perrella, Robert Scott, and Bruce Fiedorek. *See* Ex. A. In support of this motion, CPH states as follows:

1. This motion arises from Morgan Stanley's continuing, systematic refusal to comply with the discovery requests that CPH served after October 14, 2004 — even though this Court entered an Order on November 4 denying Morgan Stanley's motion to bar CPH's discovery. CPH served the deposition notices in question on October 26, but at the close of business on November 11, Morgan Stanley advised CPH for the first time that it would not make any of the four individuals (whose depositions were scheduled for November 16, 17, 18, and 19) available for their depositions.

2. Morgan Stanley's position is indefensible because Messrs. Abdel-Meguid, Perrella, Scott, and Fiedorek plainly possess information that could lead to the discovery of admissible evidence. All four of these executives worked with William Strong, the Managing Director of Morgan Stanley who headed the team that assisted in Sunbeam's acquisition of

Coleman. Indeed, as shown in CPH's motion to add a claim for punitive damages (at 4-7), three of these Morgan Stanley executives provided sharply critical written evaluations of Strong during the relevant time period:

- Robert Scott, who served as the head of Morgan Stanley's corporate finance and investment banking business, raised doubts in his 1995 evaluation of Strong about Strong's productivity and stated that Strong's focus going forward should be "on productivity and client business." Scott's 1996 evaluation of Strong expressed concern about Strong's "flawed" judgment and the fact that Strong "is so focused on his own agenda that he can lose perspective."

- Terek Abdel-Meguid, head of Morgan Stanley's investment banking business, observed in his 1997 evaluation of Strong that he "can be overly aggressive in terms of trying to capture transactional opportunities. Makes some judgments which are sometimes very close to, if not over, the line." Abdel-Meguid also observed that Strong suffers "the consequences of less than a straightforward approach" and gives people, including Abdel-Meguid, "the impression that he is not completely upfront." Abdel-Meguid reiterated the views that he expressed in 1997 in his 1998 evaluation of Strong.

- Joseph Perrella, another senior executive of Morgan Stanley, also challenged Strong's credibility by stating in an evaluation that "[t]he one problem I continue to have with Bill is that you never seem to get the whole story unless you probe very hard." Perrella was Strong's "Primary Evaluation Director" in 1995, 1996, and 1997 and the "Co-Director" of Strong's 1998 evaluations.

Bruce Fiedorek, the fourth executive that CPH is attempting to depose, also evaluated Strong with regard to the Sunbeam matter in 1997. In addition, Fiedorek was directly involved in aspects of Morgan Stanley's activities relating to Sunbeam. He, along with the other three Sunbeam executives whom we seek to depose, have relevant information on a wide variety of topics, including the evaluations they prepared, the evaluations they received from others relating to Strong, the evaluation process generally, and Morgan Stanley's conduct leading to the events giving rise to CPH's claims.

For the foregoing reasons, because Morgan Stanley's refusal to produce Messrs. Abdel-Meguid, Perrella, Scott, and Fiedorek for their depositions is improper, this Court should direct Morgan Stanley to produce these individuals without further delay.

Dated: November 12, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
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(312) 222-9350

John Scarola
SEARCY DENNEY SCAROLA
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West Palm Beach, Florida 33402-3626
(561) 686-6300

#1178819

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 12th day of NOV, 2004.

JACK SCAROLA
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Fax: (561) 684-5816
Attorneys for Coleman(Parent)Holdings Inc.
and MacAndrews & Forbes Holdings, Inc.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC., *et al.*,
Defendants.
_____/

CASE NO. CA 03-5165 AI

DOROTHY H. WILKEN
CLERK OF CIRCUIT COURT
CIRCUIT CIVIL DIVISION
OCT 27 2004
COPY / ORIGINAL
RECEIVED FOR FILING

NOTICE OF TAKING VIDEOTAPED DEPOSITIONS

To:

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
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Mark C. Hansen, Esq.
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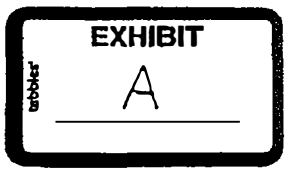
Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates and times set forth below:

DEPONENT	DATE AND TIME
Tarek Abdel-Meguid	November 16, 2004 at 9:30 a.m.
Joseph Perella	November 17, 2004 at 9:30 a.m.
Robert Scott	November 18, 2004 at 9:30 a.m.
Bruce Fiedorek	November 19, 2004 at 9:30 a.m.

The deposition will be conducted at Esquire Deposition Services, 216 East 45th Street, New York, NY 10017. The deposition will be recorded by videotape and stenographic means.



The videographer will be Esquire Deposition Services. The deposition will be taken before a person authorized to administer oaths and will continue day to day until completed.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and federal express to all counsel on the attached Service List this 26th day of October 2004.

Dated: October 26, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
JENNER & BLOCK LLP
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(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART
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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

Case No. CA 03-5045 AI

/

NOTICE OF TAKING DEPOSITION
***Duces Tecum**

PLEASE TAKE NOTICE that the undersigned attorneys will take deposition(s) of:

NAME AND ADDRESS	DATE AND TIME	LOCATION
Bank of New York Trust Company of Florida, N.A. 10161 Centurion Parkway Jacksonville, FL 32256	November 23, 2004 9:30 a.m.	Esquire Deposition Services, 200 W. Forsyth Street, Suite 1720, Jacksonville, FL 32202 877-598-1044

upon oral examination before Esquire Deposition Services, a Notary Public; or any other officer authorized by law to take depositions in the State of Florida. The oral examination is being taken for the purpose of discovery, for uses at trial, or for such other purposes as are permitted under the applicable Statutes or Rules.

***DUCES TECUM: TO HAVE AND BRING WITH YOU AT THE TIME OF THE DEPOSITION THE FOLLOWING:**

See attached Schedule A.

AND any and all materials which you have reviewed in preparation for your testimony.

Coleman Holdings, Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Plaintiff's Notice Taking Deposition Duces Tecum

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Facsimile and Federal Express to all Counsel on the attached list, this 15th day of November, 2004.

JACK SCAROLA
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West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 478-0754
Attorneys for Plaintiffs

cc: Esquire Deposition Services
MICRO COPY AND SUMMATION BRIEFCASE FILE (SBF) DISC REQUESTED – AMICUS IF SBF NOT AVAILABLE

AMERICANS WITH DISABILITIES ACT

In accordance with the Americans With Disabilities Act, persons in need of a special accommodation to participate in this proceeding should contact the Human Resources Manager, Searcy Denney Scarola Barnhart & Shipley, P.A., no later than seven days prior to the proceeding. Please telephone (561) 686-6300.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 15th day of Nov., 2004.

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Attorneys for Coleman(Parent)Holdings Inc.
and MacAndrews & Forbes Holdings, Inc.

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Todd & Evans, P.L.L.C.
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SCHEDULE A
TO SUBPOENA DUCES TECUM OF NON-PARTY
BANK OF NEW YORK TRUST COMPANY OF FLORIDA, N.A.

You are hereby requested to produce the following documents pursuant to the definitions and instructions set forth below.

DOCUMENTS REQUESTED

1. Documents sufficient to identify all payments or transfers, including any fees and charges, made to Morgan Stanley (including its affiliate Morgan Stanley Senior Funding, Inc.) by or on behalf of AHI under the Confirmed Sunbeam Bankruptcy Plan.

2. Documents sufficient to show the amount of debt presently outstanding to Morgan Stanley (including its affiliate Morgan Stanley Senior Funding, Inc.) under the Confirmed Sunbeam Bankruptcy Plan.

3. Any indentures under which Bank of New York acts or has acted as a trustee in connection with any debt of AHI during the period January 1, 2002 to the present.

4. Any notes issued to Morgan Stanley (including its affiliate Morgan Stanley Senior Funding, Inc.), under any indenture for which Bank of New York acts as trustee during the period December 2, 2002 to the present.

DEFINITIONS

1. "Documents" shall be given the broad meaning provided in Rule 1.350 of the Florida Rules of Civil Procedure and refers to any form or means, whether physical, visual, or electronic, in or by which words, numbers, or ideas are recorded or preserved, whether fixed in tangible medium or electronically stored, including any and all drafts of any final document. The word "documents" shall include, by way of example and not by way of limitation, all of the

following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, notes, messages, reports, studies, press releases, comparisons, books, accounts, checks, audio and video recordings and transcriptions thereof, pleadings, testimony, articles, bulletins, pamphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk calendars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, minutes for meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements, memoranda of understanding, letters of intent, computer tapes, computer drives or memories, computer diskettes or disks, e-mail, CD-ROMs, or any other tangible thing on which any handwriting, typing, printing, photostatic, electronic, or other form of communication or information is recorded or reproduced, together with all notations on any of the foregoing, all originals, file copies, or other unique copies of the foregoing, and all versions or drafts thereof, whether used or not.

2. "Morgan Stanley" means Morgan Stanley & Co., Inc. and any of its direct or indirect parents, affiliates, subsidiaries, and present and former officers, directors, partners, employees, representatives, and agents.

3. "AHI" means American Household, Inc. (f/k/a Sunbeam Corporation) and any of its direct or indirect parents, affiliates, subsidiaries, and present and former officers, directors, partners, employees, representatives, and agents.

4. "Bank of New York" means Bank of New York Trust Company of Florida, N.A. and any of its direct or indirect parents, affiliates, subsidiaries, and present and former officers, directors, partners, employees, representatives, and agents.

5. "Confirmed Sunbeam Bankruptcy Plan" means the Debtor's Third Amended Chapter 11 Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, as amended, confirmed on November 27, 2003 in In re Sunbeam Corp., No. 01-40291 (AJG) (Bankr. S.D.N.Y.).

INSTRUCTIONS

1. Documents shall be produced as they are kept in the usual course of business, or organized and labeled to correspond to the categories in this Request. Documents attached to each other should not be separated.

2. All documents shall be produced in the file folder, envelope or other container in which the documents are kept or maintained by you. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks.

3. The relevant period, unless otherwise indicated, shall be February 6, 2001 through the date of service of this subpoena, and shall include all documents and information which relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received prior or subsequent to that period. Please supplement or correct your responses to these requests if, at any time, you become aware that your responses are incomplete or incorrect in any respect.

4. If you claim the attorney-client privilege, or any other privilege or work-product protection for all or any portion of a document, you shall provide a privilege log that describes the withheld material sufficiently to allow CPH to test the privilege or protection asserted.

5. The following rules of construction apply:

a. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be outside of their scope;

b. The term "including" shall be construed to mean "without limitation"; and

c. The use of the singular form of any word includes the plural and vice versa.

COUNSEL LIST

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

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.
_____/

RE-NOTICE OF TAKING VIDEOTAPED DEPOSITION
(Changes date and time - previously noticed for November 17, 2004 at 9:30 a.m.)

TO: ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that pursuant to Fla.R.Civ.P. Rules 1.310 and 1.410, the undersigned counsel will take the deposition of the following:

NAME:	DATE/TIME:	LOCATION:
Phillip E. Harlow	November 19, 2004 at 8:30 a.m.	Precision Reporting Ocean Executive Suites 515 Seabreeze Blvd., 2nd Floor Ft. Lauderdale, Florida

Upon oral examination before a notary public or other officer authorized by law to take depositions in the State of Florida. The name and address of the videographer is Visual Evidence, 601 N. Dixie Highway, West Palm Beach, FL 33405. This examination may continue from day to day until completed. The deposition is being taken for the purpose of discovery, for use at trial, or for such other purposes, as is permitted under the applicable and governing rules.

Individuals who have a disability that may need accommodation should contact the undersigned seven (7) days prior to the deposition.

CERRTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and Federal Express to all counsel of record listed below on this 15th day of November, 2004.

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BY: Joseph Ianno Jr.
Joseph Ianno, Jr.
Florida Bar No. 655351

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Chicago, Illinois 60611

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

AMENDED NOTICE OF VIDEOTAPED DEPOSITION

PLEASE TAKE NOTICE that Morgan Stanley & Co. Incorporated and will take the videotaped deposition of Howard Gittis, pursuant to Florida Rules of Civil Procedure 1.280 and 1.310. The oral examination will take place on November 19, 2004 at 9:00 a.m. and continue from day to day until completed at the offices of Kirkland & Ellis, LLP, 153 East 53rd Street, New York, New York, 10022. The deposition will be taken before a person authorized to administer oaths and recorded by stenographic and videographic means. The video operator will be Esquire Deposition Services of 216 E. 45th Street in New York, New York. The witness is instructed to bring all books, papers, and other things in his possession or under his control relevant to this lawsuit (and not previously produced in discovery) to the examination.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 16th day of November, 2004.

Thomas D. Yannucci, P.C.
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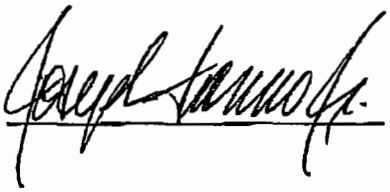
BY: 

SERVICE LIST

Counsel for Coleman(Parent) Holdings & MacAndrews & Forbes

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West Palm Beach, FL 33409

Jerold S. Solovy
Michael Brody
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One IBM Plaza, Suite 400
Chicago, IL 60611

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

AMENDED NOTICE OF VIDEOTAPED DEPOSITION

PLEASE TAKE NOTICE that Morgan Stanley & Co. Incorporated and will take the videotaped deposition of Ronald Perelman, pursuant to Florida Rules of Civil Procedure 1.280 and 1.310. The oral examination will take place on November 17, 2004 at 9:00 a.m. and November 18, 2004 at 9:00 a.m. and continue from day to day until completed at the offices of MacAndrews & Forbes Holdings Inc., 35 E. 62nd St., New York, NY 10021. The deposition will be taken before a person authorized to administer oaths and recorded by stenographic and videographic means. The video operator will be Esquire Deposition Services of 216 E. 45th Street in New York, New York. The witness is instructed to bring all books, papers, and other things in his possession or under his control relevant to this lawsuit (and not previously produced in discovery) to the examination.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 16th day of November, 2004.

Thomas D. Yannucci, P.C.
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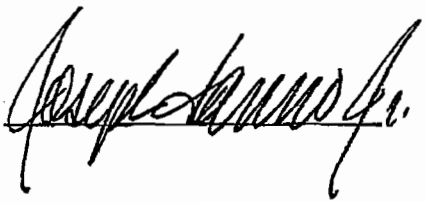
E-mail: jianno@carltonfields.com

BY: 

SERVICE LIST

Counsel for Coleman(Parent) Holdings & MacAndrews & Forbes

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

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITION

TO: ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that pursuant to Fla.R.Civ.P. Rules 1.310 and 1.410, the undersigned counsel will take the deposition of the following:

NAME:	**DATE/TIME:**	**LOCATION:**
Jerry Levin	December 1- 2, 2004 at 9:30 a.m.	Kirkland and Ellis LLP 153 East 53rd St. New York, NY 10022
	and, if necessary, continued to December 3, 2004 at 9:30 a.m.	Carlton Fields, P.A. 222 Lakeview Ave., Suite 1400 West Palm Beach, FL 33401

Upon oral examination before a notary public or other officer authorized by law to take depositions and recorded by stenographic and vidoegraphic means. The video operator will be Esquire Deposition Services of 216 E. 45th Street, New York, New York. This examination may continue from day to day until completed. The deposition is being taken for the purpose of

discovery, for use at trial, or for such other purposes, as is permitted under the applicable and governing rules.

Individuals who have a disability that may need accommodation should contact the undersigned seven (7) days prior to the deposition.

CERRTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and Federal Express to all counsel of record listed below on this 15 day of November, 2004.

Thomas D. Yannucci, P.C.
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BY: _____
Joseph Ianno, Jr.
Florida Bar No. 655351

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GREENBERG
ATTORNEYS AT LAW
TRAURIG

Transmittal Cover Sheet

TO

Name: Joseph Ianno, Jr., Esq..
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Fax No.: 659-7368
Phone No.: 659-7070

Name: Jerold S. Solovy, Esq.
Company: Jenner & Block, LLC
Fax No.: 312-840-7671
Phone No.: 312-923-2711

Name: Jack Scarola, Esq.
Company: Searcy, Denney et al.
Fax No.: 684-5816
Phone No.: 686-6300

Name: Michael Brody, Esq.
Company: Jenner & Block, LLC
Fax No.: 312-840-7711
Phone No.: 312-923-2711

Name: Thomas D. Yannucci, Esq.
Copy to: Lawrence P. Bemis, Esq.
Copy to: Thomas A. Clare, Esq.
Copy to: Zhonette M. Brown, Esq.
Company: Kirkland & Ellis LLP
Fax No.: 202-879-5200
Phone No.: 202-879-5000

FROM Lorie Gleim, Esq.

File Number 16560.071300

Comments

Date November 16, 2004

No. Pages Including this cover sheet 5

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777 South Flagler Drive, Suite 300 East. West Palm Beach, Florida 33401 (561) 650-7900 Fax (561) 655-6222

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

CASE NO. 03 CA 5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

v.

MACANDREWS & FORBES HOLDING, INC., et al.,

Defendants.

CASE NO. CA 03-5165 AI

NON-PARTY SUNBEAM'S MOTION FOR PROTECTIVE ORDER ON RECORDS CUSTODIAN DEPOSITION

Non-Party, Sunbeam Corporation n/k/a American Household, Inc. ("Sunbeam") hereby files its Motion for Protective Order on a Record Custodian Deposition and in support thereof states the following:

1. Coleman (Parent) Holdings, Inc. ("CPH") issued a Subpoena on Sunbeam Corporation's Record Custodian to authenticate and provide the foundation for business records of numerous documents produced by Sunbeam.

2. While Sunbeam accepted service of the Subpoena, with the understanding that the parties would select a mutually agreeable date for the deposition, CPH explained that they had no

intention of going forward with the deposition if they could work out among the parties by stipulation with Morgan Stanley that the documents produced by Sunbeam were both authentic and business records.

3. It has become apparent that the parties have not even tried to stipulate as to the authenticity and business records of Sunbeam's documents. Instead, the parties continue to fight among themselves and look to third-parties to incur the expense of discovery over issues easily resolved by the parties.

4. There is no reason to require Sunbeam to incur the expense of having a deposition in New York City and have the general counsel of the company review two (2) boxes of documents to provide testimony that they are authentic and business records when the parties have not even taken the time to review the documents to determine if a record custodian deposition of Sunbeam is even necessary. Sunbeam has offered to provide affidavits or any other form of stipulation which may streamline the process. However the parties would rather force Sunbeam to incur the expense of discovery than work through these issues amongst themselves.

WHEREFORE, Sunbeam respectfully requests that this Court enter a protective order on Sunbeam's Record Custodian Deposition and require the parties to review the documents attached as Exhibit "A" to CPH's Subpoena on Sunbeam's Record Custodian and identify if there are any documents which require a records custodian deposition or affidavit of Sunbeam.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via facsimile and mail to the addressees on the attached Service List, this 16 day of November, 2004.

GREENBERG TRAURIG, P.A.
777 South Flagler Drive - Suite 300 East
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Telephone: (561) 650-7900
Facsimile: (561) 655-6222

By: _____
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Lorie M. Gleim
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WPB-FS1\GLEIML\519907v01\11/16/04\16560.071300

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON MOTION FOR PROTECTIVE ORDER CONCERNING MORGAN STANLEY'S COLEMAN ESCROW NOTES

THIS CAUSE came before the Court November 17, 2004 on Defendant's Motion for Protective Order Concerning Morgan Stanley's Coleman Escrow Notes, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Defendant's Motion for Protective Order Concerning Morgan Stanley's Coleman Escrow Notes is Denied.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 17 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON MOTION FOR PROTECTIVE ORDER CONCERNING MORGAN STANLEY'S COLEMAN ESCROW NOTES

THIS CAUSE came before the Court November 17, 2004 on Defendant's Motion for Protective Order Concerning Morgan Stanley's Coleman Escrow Notes, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Defendant's Motion for Protective Order Concerning Morgan Stanley's Coleman Escrow Notes is Denied.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 17 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON MOTION FOR PROTECTIVE ORDER PREVENTING COLEMAN (PARENT) HOLDINGS INC.'S NOTICE OF DEPOSITION, SERVED ON NOVEMBER 3, 2004

THIS CAUSE came before the Court November 17, 2004 on Defendant's Motion for Protective Order Preventing Coleman (Parent) Holdings, Inc.'s Notice of Deposition, Served on November 3, 2004, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Defendant's Motion for Protective Order Preventing Coleman (Parent) Holdings, Inc.'s Notice of Deposition, Served on November 3, 2004 is Denied.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 17 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON MOTION FOR PROTECTIVE ORDER PREVENTING COLEMAN (PARENT) HOLDINGS INC.'S NOTICE OF DEPOSITION, SERVED ON NOVEMBER 3, 2004

THIS CAUSE came before the Court November 17, 2004 on Defendant's Motion for Protective Order Preventing Coleman (Parent) Holdings, Inc.'s Notice of Deposition, Served on November 3, 2004, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Defendant's Motion for Protective Order Preventing Coleman (Parent) Holdings, Inc.'s Notice of Deposition, Served on November 3, 2004 is Denied.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 17 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL MORGAN STANLEY'S COMPLIANCE WITH RULE 1.310 DEPOSITION NOTICE CONCERNING SUBORDINATED DEBENTURE TRANSACTIONS

THIS CAUSE came before the Court November 17, 2004 on Coleman (Parent) Holdings, Inc.'s Motion to Compel Morgan Stanley's Compliance with Rule 1.310 Deposition Notice Concerning Subordinated Debenture Transactions, with all counsel present. In open Court counsel acknowledged an agreement on paragraph 1 (ii) of Exhibit A to the Motion, and Plaintiff withdrew the portion of its Motion directed to that topic. Based on the foregoing and the proceedings before the Court, it is

ORDERED AND ADJUDGED that paragraph 1 (ii) of Exhibit A to the Motion is stricken. It is further

ORDERED AND ADJUDGED that Coleman (Parent) Holdings, Inc.'s Motion to Compel Morgan Stanley's Compliance with Rule 1.310 Deposition Notice Concerning Subordinated Debenture Transactions is Granted. Defendant shall provide a corporate representative to testify pursuant to Rule 1.310 concerning the topics set forth in Exhibit A to the Motion, as modified herein.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 17 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL MORGAN STANLEY'S COMPLIANCE WITH RULE 1.310 DEPOSITION NOTICE CONCERNING SUBORDINATED DEBENTURE TRANSACTIONS

THIS CAUSE came before the Court November 17, 2004 on Coleman (Parent) Holdings, Inc.'s Motion to Compel Morgan Stanley's Compliance with Rule 1.310 Deposition Notice Concerning Subordinated Debenture Transactions, with all counsel present. In open Court counsel acknowledged an agreement on paragraph 1 (ii) of Exhibit A to the Motion, and Plaintiff withdrew the portion of its Motion directed to that topic. Based on the foregoing and the proceedings before the Court, it is

ORDERED AND ADJUDGED that paragraph 1 (ii) of Exhibit A to the Motion is stricken. It is further

ORDERED AND ADJUDGED that Coleman (Parent) Holdings, Inc.'s Motion to Compel Morgan Stanley's Compliance with Rule 1.310 Deposition Notice Concerning Subordinated Debenture Transactions is Granted. Defendant shall provide a corporate representative to testify pursuant to Rule 1.310 concerning the topics set forth in Exhibit A to the Motion, as modified herein.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 17 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON COLEMAN (PARENT) HOLDINGS, INC.'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO ITS SIXTH REQUEST FOR PRODUCTION

THIS CAUSE came before the Court November 17, 2004 on Coleman (Parent) Holdings, Inc.'s Motion to Compel Production of Documents Responsive to Its Sixth Request for Production, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Coleman (Parent) Holdings, Inc.'s Motion to Compel Production of Documents Responsive to Its Sixth Request for Production is Granted, in part. Defendant shall produce for inspection and copying (i) all items within its care, custody, or control requested in paragraph 5, excluding documents related to fees, monies, or other compensation to be received by Skadden; and (ii) items within its care, custody, or control requested in paragraph 7 sufficient to show the size and nature of holdings of MSSF or MS & Co., as defined in the Definitions and Instructions of Plaintiff's Sixth Request for Production, in AHI from December 18, 2002 to the present, by 5:00 p.m. November 19, 2004.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 17 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

16div-008507

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON COLEMAN (PARENT) HOLDINGS, INC.'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO ITS SIXTH REQUEST FOR PRODUCTION

THIS CAUSE came before the Court November 17, 2004 on Coleman (Parent) Holdings, Inc.'s Motion to Compel Production of Documents Responsive to Its Sixth Request for Production, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Coleman (Parent) Holdings, Inc.'s Motion to Compel Production of Documents Responsive to Its Sixth Request for Production is Granted, in part. Defendant shall produce for inspection and copying (i) all items within its care, custody, or control requested in paragraph 5, excluding documents related to fees, monies, or other compensation to be received by Skadden; and (ii) items within its care, custody, or control requested in paragraph 7 sufficient to show the size and nature of holdings of MSSF or MS & Co., as defined in the Definitions and Instructions of Plaintiff's Sixth Request for Production, in AHI from December 18, 2002 to the present, by 5:00 p.m. November 19, 2004.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 17 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON MOTION FOR PROTECTIVE ORDER CONCERNING THE NOTICE OF DEPOSITIONS, SERVED BY COLEMAN (PARENT) HOLDINGS INC. ON OCTOBER 26, 2004

THIS CAUSE came before the Court November 17, 2004 on Defendant's Motion for Protective Order Concerning the Notice of Depositions, Served by Coleman (Parent) Holdings, Inc. on October 26, 2004, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Defendant's Motion for Protective Order Concerning the Notice of Depositions, Served by Coleman (Parent) Holdings, Inc. on October 26, 2004 is Denied.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 17 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON MOTION FOR PROTECTIVE ORDER CONCERNING THE NOTICE OF DEPOSITIONS, SERVED BY COLEMAN (PARENT) HOLDINGS INC. ON OCTOBER 26, 2004

THIS CAUSE came before the Court November 17, 2004 on Defendant's Motion for Protective Order Concerning the Notice of Depositions, Served by Coleman (Parent) Holdings, Inc. on October 26, 2004, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Defendant's Motion for Protective Order Concerning the Notice of Depositions, Served by Coleman (Parent) Holdings, Inc. on October 26, 2004 is Denied.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 17 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

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#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

Case No. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

Case No. CA 03-5165 AI

_____/

ORDER ON WACHOVIA BANK, N.A.'S MOTION TO QUASH SUBPOENA OR, IN THE ALTERNATIVE, MOTION FOR PROTECTIVE ORDER

THIS CAUSE having come to be considered upon Wachovia Bank, N.A.'s Motion to Quash Subpoena or, in the alternative, Motion for Protective Order, and the Court having reviewed the file and being fully advised in the premises, it is hereby,

ORDERED and ADJUDGED: The Motion is granted, in part, and denied, in part. Wachovia shall produce for inspection and copying all documents evidencing ~~offers~~ * any consideration, in whatever form, *

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this 17 day of Nov., 2004.

* to be received by shareholders, or anyone of them, in connection with the contemplated sale by American Household *

ELIZABETH T. MAASS
CIRCUIT COURT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

** to Tarden, ~~Inc.~~ Corp., by ~~4:00~~ 5:00 p.m. Nov. 24, 2004. The Court reserves jurisdiction to award reasonable costs, ~~to~~ comply with this Order. Wachovia and/or American Household may subject any document produced subject to the Stipulated Confidentiality Order, as modified by later order. ** Nov. 19, ✓

Jfcdiv-008515

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16div-008516

#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

/

Case No. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

/

Case No. CA 03-5165 AI

ORDER ON WACHOVIA BANK, N.A.'S MOTION TO QUASH SUBPOENA OR, IN THE ALTERNATIVE, MOTION FOR PROTECTIVE ORDER

THIS CAUSE having come to be considered upon Wachovia Bank, N.A.'s Motion to Quash Subpoena or, in the alternative, Motion for Protective Order, and the Court having reviewed the file and being fully advised in the premises, it is hereby,

ORDERED and ADJUDGED: the Motion is granted, in part and denied, in part. Wachovia shall produce for inspection and copy all documents evidencing ~~or reflecting~~ any consideration, in whatever form,* paid or to be received by shareholders, or any one of them, in connection with the contemplated sale by American Household.*

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this 17th day of Nov., 2004.

ELIZABETH T. MAASS
CIRCUIT COURT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

* ** to Jordan, ~~Inc.~~ Corp., by 5:00 ✓ NW. 19, ✓ 4:00 p.m. Nov. 24, 2004. The Court reserves jurisdiction to award the reasonable costs ~~of~~ complying with this Order. Wachovia and/or American Household may subject any document produced subject to

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Case No.:2003 CA 005045 AI
Order

COUNSEL LIST

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL COMPLIANCE WITH DEPOSITION NOTICE DIRECTED AT FOUR MORGAN STANLEY EXECUTIVES

THIS CAUSE came before the Court November 17, 2004 on Coleman (Parent) Holdings, Inc.'s Motion to Compel Compliance with Deposition Notice Directed at Four Morgan Stanley Executives, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Coleman (Parent) Holdings, Inc.'s Motion to Compel Compliance with Deposition Notice Directed at Four Morgan Stanley Executives is Granted. The four listed witnesses shall be deposed as noticed.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 17 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL MORGAN STANLEY'S COMPLIANCE WITH RULE 1.310 DEPOSITION NOTICE CONCERNING SUBORDINATED DEBENTURE TRANSACTIONS

THIS CAUSE came before the Court November 17, 2004 on Coleman (Parent) Holdings, Inc.'s Motion to Compel Morgan Stanley's Compliance with Rule 1.310 Deposition Notice Concerning Subordinated Debenture Transactions, with all counsel present. In open Court counsel acknowledged an agreement on paragraph 1 (ii) of Exhibit A to the Motion, and Plaintiff withdrew the portion of its Motion directed to that topic. Based on the foregoing and the proceedings before the Court, it is

ORDERED AND ADJUDGED that paragraph 1 (ii) of Exhibit A to the Motion is stricken. It is further

ORDERED AND ADJUDGED that Coleman (Parent) Holdings, Inc.'s Motion to Compel Morgan Stanley's Compliance with Rule 1.310 Deposition Notice Concerning Subordinated Debenture Transactions is Granted. Defendant shall provide a corporate representative to testify pursuant to Rule 1.310 concerning the topics set forth in Exhibit A to the Motion, as modified herein.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 17 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

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#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

Case No. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

_____/

Case No. CA 03-5165 AI

ORDER ON PHILLIP HARLOW'S MOTION FOR PROTECTIVE ORDER

THIS CAUSE having come to be considered upon Phillip Harlow's Motion for Protective Order, and the Court having reviewed the file and being fully advised in the premises, it is hereby,

ORDERED and ADJUDGED: The Motion is Denied.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this 15 day of Nov., 2004.

ELIZABETH T. MAASS
CIRCUIT COURT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

COUNSEL LIST

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Carlton Fields, et al.
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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MOTION TO EXTEND EXPERT DISCOVERY AND SUMMARY JUDGMENT DEADLINES BY ONE WEEK

Defendant, Morgan Stanley & Co. Incorporated ("Morgan Stanley"), by and through its undersigned counsel, moves the Court to extend the deadlines for summary judgment and expert disclosures. In support of its motion, Morgan Stanley states:

1. On October 14, 2004 the Court entered an Order establishing the Pretrial Schedule for this case. The Order established a November 24, 2004 deadline for fact discovery. In addition, the Order established deadlines for Initial, Responsive, and Rebuttal Expert Disclosures (December 1, December 13, and December 20 respectively) and Depositions of Experts (December 21, 2004 to January 7, 2005). The Court also set forth deadlines for the Summary Judgment briefing (December 6, 17, and 31, 2004) and hearing (January 21, 2005).

2. As the parties prepare for the close of fact discovery, they have devoted significant resources to responding to multiple last-minute discovery requests, to resolving numerous discovery disputes and attending related hearings, and to conducting daily, often double and triple tracked, depositions.

3. Recent events concerning the close of fact discovery have consumed the parties' attention, diverting the parties from completing expert disclosures and preparation of motions for summary judgment. Moreover, much of the discovery taken since October 14, as well as discovery agreed to be taken beyond the original discovery cut-off, is highly relevant to the expert disclosures and motions for summary judgment.

WHEREFORE, Morgan Stanley requests that this Court enter an Order granting a one-week extension of the previously imposed deadlines for expert discovery and motions for summary judgment and award such other and further relief as is just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 19th day of November, 2004.

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BY: _____
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Joyce Dillard
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WEST PALM BEACH, FL 33401

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MOTION TO EXTEND EXPERT DISCOVERY AND SUMMARY JUDGMENT DEADLINES BY ONE WEEK

Defendant, Morgan Stanley & Co. Incorporated ("Morgan Stanley"), by and through its undersigned counsel, moves the Court to extend the deadlines for summary judgment and expert disclosures. In support of its motion, Morgan Stanley states:

1. On October 14, 2004 the Court entered an Order establishing the Pretrial Schedule for this case. The Order established a November 24, 2004 deadline for fact discovery. In addition, the Order established deadlines for Initial, Responsive, and Rebuttal Expert Disclosures (December 1, December 13, and December 20 respectively) and Depositions of Experts (December 21, 2004 to January 7, 2005). The Court also set forth deadlines for the Summary Judgment briefing (December 6, 17, and 31, 2004) and hearing (January 21, 2005).

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3. Recent events concerning the close of fact discovery have consumed the parties' attention, diverting the parties from completing expert disclosures and preparation of motions for summary judgment. Moreover, much of the discovery taken since October 14, as well as discovery agreed to be taken beyond the original discovery cut-off, is highly relevant to the expert disclosures and motions for summary judgment.

WHEREFORE, Morgan Stanley requests that this Court enter an Order granting a one-week extension of the previously imposed deadlines for expert discovery and motions for summary judgment and award such other and further relief as is just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 19th day of November, 2004.

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Joseph Ianno, Jr. 718947
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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a hearing has been set in the above-styled case as follows:

DATE:	November 23, 2004
TIME:	8:45 a.m.
PLACE:	Palm Beach County Courthouse, Courtroom 11A 205 North Dixie Highway West Palm Beach, Florida 33401
BEFORE:	Judge Elizabeth T. Maass
CONCERNING:	Morgan Stanley's Motion to Extend Expert Discovery and Summary Judgment Deadlines by One Week

KINDLY GOVERN YOURSELVES ACCORDINGLY.

The undersigned counsel hereby certifies that a good faith attempt to resolve the issues contained in the foregoing motions or matters will be made with opposing counsel prior to hearing on these matters on the Court's Motion Calendar.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no costs to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-2431 within two (2) working days of your receipt of this notice; if you are hearing or voice impaired, call 1-800-955-8771.

WPB#571076.23

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 19th day of November, 2004.

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Counsel for Morgan Stanley & Co. Incorporated

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FAX COVER SHEET

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	Jerold Solovy/Michael Brody	(312) 222-9350	(312) 840-7711
	Thomas Clare	(202) 879-5993	(202) 879-5200
	Rebecca Beynon/Mark Hansen	(202) 326-7900	(202) 326-7999
From:	Joyce Dillard, CLA	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:**

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Message:

Coleman v. Morgan Stanley & Co., Inc.

To follow please find a copy of Morgan Stanley's Motion to Extend Expert Discovery and Summary Judgment Deadline by One Week and Notice of Hearing. We requested CPH's preference for the hearing date; however, since we had not heard back regarding the date, we noticed this motion for Tuesday, November 23, 2004. If there is a conflict please let us know as soon as possible. Thank you.

☐ ***Original to follow Via Regular Mail*** ☐ ***Original will Not be Sent*** ☐ ***Original will follow via Overnight Courier***

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (if long distance, please call collect) and return the original message to us at the above address via the U.S. Postal Service. Thank you.

IF THERE ARE ANY PROBLEMS OR COMPLICATIONS, PLEASE NOTIFY US IMMEDIATELY AT:
(561) 659-7070

TELECOPIER OPERATOR: _____

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a hearing has been set in the above-styled case as follows:

DATE:	November 23, 2004
TIME:	8:45 a.m.
PLACE:	Palm Beach County Courthouse, Courtroom 11A 205 North Dixie Highway West Palm Beach, Florida 33401
BEFORE:	Judge Elizabeth T. Maass
CONCERNING:	Morgan Stanley's Motion to Extend Expert Discovery and Summary Judgment Deadlines by One Week

KINDLY GOVERN YOURSELVES ACCORDINGLY.

The undersigned counsel hereby certifies that a good faith attempt to resolve the issues contained in the foregoing motions or matters will be made with opposing counsel prior to hearing on these matters on the Court's Motion Calendar.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no costs to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-2431 within two (2) working days of your receipt of this notice; if you are hearing or voice impaired, call 1-800-955-8771.

WPB#571076.23

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 19th day of November, 2004.

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BY: Susan Cl—d for
Joseph Ianno, Jr. 718947
Florida Bar No. 655351

Counsel for Morgan Stanley & Co. Incorporated

WPB#571076.23

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Date: November 22, 2004

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From: Michael T. Brody
312 923-2711

Employee Number:

Client Number: 41198-10003

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JENNER&BLOCK

November 22, 2004

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By Telecopy

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Michael T. Brody
Tel 312 923-2711
Fax 312 840-7711
mbrody@jenner.com

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Tom:

I write in response to your letter of November 21, 2004 concerning deposition scheduling. We are disappointed that you did not raise any of these issues in our teleconference yesterday concerning depositions.

In your letter, you complain that the amended deposition notice we served for November 22, 2004 at 10:15 a.m. is invalid because it was served in the name of the wrong party. I enclose a revised notice so that there is no confusion. As for your complaint that the notice is untimely, each of the topics identified in the notice has long been the subject of prior notices. As we said in our telephone call on Friday, November 19, 2004, we re-noticed the deposition so that there would be no confusion as to which topics contained in our prior notices were to be the subject of testimony. If your witness today is unable to answer these topics, you will need to produce an additional witness prior to the close of discovery.

Your complaint as to the notices served for November 24 is similarly ineffective. These notices address topics that have long been the subject of deposition notices. You moved for a protective order as to the prior notices, which the Court denied. The Court ordered you to respond to this discovery prior to the close of discovery. Thus, your complaints as to timing and lack of notice are groundless.

Any problems you may face in producing witnesses prior to the close of discovery are of your own making. Had Morgan Stanley responded to this discovery rather than moving for a protective order, we could have completed these depositions long ago. We intend to proceed with these depositions as noticed.

Very truly yours,

Michael T. Brody

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

AMENDED NOTICE OF TAKING VIDEOTAPED DEPOSITION

To:

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following party pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co., Inc. on topics identified on Exhibit A.	November 22, 2004 at 10:15 a.m.

The deposition will be conducted at Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017. The deposition will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The deposition will be taken before a person authorized to administer oaths and will continue day to day until completed.

With respect to the deposition identified above, please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List this 22nd day of November 2004.

Dated: November 22, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART
& SHIPLEY P.A.
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(561) 686-6300

SERVICE LIST

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Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
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West Palm Beach, FL 33401

Exhibit A

CORPORATE DEPOSITION TOPICS

1. All amounts lent in connection with, advanced on, charged to, assessed against, paid on, received from or on behalf of, credited to or on behalf of, or applied to any loans to, Sunbeam or AHI, or any debts payable by Sunbeam or AHI, to MSSF or any affiliate of MSSF, or in which MSSF or any affiliate of MSSF has participated or held any interest.

2. The balance(s) due after each advance, charge, payment, credit, or other transaction referred to in topic number 1, above.

FAX TRANSMITTAL

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Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611
Tel 312 222-9350
www.jenner.com

Chicago
Dallas
Washington, DC

Date: November 22, 2004

To:			
	Thomas A. Clare, Esq.	Fax:	(202) 879-5200
		Voice:	(202) 879-5993
	Joseph Ianno, Jr., Esq.	Fax:	(561) 659-7368
		Voice:	(561) 659-7070
	John Scarola, Esq.	Fax:	(561) 684-5816 (before 5 PM)
		Voice:	(561) 686-6350, Ext. 140
	Mark C. Hansen, Esq.	Fax:	(202) 326-7999
		Voice:	(202) 326-7900

From: Michael T. Brody
312 923-2711

Employee Number: Client Number: 41198-10003

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Message:

Our earlier transmission of this fax was incomplete. We are resending the entire fax. Sorry for any inconvenience.

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Secretary: Caryn Jo Geisler Extension: 6490

JENNER&BLOCK

November 22, 2004

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mbrody@jenner.com

By Telecopy

Thomas A. Clare, Esq.
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Tom:

I write to follow up on our conversation yesterday concerning Morgan Stanley's responses to CPH's Sixth Set of Requests for Admission and CPH's Notice of Taking Deposition Dated October 22, 2004.

On Friday, November 19, 2004, we received the Court's Order denying your motion for protective order concerning that discovery. Accordingly, we expect to receive Morgan Stanley's responses to the Sixth Set of Requests for Admission when they are due, which is today. We also intend to take the corporate representative deposition, and I enclose an amended notice for that deposition. We are willing to accept the enclosed stipulation in lieu of that deposition if Morgan Stanley executes and returns it to us by Tuesday, November 23, 2004 at 12:00 p.m. EST.

Very truly yours,

Michael T. Brody

MTB:cjg
cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

AMENDED NOTICE OF TAKING DEPOSITION

To:

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
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Mark C. Hansen, Esq.
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Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings, Inc. will take the deposition upon oral examination of the following parties and witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co. on topics identified on Exhibit A.	November 24, 2004 at 9:30 a.m.

The deposition will be recorded by stenographic means at the offices of Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017-3004. The deposition will be taken before a person authorized to administer oaths and will continue day to day until complete.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to all counsel on the attached Service List, this 22nd day of November, 2004.

Dated: November 22, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Michael T. Brody
Deirdre E. Connell
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409
(561) 686-6300

EXHIBIT A

You are hereby requested to respond to the following topics pursuant to the definitions set forth below.

RULE 1.310 TOPICS

1. The authenticity, source, creation, use, maintenance, and business purpose of documents produced and/or authored by Morgan Stanley and/or MSSF, bearing the following deposition exhibit number and/or Bates numbers, and information contained therein:

DEP EXHIBIT #	BATES RANGE
	MSC 0015896-0015970
	MSC 0015626-0015703
	MSC 0020477-0020552
	MSC 0061553-0061621
	MSC 0061191-0061251
	MSC 0067528-0067602
	MSC 0072800-0072863
	MSC 0073484-0073562
	MSC 0067258-0067341
	MSC 0087405-0087490
	MSC 0070445-0070542
	MSC 0086753-0086799
	MSC 0092043-0092076
	MSC 0092077-0092111

DEP EXHIBIT #	BATES RANGE
	MSC 0092146-0092177
	MSC 0092032-0092042
	MSC 0092178-0092188
	MSC 0092112-0092133
	MSC 0092134-0092145
CPH 003	MSC 0080435-0080437
CPH 004	MSC 0031171-0031176
CPH 005	MSC 0031177-0031220
CPH 006	MSC 0080438-0080439
CPH 009	CP 026286-026370
CPH 010	CP 033169-033240
CPH 011	SASMF 10699-10705
CPH 012	CPH 0012526-0012527
CPH 013	CPH 0635991-0635992
CPH 014	MSC 0016944-0016945

DEP EXHIBIT #	BATES RANGE
CPH 016	MSC 0028858
CPH 017	MS 00375-00381
CPH 024	DPW000001 - 000002
CPH 025	N/A
CPH 026	CPH1412961-1413007
CPH 027	MSC 0026219
CPH 028	MSC 0081555-0080760
CPH 029	MSC 0080440 - 0081556
CPH 031	CPH0635893
CPH 032	CPH0635894 - 0635895
CPH 033	MSC 0029176
CPH 034	CPH0520973 - 0520974
CPH 035	CPH1257351
CPH 036	CPH0639323 - 0639327
CPH 037	MSC 0045317 - 0045318

DEP EXHIBIT #	BATES RANGE
CPH 038	MSC 0041766 - 0041858
CPH 061	CPH0284977- 0285008
CPH 062	CPH0283484
CPH 064	MSC 0028423
CPH 065	CPH0088703
CPH 066	CPH0038717
CPH 067	CPH0063827- 0063833
CPH 068	MSC 0003995- 0004001
CPH 069	MSC 0003894- 0003930
CPH 070	SB237825-237830
CPH 071	MSC 0005984- 0005995
CPH 072	MSC 0064865- 0064866
CPH 074	MSC 0080356- 0080358
CPH 075	SB0018202-0018288
CPH 076	MSC 0025829- 0025886
CPH 078	MSC 0039543
CPH 079	MSC 0031855 – 0031856
CPH 080	CPH0465134
CPH 081	MSC 0036393 – 0036395
CPH 081A	N/A
CPH 082	CPH0469477- 0469561
CPH 083	N/A

DEP EXHIBIT #	BATES RANGE
CPH 084	MSC 0033255 – 033263
CPH 084A	N/A
CPH 085	MSC 0036347 – 0036349
CPH 086	MSC 0045112 - 0045113
CPH 087	MSC 0035967- 0035989
CPH 088	MSC 0031791 – 0031799
CPH 089	MSC 0083960 – 0084026
CPH 090	CPH1332631 – 1335633
CPH 091	N/A
CPH 092	MSC 0003389 - 0003415
CPH 093	N/A
CPH 094	N/A
CPH 095	MSC 0036112 – 0036113
CPH 096	CPH0472488 – 0472496
CPH 097	MSC 0033910 – 0033911
CPH 098	CPH0482089 – 0482098
CPH 099	N/A
CPH 100	MSC 0062860 – 0062896
CPH 110	CPH0038670 – 0038676
CPH 111	CPH0038700 – 0038706
CPH 112	CPH0129613 – 0129616
CPH 115	CPH0038700 – 0038706

DEP EXHIBIT #	BATES RANGE
CPH 117	CPH0038523 – 0038524
CPH 120	CPH0012522 – 0012524
CPH 121	CPH1145796
CPH 122	CPH0039327, CPH0038707
CPH 122	CPH0039327, CPH0038707
CPH 124	CPH0012464 – 0012466
CPH 125	MSC 0004673 - 0004702
CPH 126	MSC 0042248 - 0042275
CPH 128	MSC 0029199 - 0029201
CPH 129	MSC 000513 - 000541
CPH 130	CPH0251869 – 0251889
CPH 131	CPH0251890 – 0251985
CPH 132	CPH0636135 – 0636136
CPH 133	MSC 0059244 – 0059266
CPH 135	MSC 0063735 – 0063804
CPH 136	MSC 0083748 – 0083904
CPH 137	MSC 0039543
CPH 138	CPH1411216 – 1411300
CPH 139	MSC 0026540 – 0026544
CPH 140	CPH0483399 – 0483407
CPH 141	CPH 0483341 – 0483350
CPH 142	CPH 0253547 – 0253555

DEP EXHIBIT #	BATES RANGE
CPH 143	CPH1026942-1026953
CPH 144	MSC 0016944
CPH 145	MSC 0028214 – 0028271
CPH 146	MSC 0080325 – 0080333
CPH 148	MSC 0047892
CPH 149	MSC 0047893
CPH 150	CPH0470006-04700016
CPH 151	MSC 0065651 – 0065784
CPH 152	LAB 000043
CPH 153	MSC 0018885 – 0018942
CPH 154	CPH1258265 – 1258266
CPH 155	CPH1346133 – 1346250
CPH 156	CPH1346276 – 1346342
CPH 157	MSC 0018702 – 0018703
CPH 160	MSC 0003143
CPH 162	MSC 0026888 – 0026891
CPH 163	MSC 0080427 – 0080430
CPH 164	MSC 0045133-0045139
CPH 165	N/A
CPH 166	MSC 0045102-0045108
CPH 167	N/A
CPH 168	N/A

DEP EXHIBIT #	BATES RANGE
CPH 169	MSC 0044556-0044573
CPH 170	MSC 0042538-0042540
CPH 171	N/A
CPH 172	MSC 0044462
CPH 173	MSC 0043129
CPH 174	MSC 0042570
CPH 175	N/A
CPH 176	N/A
CPH 177	MSC 0085779
CPH 178	MSC 0084771-0084778
CPH 179	CPH0635892-0635895
CPH 180	MSC 0029194-0029196
CPH 181	MSC 0006284-0006335
CPH 182	CPH 1089795-1089815
CPH 183	MSC 0063286-0063330
CPH 184	N/A
CPH 186	MSC 0041901-0041912
CPH 187	MSC 0041870-0041888
CPH 187A	CP0254621-0254640
CPH 188	CPH1408952-1408956
CPH 189	CPH0642933-0642937
CPH 190	N/A

DEP EXHIBIT #	BATES RANGE
CPH 194	N/A
CPH 195	MSC 0040237-0040305
CPH 196	MSC 085612-0085613
CPH 200	CPH0472360-0472361
CPH 202	MSC 0003931
CPH 203	MSC 0042314-0042327
CPH 204	MSC 0042328-0042341
CPH 205	MSC 0004005-004007
CPH 207	CPH0471614-0471629
CPH 208	CPH632817-0632905
CPH 209	CPH1348404-1348475
CPH 210	CPH0632981
CPH 211	CPH0633012-0633049
CPH 212	CPH1257349
CPH 213	MSC 0029159-0029162
CPH 214	CPH127359
CPH 215	N/A
CPH 217	MSC 0045665-0045758
CPH 217A	MSC 0080431-0080434
CPH 218	MSC 0004724-0004728
CPH 218A	MSC 0045760-0045761
CPH 219	MSC 0036347-0036349

DEP EXHIBIT #	BATES RANGE
CPH 220	CPH0467090-0467126
CPH 221	MSC 0045474-0045475
CPH 222	MSC 0003431-0003464
CPH 223	MSC 0042482-0042483
CPH 224	N/A
CPH 225	CPH 0147626-0147627
CPH 226	CPH 0147607-0147616
CPH 227	CPH 0639174-0639182
CPH 228	MSC 0085750-0085751
CPH 229	MSC 0085763-0085765
CPH 230	CPH 0635890-0635891
CPH 232	MSC 0085589-0085609
CPH 233	MSC 0085274-0085283
CPH 234	MSC 0084771-0084778
CPH 235	MSC 0085726-0085727
CPH 238	CPH 1412552-1412570
CPH 242	MSC 0045156
CPH 243	MSC 0026587-0026588
CPH 244	MSC 0031982-0031984
CPH 245	MSC 0043210
CPH 246	CPH 0473192-0473193
CPH 247	MSC 0004132-0004143

DEP EXHIBIT #	BATES RANGE
CPH 248	MSC 0085175-0085181
CPH 249	MSC 0036633-0036634
CPH 250	CPH 0146467
CPH 251	MSC 0005547-0005599
CPH 252	MSC 0019638-0019725
CPH 255	MSC 0045317-0045318
CPH 256	MSC 0019097-0019116
CPH 257	FUNB 021139
CPH 258	FUNB 021243
CPH 260	CPH 0485371-0485376
CPH 261	MSC 0024383-0024451
CPH 262	MSC 0018660-0018725 *(18687-88)**
CPH 263	MSC 0018730-0018731
CPH 264	MSC 0024863
CPH 265	MSC 0024864-0024866
CPH 286	CPH 1349253-1349282
CPH 272	CPH0473148-0473165
CPH 273	MSC 0023225-0023229
CPH 274	MSC 0054921-0054925
CPH 275	MSC 0001575-0001579
CPH 277	MSC0004673-0004702
CPH 278	MSC 0036700-0036720

DEP EXHIBIT #	BATES RANGE
CPH 279	MSC 006375-006432
CPH 280	MSC 0018885-0018942
CPH 281	MSC 0059244-0059266
CPH 284	MSC 0025887
MS 013	MSC 0027828-0027829
MS 040	MSC 0000001-0000175
MS 048	CPH 0041655-0041661
MS 057	FUNB 016564-016567
MS 079	CPH 0467007
MS 080	CPH 1426289-1426296
MS 081	CPH 1421814-1421817
MS 082	CPH 1406962-1406964
MS 083	CPH 1427250-1427253
MS 085	CPH 1411216-1411300
MS 115	MSC 0063805-0063811
MS 166	CPH 1326487-1326662
MS 175	CPH 0482090-0482098
MS 182	CPH 1412533-1412551
MS 183	CPH 1109095-1109115
MS 189	CPH 1399821-1399822
MS 194	CPH 1185762-1185784
MS 238	CPH 1418423-1418499

DEFINITIONS

1. "CPH" means Coleman (Parent) Holdings, Inc., its predecessors, successors, subsidiaries, and present and former officers, directors, and employees.

2. "Morgan Stanley" means Morgan Stanley & Co., Inc. and any of its direct or indirect parents, affiliates, subsidiaries, and present and former officers, directors, partners, employees, representatives, and agents.

3. "MSSF" means Morgan Stanley Senior Funding, Inc. and any of its direct or indirect parents, affiliates, subsidiaries, and present and former officers, directors, partners, employees, representatives, and agents.

4. "Documents" shall be given the broad meaning provided in CPLR 3120 and refers to any form or means, whether physical, visual, or electronic, in or by which words, numbers, or ideas are recorded or preserved, whether fixed in tangible medium or electronically stored, including any and all drafts of any final document. The word "documents" shall include, by way of example and not by way of limitation, all of the following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, notes, messages, reports, studies, press releases, comparisons, books, accounts, checks, audio and video recordings and transcriptions thereof, pleadings, testimony, articles, bulletins, pamphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk calendars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, minutes for meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements,

memoranda of understanding, letters of intent, computer tapes, computer drives or memories, computer diskettes or disks, e-mail, CD-ROMs, or any other tangible thing on which any handwriting, typing, printing, photostatic, electronic, or other form of communication or information is recorded or reproduced, together with all notations on any of the foregoing, all originals, file copies, or other unique copies of the foregoing, and all versions or drafts thereof, whether used or not.

5. "You" or "Your" means Morgan Stanley and/or MSSF and any of its present and former partners, employees, representatives, and agents.

SERVICE LIST

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Mark C. Hansen, Esq.
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& EVANS, P.L.L.C.
Sumner Square, 1615 M Street
N.W., Suite 400
Washington, D.C. 20036-3209

CHICAGO_1182401_1

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

CASE NO.: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

STIPULATION

Subject to its objection on relevance grounds, Morgan Stanley & Co. stipulates to the admission in evidence of the documents listed in the attached Exhibit. A. Morgan Stanley & Co. hereby waives any other objections to the admission of the documents listed in Exhibit A in evidence, including but not limited to objections to authenticity, hearsay, and foundation.

MORGAN STANLEY & CO.

BY: _____

Thomas A. Clare
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

COLEMAN (PARENT) HOLDINGS INC.

BY: _____

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Dated: November 23, 2004

ORDER APPROVING STIPULATION

THIS CAUSE, having come before the Court upon the foregoing stipulation, and after having reviewed the agreement of the parties, the Court approves the stipulation.

DONE AND ORDERED in chambers in West Palm Beach, Florida this _____ day of November, 2004.

Elizabeth Maass
Circuit Judge

Copies furnished to:

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2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy, Esq.
One IBM Plaza, Suite 4400
Chicago, IL 60611

Joseph Ianno, Jr., Esq.
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Thomas A. Clare, Esq.
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Suite 400
Washington, D.C. 20036-33401

CHICAGO_1182454_2
CHICAGO_1182454_2

EXHIBIT A

DEP EXHIBIT #	BATES RANGE
	MSC 0015896-0015970
	MSC 0015626-0015703
	MSC 0020477-0020552
	MSC 0061553-0061621
	MSC 0061191-0061251
	MSC 0067528-0067602
	MSC 0072800-0072863
	MSC 0073484-0073562
	MSC 0067258-0067341
	MSC 0087405-0087490
	MSC 0070445-0070542
	MSC 0086753-0086799
	MSC 0092043-0092076
	MSC 0092077-0092111
	MSC 0092146-0092177
	MSC 0092032-0092042
	MSC 0092178-0092188
	MSC 0092112-0092133
	MSC 0092134-0092145
CPH 003	MSC 0080435-0080437

DEP EXHIBIT #	BATES RANGE
CPH 004	MSC 0031171-0031176
CPH 005	MSC 0031177-0031220
CPH 006	MSC 0080438-0080439
CPH 009	CP 026286-026370
CPH 010	CP 033169-033240
CPH 011	SASMF 10699-10705
CPH 012	CPH 0012526-0012527
CPH 013	CPH 0635991-0635992
CPH 014	MSC 0016944-0016945
CPH 016	MSC 0028858
CPH 017	MS 00375-00381
CPH 024	DPW000001 - 000002
CPH 025	N/A
CPH 026	CPH1412961-1413007
CPH 027	MSC 0026219
CPH 028	MSC 0081555-0080760
CPH 029	MSC 0080440 - 0081556
CPH 031	CPH0635893
CPH 032	CPH0635894 - 0635895
CPH 033	MSC 0029176
CPH 034	CPH0520973 - 0520974

DEP EXHIBIT #	BATES RANGE
CPH 035	CPH1257351
CPH 036	CPH0639323 - 0639327
CPH 037	MSC 0045317 - 0045318
CPH 038	MSC 0041766 - 0041858
CPH 061	CPH0284977-0285008
CPH 062	CPH0283484
CPH 064	MSC 0028423
CPH 065	CPH0088703
CPH 066	CPH0038717
CPH 067	CPH0063827-0063833
CPH 068	MSC 0003995-0004001
CPH 069	MSC 0003894-0003930
CPH 070	SB237825-237830
CPH 071	MSC 0005984-0005995
CPH 072	MSC 0064865-0064866
CPH 074	MSC 0080356-0080358
CPH 075	SB0018202-0018288
CPH 076	MSC 0025829-0025886
CPH 078	MSC 0039543
CPH 079	MSC 0031855 – 0031856
CPH 080	CPH0465134

DEP EXHIBIT #	BATES RANGE
CPH 081	MSC 0036393 – 0036395
CPH 081A	N/A
CPH 082	CPH0469477-0469561
CPH 083	N/A
CPH 084	MSC 0033255 – 033263
CPH 084A	N/A
CPH 085	MSC 0036347 – 0036349
CPH 086	MSC 0045112 - 0045113
CPH 087	MSC 0035967-0035969
CPH 088	MSC 0031791 – 0031799
CPH 089	MSC 0083960 – 0084026
CPH 090	CPH1332631 – 1335633
CPH 091	N/A
CPH 092	MSC 0003389 - 0003415
CPH 093	N/A
CPH 094	N/A
CPH 095	MSC 0036112 – 0036113
CPH 096	CPH0472488 – 0472496
CPH 097	MSC 0033910 – 0033911
CPH 098	CPH0482089 – 0482098
CPH 099	N/A
CPH 100	MSC 0062860 – 0062896

DEP EXHIBIT #	BATES RANGE
CPH 110	CPH0038670 – 0038676
CPH 111	CPH0038700 – 0038706
CPH 112	CPH0129613 – 0129616
CPH 115	CPH0038700 – 0038706
CPH 117	CPH0038523 – 0038524
CPH 120	CPH0012522 – 0012524
CPH 121	CPH1145796
CPH 122	CPH0039327, CPH0038707
CPH 122	CPH0039327, CPH0038707
CPH 124	CPH0012464 – 0012466
CPH 125	MSC 0004673 - 0004702
CPH 126	MSC 0042248 - 0042275
CPH 128	MSC 0029199 - 0029201
CPH 129	MSC 000513 - 000541
CPH 130	CPH0251869 – 0251889
CPH 131	CPH0251890 – 0251985
CPH 132	CPH0636135 – 0636136
CPH 133	MSC 0059244 – 0059266
CPH 135	MSC 0063735 – 0063804
CPH 136	MSC 0083748 – 0083904
CPH 137	MSC 0039543
CPH 138	CPH1411216 – 1411300

DEP EXHIBIT #	BATES RANGE
CPH 139	MSC 0026540 – 0026544
CPH 140	CPH0483399 – 0483407
CPH 141	CPH 0483341 – 0483350
CPH 142	CPH 0253547 -- 0253555
CPH 143	CPH1026942-1026953
CPH 144	MSC 0016944
CPH 145	MSC 0028214 – 0028271
CPH 146	MSC 0080325 -- 0080333
CPH 148	MSC 0047892
CPH 149	MSC 0047893
CPH 150	CPH0470006-04700016
CPH 151	MSC 0065651 – 0065784
CPH 152	LAB 000043
CPH 153	MSC 0018885 – 0018942
CPH 154	CPH1258265 -- 1258266
CPH 155	CPH1346133 -- 1346250
CPH 156	CPH1346276 -- 1346342
CPH 157	MSC 0018702 -- 0018703
CPH 160	MSC 0003143
CPH 162	MSC 0026888 -- 0026891
CPH 163	MSC 0080427 -- 0080430
CPH 164	MSC 0045133-0045139

DEP EXHIBIT #	BATES RANGE
CPH 165	N/A
CPH 166	MSC 0045102-0045108
CPH 167	N/A
CPH 168	N/A
CPH 169	MSC 0044556-0044573
CPH 170	MSC 0042538-0042540
CPH 171	N/A
CPH 172	MSC 0044462
CPH 173	MSC 0043129
CPH 174	MSC 0042570
CPH 175	N/A
CPH 176	N/A
CPH 177	MSC 0085779
CPH 178	MSC 0084771-0084778
CPH 179	CPH0635892-0635895
CPH 180	MSC 0029194-0029196
CPH 181	MSC 0006284-0006335
CPH 182	CPH 1089795-1089815
CPH 183	MSC 0063286-0063330
CPH 184	N/A
CPH 186	MSC 0041901-0041912
CPH 187	MSC 0041870-0041888

DEP EXHIBIT #	BATES RANGE
CPH 187A	CP0254621-0254640
CPH 188	CPH1408952-1408956
CPH 189	CPH0642933-0642937
CPH 190	N/A
CPH 194	N/A
CPH 195	MSC 0040237-0040305
CPH 196	MSC 085612-0085613
CPH 200	CPH0472360-0472361
CPH 202	MSC 0003931
CPH 203	MSC 0042314-0042327
CPH 204	MSC 0042328-0042341
CPH 205	MSC 0004005-004007
CPH 207	CPH0471614-0471629
CPH 208	CPH632817-0832905
CPH 209	CPH1348404-1348475
CPH 210	CPH0632981
CPH 211	CPH0633012-0633049
CPH 212	CPH1257349
CPH 213	MSC 0029159-0029162
CPH 214	CPH127359
CPH 215	N/A
CPH 217	MSC 0045665-0045758

DEP EXHIBIT #	BATES RANGE
CPH 217A	MSC 0080431-0080434
CPH 218	MSC 0004724-0004728
CPH 218A	MSC 0045760-0045761
CPH 219	MSC 0036347-0036349
CPH 220	CPH0467090-0467126
CPH 221	MSC 0045474-0045475
CPH 222	MSC 0003431-0003464
CPH 223	MSC 0042482-0042483
CPH 224	N/A
CPH 225	CPH 0147626-0147627
CPH 226	CPH 0147607-0147616
CPH 227	CPH 0639174-0639182
CPH 228	MSC 0085750-0085751
CPH 229	MSC 0085763-0085765
CPH 230	CPH 0635890-0635891
CPH 232	MSC 0085589-0085609
CPH 233	MSC 0085274-0085283
CPH 234	MSC 0084771-0084778
CPH 235	MSC 0085726-0085727
CPH 238	CPH 1412552-1412570
CPH 242	MSC 0045156
CPH 243	MSC 0026587-0026588

DEP EXHIBIT #	BATES RANGE
CPH 244	MSC 0031982-0031984
CPH 245	MSC 0043210
CPH 246	CPH 0473192-0473193
CPH 247	MSC 0004132-0004143
CPH 248	MSC 0085175-0085181
CPH 249	MSC 0036633-0036634
CPH 250	CPH 0146467
CPH 251	MSC 0005547-0005599
CPH 252	MSC 0019638-0019725
CPH 255	MSC 0045317-0045318
CPH 256	MSC 0019097-0019116
CPH 257	FUNB 021139
CPH 258	FUNB 021243
CPH 260	CPH 0485371-0485376
CPH 261	MSC 0024383-0024451
CPH 262	MSC 0018660-0018725 *(18687-88)**
CPH 263	MSC 0018730-0018731
CPH 264	MSC 0024863
CPH 265	MSC 0024864-0024866
CPH 266	CPH 1349253-1349282
CPH 272	CPH0473148-0473165
CPH 273	MSC 0023225-0023229

DEP EXHIBIT #	BATES RANGE
CPH 274	MSC 0054921-0054925
CPH 275	MSC 0001575-0001579
CPH 277	MSC0004673-0004702
CPH 278	MSC 0036700-0036720
CPH 279	MSC 006375-006432
CPH 280	MSC 0018885-0018942
CPH 281	MSC 0059244-0059266
CPH 284	MSC 0025887
MS 013	MSC 0027828-0027829
MS 040	MSC 0000001-0000175
MS 048	CPH 0041655-0041661
MS 057	FUNB 016564-016567
MS 079	CPH 0467007
MS 080	CPH 1426289-1426296
MS 081	CPH 1421814-1421817
MS 082	CPH 1406962-1406964
MS 083	CPH 1427250-1427253
MS 085	CPH 1411216-1411300
MS 115	MSC 0083805-0063811
MS 166	CPH 1326487-1326662
MS 175	CPH 0482090-0482098
MS 182	CPH 1412533-1412551

DEP EXHIBIT #	BATES RANGE
MS 183	CPH 1109095-1109115
MS 189	CPH 1399821-1399822
MS 194	CPH 1185762-1185784
MS 238	CPH 1418423-1418499

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO SEVENTH REQUEST FOR PRODUCTION

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, respectfully requests that this Court enter an Order directing Morgan Stanley to produce documents responsive to CPH's Seventh Request for Production. In support of this motion, CPH states as follows:

1. This motion arises from Morgan Stanley's refusal to provide basic financial information responsive to CPH's Seventh Request for Production that we served on September 30, 2004. The Seventh Request seeks three categories of financial documents: (1) Morgan Stanley's balance sheets and income statements for the last fiscal year and each of the last six quarters; (2) documents sufficient to show Morgan Stanley's net worth, income, revenue, profits, losses, and global holdings for each fiscal year from 1998 through 2004; and (3) any financial statements relating to Morgan Stanley's net worth, revenues, profits, losses, and global holdings created from the date of the request through the start of trial. *See* Ex. A.

2. On November 1, 2004, Morgan Stanley served its written response, refusing to produce any documents on the ground that they were not relevant to any issue then framed by the pleadings. Subsequently, on November 19, 2004, this Court granted CPH's motion to amend its pleadings to add a claim for punitive damages. As a result, under Fla. Stat. § 768.72, CPH now

is entitled to discovery of financial worth and other information that could lead to the discovery of admissible evidence on the issue of punitive damages.

3. In light of this Court's recent ruling, Morgan Stanley's refusal to produce documents responsive to CPH's Seventh Request for Production is improper. Morgan Stanley has refused to produce those documents on the following grounds: (1) discovery for punitive damages purpose, if it is allowed, should be limited to current financial information; and (2) discovery of financial information should not extend to Morgan Stanley's global holdings. CPH, notwithstanding Morgan Stanley's contentions, is entitled to reasonable discovery concerning Morgan Stanley's financial condition.

First, CPH is willing to limit its request to more current financial information. But that means that Morgan Stanley still should be required to produce: (1) balance sheets and income statements for the last fiscal year and each of the last six quarters; (2) documents sufficient to show Morgan Stanley's net worth, income, revenue, profits, losses, and global holdings for calendar years 2003 and 2004; and (3) any financial statements relating to Morgan Stanley's net worth, revenues, profits, losses, and global holdings for now through the start of trial. That discovery is consistent with Florida's standard jury instruction for punitive damages, which requires juries to consider "the defendant's financial resources." *See* Standard Jury Instructions — Civil Cases, 867 So. 2d 1164, 1165 (Fla. 2004). Insofar as Morgan Stanley persists in resisting this discovery, Morgan Stanley's opposition should be overruled.

Second, Morgan Stanley objects to CPH's request for information relating to "global holdings" on relevance grounds, contending that we are entitled to discovery only of Morgan Stanley's Florida holdings. That objection is baseless. We know of no Florida case holding, with respect to a company like Morgan Stanley, that discovery for punitive damages purposes is limited to ascertaining the net worth of the company in the state where the case is pending. To

the contrary, Florida courts regularly use a company's overall financial data in determining net worth for punitive damages purposes. *E.g., Owens-Corning Fiberglas Corp. v. Ballard*, 749 So. 2d 483, 487 (Fla. 1999) (citing defendant's $2.5 billion net worth); *American Med. Int'l, Inc. v. Scheller*, 590 So. 2d 947, 951 (Fla. 3d DCA 1991) (citing net worth exceeding $1 billion).

Although Morgan Stanley cites *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003), in its discovery response, the Supreme Court nowhere suggests that a defendant's out-of-state assets are irrelevant in considering the defendant's financial resources. To the contrary, *State Farm* explicitly observes that a punitive damage award against State Farm in Utah would draw on the same assets as punitive damage award against State Farm in other states. *See id.* at 427. That reasoning is flatly inconsistent with Morgan Stanley's suggestion that assets related to the conduct at issue in the particular state involved are the only ones that may be considered. Thus, information regarding Morgan Stanley's global holdings is relevant and ought to be discoverable.

For the foregoing reasons, CPH respectfully requests that this Court direct Morgan Stanley to produce the following documents responsive to CPH's Seventh Request for Production within seven days: (1) balance sheets and income statements for the last fiscal year and each of the last six quarters; (2) documents sufficient to show Morgan Stanley's net worth, income, revenue, profits, losses, and global holdings for calendar years 2003 and 2004; and (3) any financial statements relating to Morgan Stanley's net worth, revenues, profits, losses, and global holdings for now through the start of trial.

Dated: November 22, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

#1176458

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 23rd day of Nov, 2004.

JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 684-5816
Attorneys for Coleman(Parent)Holdings Inc.
and MacAndrews & Forbes Holdings, Inc.

COUNSEL LIST

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Mark C. Hansen, Esq.
Kellogg, Huber, Hansen,
Todd & Evans, P.L.L.C.
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Washington, DC 20036-3206

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

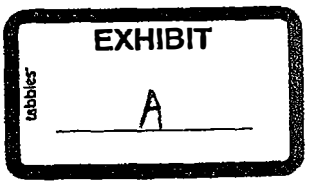
MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

PLAINTIFF COLEMAN (PARENT) HOLDINGS INC.'S SEVENTH REQUEST FOR PRODUCTION OF DOCUMENTS TO MORGAN STANLEY & CO., INC.

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys Searcy Denney Scarola Barnhart & Shipley P.A. and Jenner & Block LLP, hereby serves its Sixth Request for Production of Documents upon Morgan Stanley & Co., Inc. ("MS&Co."), and, except as otherwise provided, requests responses and the production of documents at the office of Searcy Denney Scarola Barnhart & Shipley P.A., 2139 Palm Beach Lakes Blvd., West Palm Beach, Florida, within thirty (30) days from the date of service.



DEFINITIONS AND INSTRUCTIONS

Except as otherwise provided below, CPH incorporates by reference its Definitions and Instructions set forth in CPH's First Request for Production of Documents, served on MS&Co. on May 9, 2003. In addition, CPH defines the following terms as follows:

1. "MS&Co." means Morgan Stanley & Co., Inc. or any of its affiliates, subsidiaries, divisions, predecessors, successors, present and former employees, representatives, agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

DOCUMENTS REQUESTED

1. All MS&Co.'s balance sheets and income statements for MS&Co.'s most recent fiscal year and for each of MS&Co.'s last six quarters.

2. Documents sufficient to show MS&Co.'s net worth, income, revenue, profits, losses, and global holdings for each fiscal year between and including 1998-2004.

3. All MS&Co.'s balance sheets, income statements, and any other financial statements relating to MS&Co.'s net worth, revenues, profits, losses, and global holdings that are created or edited during the time period between today's date through the date of trial in this

matter. Documents responsive to this request must be tendered by MS&Co. on the first day of trial.

Dated: September 30, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____

John Scarola
SEARCY DENNEY SCAROLA BARNHART
& SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a copy of the foregoing has been furnished by U.S. Mail and facsimile to the following counsel of record on this 30th day of September, 2004:

Joseph Ianno, Jr.
CARLTON FIELDS
222 Lake View Avenue
Suite 1400
West Palm Beach, Florida 33401
Tel.: (561) 659-7070
Fax: (561) 659-7368

Thomas A. Clare
KIRKLAND & ELLIS
655 15th Street, N.W.
Suite 1200
Washington, D.C. 20005
Tel.: (202) 879-5000
Fax: (202) 879-5200

Deirdre E. Connell

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S MOTION FOR A FINDING OF CONTEMPT AND FOR OTHER RELIEF DUE TO MORGAN STANLEY'S REFUSAL TO COMPLY WITH COURT ORDER

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, respectfully requests that this Court enter an Order finding Morgan Stanley in contempt for its refusal to comply with a discovery Order that this Court entered on November 17, 2004. In support of this motion, CPH states as follows:

1. This motion arises as a result of Morgan Stanley's stated refusal to comply with one of this Court's discovery Orders by the discovery cut-off. Specifically, on November 17, 2004, this Court granted CPH's motion to compel compliance with its Rule 1.310 deposition notice concerning subordinated debenture transactions. *See* Ex. A; *see also* Ex. B (denying Morgan Stanley's associated motion for protective order). Because the original scheduled date for the deposition had lapsed, on November 19, CPH renoticed the deposition to take place on Wednesday, November 24 — the day of the discovery cut-off. *See* Ex. C.

2. Thereafter, on November 21, Morgan Stanley objected to CPH's deposition notice — contending that the notice did not give adequate time before the deposition and was otherwise unreasonable because "it would be impossible for counsel to prepare the witness" before the discovery cut-off given the other depositions to be taken. *See* Ex. D.

3. Morgan Stanley's refusal to produce a subordinated debenture witness before the discovery cut-off constitutes a direct violation of this Court's November 17 Order. Consequently, CPH respectfully requests that this Court find Morgan Stanley in contempt, direct Morgan Stanley to comply with the Court's Order, and enter an appropriate sanction for Morgan Stanley's deliberate violation of this Court's Order.

Dated: November 22, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

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2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

#1182676

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 22nd day of Nov, 2004.

JACK SCAROLA
Florida Bar No.: 169440
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Attorneys for Coleman(Parent)Holdings Inc.
and MacAndrews & Forbes Holdings, Inc.

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Washington, DC 20036-3206

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL MORGAN STANLEY'S COMPLIANCE WITH RULE 1.310 DEPOSITION NOTICE CONCERNING SUBORDINATED DEBENTURE TRANSACTIONS

THIS CAUSE came before the Court November 17, 2004 on Coleman (Parent) Holdings, Inc.'s Motion to Compel Morgan Stanley's Compliance with Rule 1.310 Deposition Notice Concerning Subordinated Debenture Transactions, with all counsel present. In open Court counsel acknowledged an agreement on paragraph 1 (ii) of Exhibit A to the Motion, and Plaintiff withdrew the portion of its Motion directed to that topic. Based on the foregoing and the proceedings before the Court, it is

ORDERED AND ADJUDGED that paragraph 1 (ii) of Exhibit A to the Motion is stricken. It is further

ORDERED AND ADJUDGED that Coleman (Parent) Holdings, Inc.'s Motion to Compel Morgan Stanley's Compliance with Rule 1.310 Deposition Notice Concerning Subordinated Debenture Transactions is Granted. Defendant shall provide a corporate representative to testify pursuant to Rule 1.310 concerning the topics set forth in Exhibit A to the Motion, as modified herein.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 17 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

EXHIBIT
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A

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON MOTION FOR PROTECTIVE ORDER PREVENTING COLEMAN (PARENT) HOLDINGS INC.'S NOTICE OF DEPOSITION, SERVED ON NOVEMBER 3, 2004

THIS CAUSE came before the Court November 17, 2004 on Defendant's Motion for Protective Order Preventing Coleman (Parent) Holdings, Inc.'s Notice of Deposition, Served on November 3, 2004, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Defendant's Motion for Protective Order Preventing Coleman (Parent) Holdings, Inc.'s Notice of Deposition, Served on November 3, 2004 is Denied.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 17 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci
655 15th Street, NW, Suite 1200
Washington DC 20005

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,
vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,
vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

AMENDED NOTICE OF TAKING VIDEOTAPED DEPOSITION

To: Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings, Inc. ("CPH") will take the deposition upon oral examination of the following party pursuant to Florida Rule of Civil Procedure 1.310 on the date set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co., Inc. on the topic identified on Exhibit A.	November 24, 2004 at 9:30 a.m.

The deposition will be conducted at Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017. The deposition will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until completed.

Please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to all counsel on the attached Service List this 19th day of November 2004.

Dated: November 19, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART
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(561) 686-6300

SERVICE LIST

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KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
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Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Exhibit A

CORPORATE DEPOSITION TOPIC

1. All transactions involving Subordinated Debentures (as defined in the Definitions and Instructions set forth in CPH's First Request for Production of Documents served on May 9, 2003), including but not limited to: (i) all transactions in which Morgan Stanley bought or sold any Subordinated Debentures or any interest therein; ~~(ii) all communications with any Morgan Stanley customer or counter-party to any trade involving Morgan Stanley as a broker or principal relating to the Subordinated Debentures;~~ (iii) any market for the Subordinated Debentures; and (iv) the purchase price, other costs in connection with the purchase, sales price, other costs in connection with the sale, gains, losses, and amount or rate of return on any purchase or sale of Subordinated Debentures or any interest therein.

2. Morgan Stanley's gains, losses, and amount or rate of return in connection with the purchase or sale of Subordinated Debentures or any interest therein.

3. The documents produced by Morgan Stanley at Morgan Stanley Confidential 0096879 to 0096972 and Morgan Stanley Confidential 0102880 to 0103433, including but not limited to: (1) the authenticity, source, creation, use, maintenance and business purpose of the documents; and (2) the explanation of the documents and the information contained therein.

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

655 Fifteenth Street, N.W.
Washington, D.C. 20005

202 879-5000

Facsimile:
202 879-5200

www.kirkland.com

November 21, 2004

BY FACSIMILE

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: ***Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.***

Dear Mike:

I write to confirm our telephone conversation on Friday afternoon regarding the deposition schedule for next week, and in response to the deposition notices you served after business hours on Friday evening. To summarize, we intend to proceed with the following depositions:

Deponent	Requested	Day	Location	Start
Todd Freed	CPH	Monday	Skadden	9:30 a.m.
Mitch Petrick	CPH	Monday	Esquire	10:15 a.m.
Rule 1.310 (10/8 notice Ex. A Topics 1-4)	CPH	Monday	Esquire	10:15 a.m.
Ruth Porat	CPH	Tuesday	Esquire	8:00 a.m.
Rule 1.310 (10/18 notice Ex. D Topics 1-3)	CPH	Tuesday	Esquire	8:00 a.m.
Bill Reid	MS	Tuesday	K&E (NY)	9:30 a.m.
Alison Amorison	MS	Tuesday	Skadden	9:30 a.m.

Ms. Porat is unable to continue her deposition beyond 1p.m. on Tuesday and is not available to resume the deposition on Wednesday. In the event that additional time is necessary, we will provide you with proposed dates to complete the deposition. During our telephone conversation on Friday, I offered to make Ms. Porat available for several hours on Monday afternoon to complete the corporate representative portion of Ms. Porat's deposition, a proposal that would have allowed CPH more time on Tuesday for Ms. Porat's individual deposition. You declined my offer.

You informed me that none of the Bank of New York depositions are going forward on November 23 as noticed. You assured me that you would inform me immediately if any of those depositions are going to go forward on that date. Given the need to send additional counsel to

EXHIBIT
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D

KIRKLAND & ELLIS LLP

Jacksonville, FL or New York City if the depositions are going to go forward, please inform us no later than noon on Monday if either of those depositions will proceed.

The Amended Deposition Notice you served for November 22 at 10:15 a.m. is invalid. MacAndrews & Forbes Holdings Inc. is not a party to the litigation and cannot issue a deposition notice. Even if it could, the notice period is inadequate. The notice was not served until after 6:00 p.m. EDT on Friday evening, yet purports to require Morgan Stanley to produce a corporate representative on those topics at 10:15 a.m. on Monday morning. Moreover, even if the deposition had been properly noticed and timely served on Friday evening, it is impractical to believe that a corporate representative could be prepared to provide testimony on such short notice. Morgan Stanley objects to the deposition notice on these grounds.

The Amended Deposition Notices you served for November 24 regarding the Sunbeam debenture and Coleman securities topics suffer from many of the same flaws. The deposition notices for these topics were not served until after 6:00 p.m. EDT on Friday evening, yet purport to require Morgan Stanley to produce corporate representatives to testify on six different topics just two business days after the effective service date, on the day before Thanksgiving. Even if witnesses could be found to provide testimony on these multiple topics on such short notice, it would be impossible for counsel to prepare the witness for Rule 1.310 testimony given the other depositions listed above. Morgan Stanley objects to the deposition notice on these grounds.

If we are able to come to an agreement on the deposition notices served on November 19, we will not object to those depositions being taken, if necessary, after the discovery deadlines.

We have not yet been able to serve Mr. Uzzi. Our efforts to do so continue.

Sincerely,

Thomas A. Clare

Thomas A. Clare

cc: Joseph Ianno, Esq. (by facsimile)
John Scarol, Esq. (by facsimile)
Mark C. Hansen, Esq. (by facsimile)

CARLTON FIELDS, P.A.

ATTORNEYS AT LAW

ESPERANTÉ
222 LAKEVIEW AVENUE, SUITE 1400
WEST PALM BEACH, FLORIDA 33401-6149

MAILING ADDRESS
P.O. BOX 150, WEST PALM BEACH, FL 33402-0150
TEL (561) 659-7070 FAX (561) 659-7368

FAX COVER SHEET

		Phone Number	Fax Number
Date:	November 22, 2004		
To:	Jack Scarola	(561) 686-6300	(561) 684-5816
	Jerold Solovy/Michael Brody	(312) 222-9350	(312) 840-7711
	Thomas Clare	(202) 879-5993	(202) 879-5200
	Rebecca Beynon/Mark Hansen	(202) 326-7900	(202) 326-7999
From:	Joyce Dillard, CLA	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 3

Message:

Coleman v. Morgan Stanley & Co., Inc.

To follow please find a copy of Morgan Stanley's Notice of Cancellation of Deposition of William Reid.

☐ ***Original to follow Via Regular Mail*** ☐ ***Original will Not be Sent*** ☐ ***Original will follow via Overnight Courier***

****

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (if long distance, please call collect) and return the original message to us at the above address via the U.S. Postal Service. Thank you.

****

IF THERE ARE ANY PROBLEMS OR COMPLICATIONS, PLEASE NOTIFY US IMMEDIATELY AT:
(561) 659-7070

TELECOPIER OPERATOR: _____

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

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDING INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF CANCELLATION OF DEPOSITION

Defendant, MORGAN STANLEY & CO. INC., by and through its undersigned attorneys, hereby give notice of its cancellation of the deposition of William Reid noticed for November 23, 2004 at 9:30 a.m. at Kirkland and Ellis LLP, 153 East 53rd Street, New York, New York.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 22ND day of November, 2004.

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BY: Joseph Ianno, Jr.
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FAX COVER SHEET

		Phone Number	Fax Number
Date:	November 22, 2004		
To:	Jack Scarola	(561) 686-6300	(561) 684-5816
	Jerold Solovy/Michael Brody	(312) 222-9350	(312) 840-7711
	Thomas Clare	(202) 879-5993	(202) 879-5200
	Rebecca Beynon/Mark Hansen	(202) 326-7900	(202) 326-7999
From:	Joyce Dillard, CLA	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 4

Message:

Coleman v. Morgan Stanley & Co., Inc.

To follow please find a copy of Morgan Stanley's Notice of Hearing setting its Motion to Remove Confidential Designations for December 3, 2004.

☐ *Original to follow Via Regular Mail* ☐ *Original will Not be Sent* ☐ *Original will follow via Overnight Courier*

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (if long distance, please call collect) and return the original message to us at the above address via the U.S. Postal Service. Thank you.

IF THERE ARE ANY PROBLEMS OR COMPLICATIONS, PLEASE NOTIFY US IMMEDIATELY AT:
(561) 659-7070

TELECOPIER OPERATOR: _____

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a hearing has been set in the above-styled case as follows:

DATE:	December 3, 2004
TIME:	8:00 a.m.
PLACE:	Palm Beach County Courthouse, Courtroom 11A 205 North Dixie Highway West Palm Beach, Florida 33401
BEFORE:	Judge Elizabeth T. Maass
CONCERNING:	Morgan Stanley's Motion to Remove Confidential Designations

KINDLY GOVERN YOURSELVES ACCORDINGLY.

The undersigned counsel hereby certifies that a good faith attempt to resolve the issues contained in the foregoing motions or matters will be made with opposing counsel prior to hearing on these matters on the Court's Motion Calendar.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no costs to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-2431 within two (2) working days of your receipt of this notice; if you are hearing or voice impaired, call 1-800-955-8771.

WPB#571076.22

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 22ND day of November, 2004.

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BY: Joseph Ianno, Jr.
Joseph Ianno, Jr.
Florida Bar No. 655351

Counsel for Morgan Stanley & Co. Incorporated

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY & CO. INCORPORATED'S RESPONSES AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC.'S SIXTH SET OF REQUESTS FOR ADMISSION

Defendant Morgan Stanley & Co. Incorporated ("MS & Co."), by its attorneys and pursuant to Florida Rule of Civil Procedure 1.370, hereby responds and objects to Coleman (Parent) Holdings Inc.'s ("CPH") Sixth Set of Requests for Admission.

INITIAL OBJECTIONS

1. MS & Co. objects to CPH's Sixth Set of Requests for Admission, including all Definitions, to the extent that they purport to impose upon MS & Co. any requirements that exceed or are otherwise inconsistent with the Florida Rules of Civil Procedure or any other applicable rule or court order.

2. MS & Co. objects to CPH's Sixth Set of Requests for Admission to the extent that they seek information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable privilege, doctrine, immunity or rule.

3. MS & Co. objects to the definition of "Morgan Stanley" to the extent that it includes MS & Co.'s counsel in this litigation and entities not a party to this action. Specifically, MS & Co. interprets these definitions to exclude Kirkland & Ellis LLP, Carlton Fields, P.A.,

Kellogg Huber, Hansen, Todd & Evans, PLLC and affiliates, parents, and others not a party to this action.

4. MS & Co. objects to the Requests for Admission as unduly burdensome, abusive, and vexatious, since many of them are duplicative and constitute an unnecessary waste of time and concern factual allegations uniquely within the possession of CPH, MAFCO, or third parties, which could be confirmed with less expense and burden on the parties through other techniques of discovery

5. In the instances where Morgan Stanley admits to Request One and Request Eight for a document, Morgan Stanley objects to the remaining Requests related to the same document because such Requests are redundant, unduly burdensome, and harassing.

6. In the instances where Morgan Stanley has noted that a document is incomplete, the responses below pertain only to the portion of the document identified in the respective Requests and Morgan Stanley reserves all other objections.

7. MS & Co. incorporates, as though fully set forth therein, these General Objections into each of the Responses set forth below.

RESPONSES

1. Admit that the documents listed in the attached Exhibits A and B are what they purport to be or are otherwise true and authentic copies of original documents within the meaning of Florida Evidence Code § 90.901.

RESPONSE: See the attached Table A. In the instances where there is a notation that the document bears handwritten marginalia ["HW"], Morgan Stanley is without sufficient information to make any admission and therefore denies the Request with respect to the handwritten marginalia.

2. Admit that the documents listed in the attached Exhibits A and B were made by Morgan Stanley at or near the time of the event recorded within the meaning of Florida Evidence Code § 90.803(6)(a).

RESPONSE: See the attached Table A. In the instances where there is a notation that the document bears handwritten marginalia, Morgan Stanley is without sufficient information to make any admission and therefore denies the Request with respect to the handwritten marginalia.

3. Admit that the documents listed in the attached Exhibits A and B were made by Morgan Stanley by or from information transmitted by a person with knowledge within the meaning of Florida Evidence Code § 90.803(6)(a).

RESPONSE: See the attached Table A. In the instances where there is a notation that the document bears handwritten marginalia, Morgan Stanley is without sufficient information to make any admission and therefore denies the Request with respect to the handwritten marginalia.

4. Admit that the documents listed in the attached Exhibits A and B were kept by Morgan Stanley in the course of a regularly conducted business activity within the meaning of Florida Evidence Code § 90.803(6)(a).

RESPONSE: See the attached Table A. In the instances where there is a notation that the document bears handwritten marginalia, Morgan Stanley is without sufficient information to make any admission and therefore denies the Request with respect to the handwritten marginalia.

5. Admit that it was Morgan Stanley's regular practice to make the documents listed in the attached Exhibits A and B within the meaning of Florida Evidence Code § 90.803(6)(a).

RESPONSE: See the attached Table A. In the instances where there is a notation that the document bears handwritten marginalia, Morgan Stanley is without sufficient information to make any admission and therefore denies the Request with respect to the handwritten marginalia.

6. Admit that the documents being [sic] Bates numbers Morgan Stanley Confidential 0084771 through 0085783, and Morgan Stanley Confidential 0094003 through 0094032 were made by Morgan Stanley at or near the time of the event recorded within the meaning of Florida Evidence Code § 90.803(6)(a).

RESPONSE: See the attached Table B.

7. Admit that the documents bearing Bates numbers Morgan Stanley Confidential 0084771 through 0085783, and Morgan Stanley Confidential 0094003 through 0094032 were made by Morgan Stanley by or from information transmitted by a person with knowledge within the meaning of Florida Evidence Code § 90.803(6)(a).

RESPONSE: See the attached Table B.

8. Admit that Morgan Stanley authored the documents listed in the attached Exhibit B.

RESPONSE: See the attached Table A. In the instances where there is a notation that the document bears handwritten marginalia, Morgan Stanley is without sufficient information to make any admission and therefore denies the Request with respect to the handwritten marginalia. Morgan Stanley denies that it "authored" CPH Exhibits 9 and 138 and MS Exhibits 85 and 238 {and any other version of the February 1998 Discussion Materials provided to CPH on February 23, 1998}. Morgan Stanley admits that Sunbeam provided Morgan Stanley certain information contained in those exhibits, that other information in those

exhibits was obtained from public records, and that Morgan Stanley assisted Sunbeam in the formatting and organization of such information. For MS Exhibit 183 and CPH Exhibit 278, Morgan Stanley admits that one of its employees "authored" the handwritten notations on that document, but denies that Morgan Stanley authored the underlying printed text.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 22nd day of November, 2004.

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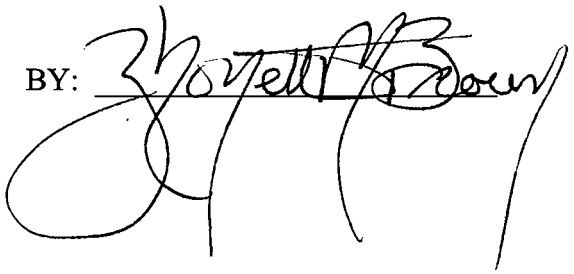
BY: 

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Response to CPH 6th Request for Admission:
Table A

Party	Ex. No	Bates	Notes	RFA 1	RFA 2	RFA 3	RFA 4	RFA 5	RFA 8
MS	13	MSC 0027828-0027829	Incomp.	A	D	D	D	D	-
MS	40	MSC 0000001-0000175		A	D	D	D	D	D
MS	48	CPH 0041655-0041661		A	D	D	D	D	-
MS	57	FUNB016564-016567		A	OBJ	OBJ	OBJ	OBJ	A
MS	79	CPH 0467007	Incomp.	A	OBJ	OBJ	OBJ	OBJ	A
MS	80	CPH 1426289-01426296	HW	A	OBJ	OBJ	OBJ	OBJ	A
MS	81	CPH 1421814-1421817		A	OBJ	OBJ	OBJ	OBJ	A
MS	82	CPH 1406962-1406964	HW	A	OBJ	OBJ	OBJ	OBJ	A
MS	83	CPH 1427250-1427253	HW	A	OBJ	OBJ	OBJ	OBJ	A
MS	85	CPH 1411216-1411300		A	D	D	D	D	D
MS	115	MSC 0063805-0063811		A	D	D	D	D	-
MS	166	CPH 1362487-1326662		A	D	D	D	D	D
MS	175	CPH 0482090-0482098		A	OBJ	OBJ	OBJ	OBJ	A
MS	182	CPH 1412533-1412551	HW	A	D	D	D	D	D
MS	183	CPH 1109095-1109115		A	D	D	D	D	A - HW D - Balance
MS	189	CPH 1399821-1399822		A	OBJ	OBJ	OBJ	OBJ	A
MS	194	CPH 1185762-1185784		A	D	D	D	D	D
MS	238	CPH 1418423-1418499		A	D	D	D	D	D
CPH	3	MSC 0080435-0080437		A	OBJ	OBJ	OBJ	OBJ	A
CPH	4	MSC 0031171-0031176		A	OBJ	OBJ	OBJ	OBJ	A
CPH	5	MSC 0031177-0031220		A	OBJ	OBJ	OBJ	OBJ	A
CPH	6	MSC 0080438-0080439		A	OBJ	OBJ	OBJ	OBJ	A
CPH	9	CP 026286-026370		A	D	D	D	D	D
CPH	10	CP 033169-033240		A	D	D	D	D	D
CPH	11	SASMF 10699-10705		A	OBJ	OBJ	OBJ	OBJ	A
CPH	12	CPH 0012526-0012527		A	OBJ	OBJ	OBJ	OBJ	A
CPH	13	CPH 0635991-0635992		A	D	D	D	D	-

A = Admit
D = Deny

HW = Handwritten Marginalia
W/O = Morgan Stanley is without sufficient information to Admit or Deny

OBJ = Object
I = Document is incomplete

Response to CPH 6th Request for Admission:
Table A

CPH	14	MSC 0016944-0016945		A	D	D	D	D	D
CPH	16	MSC 0028858		D	D	D	D	D	-
CPH	17	MSC 00375-00381		A	D	D	D	D	-
CPH	24	DPW000001-000002		A	D	D	D	D	D
CPH	25			A	D	D	D	D	-
CPH	26	CPH 1412961-1413007		A	OBJ	OBJ	OBJ	OBJ	A
CPH	27	MSC 0026219		A	OBJ	OBJ	OBJ	OBJ	A
CPH	28			A	OBJ	OBJ	OBJ	OBJ	A
CPH	29	MSC 0080440-0081556		A	OBJ	OBJ	OBJ	OBJ	A
CPH	31	CPH 0635893		A	OBJ	OBJ	OBJ	OBJ	A
CPH	32	CPH 0635894-0635895		A	OBJ	OBJ	OBJ	OBJ	-
CPH	33	MSC 0029176		A	OBJ	OBJ	OBJ	OBJ	A
CPH	34	CPH 0520973-0520974		A	OBJ	OBJ	OBJ	OBJ	A
CPH	35	CPH 1257351		A	OBJ	OBJ	OBJ	OBJ	A
CPH	36	CPH 0639323-0639327		A	D	D	D	D	-
CPH	37	MSC 0045317-0045318		A	OBJ	OBJ	OBJ	OBJ	A
CPH	38	MSC 0041766-0041858		A	OBJ	OBJ	OBJ	OBJ	A
CPH	61	CPH 0284977-0285008		A	OBJ	OBJ	OBJ	OBJ	A
CPH	62	CPH 0283484	HW	W/O	D	D	D	D	-
CPH	64	MSC 0028423		A	D	D	D	D	-
CPH	65	CPH 0088703		W/O	D	D	D	D	-
CPH	66	CPH 0038717		W/O	D	D	D	D	-
CPH	67	MSC 0063827-0063833		A	OBJ	OBJ	OBJ	OBJ	A
CPH	68	MSC 0003995-0004001		A	D	D	D	D	-
CPH	69	MSC 0003894-0003930		A	OBJ	OBJ	OBJ	OBJ	A
CPH	70	SB 237825-237830		A	OBJ	OBJ	OBJ	OBJ	A
CPH	71	MSC 0005984-0005995		A	OBJ	OBJ	OBJ	OBJ	A
CPH	72	MSC 0064865-0064866	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	74	MSC 0080356-0080358		A	OBJ	OBJ	OBJ	OBJ	A
CPH	75	SB 0018203-0018288	HW	A	D	D	D	D	D
CPH	76	MSC 0025829-0025886		A	OBJ	OBJ	OBJ	OBJ	A
CPH	78	MSC 0039543		A	OBJ	OBJ	OBJ	OBJ	A
CPH	79	MSC 0031855-0031856		A	OBJ	OBJ	OBJ	OBJ	A
CPH	80	CPH 0465134		A	D	D	D	D	-

HW = Handwritten Marginalia

A = Admit
D = Deny

W/O = Morgan Stanley is without sufficient information to Admit or Deny

OBJ = Object
I = Document is incomplete

Response to CPH 6th Request for Admission:
Table A

CPH	81	MSC 0036393-0036395		A	OBJ	OBJ	OBJ	OBJ	A
CPH	81-A			D	D	D	D	D	D
CPH	82	CPH 0469477-0469561		A	OBJ	OBJ	OBJ	OBJ	A
CPH	83			D	D	D	D	D	D
CPH	84	MSC 0033255-0033263		A	OBJ	OBJ	OBJ	OBJ	A
CPH	84-A			D	D	D	D	D	D
CPH	85	MSC 0036347-0036349		A	OBJ	OBJ	OBJ	OBJ	A
CPH	86	MSC 0045112-0045113		A	OBJ	OBJ	OBJ	OBJ	A
CPH	87	MSC 0035967-0035969		A	OBJ	OBJ	OBJ	OBJ	A
CPH	88	MSC 0031791-0031799		A	OBJ	OBJ	OBJ	OBJ	A
CPH	89	MSC 0083960-0084026		A	OBJ	OBJ	OBJ	OBJ	A
CPH	90	CPH 1332631-1322633		A	OBJ	OBJ	OBJ	OBJ	A
CPH	91			D	D	D	D	D	D
CPH	92	MSC 0003389-0003415		A	OBJ	OBJ	OBJ	OBJ	A
CPH	93			D	D	D	D	D	D
CPH	94			D	D	D	D	D	D
CPH	95			A	OBJ	OBJ	OBJ	OBJ	A
CPH	96	CPH 0472488-0472496		A	OBJ	OBJ	OBJ	OBJ	A
CPH	97	MSC 0033910-0033911		A	OBJ	OBJ	OBJ	OBJ	A
CPH	98	CPH 0482089-0482098		A	OBJ	OBJ	OBJ	OBJ	A
CPH	99			D	D	D	D	D	D
CPH	100	MSC 0062860-0062896		A	OBJ	OBJ	OBJ	OBJ	A
CPH	110	CPH 0038670-0038676	HW	A	D	D	D	D	-
CPH	111	CPH 0038700-0038706	HW	A	D	D	D	D	-
CPH	112	CPH 0129613-0129616	HW	A	D	D	D	D	-
CPH	115	CPH 0038700-0038706	HW	A	D	D	D	D	-
CPH	117	CPH 0038523-0038524	HW	A	D	D	D	D	-
CPH	120	CPH 0012522-0012524		A	D	D	D	D	-
CPH	121	CPH 1145796	HW	A	D	D	D	D	-
CPH	122	CPH 0039327; CPH 0038707	HW	A	D	D	D	D	D
CPH	124	CPH 0012464-0012466		A	D	D	D	D	-
CPH	125	MSC 0004673-004702		A	OBJ	OBJ	OBJ	OBJ	A

HW = Handwritten Marginalia
W/O = Morgan Stanley is without sufficient information to Admit or Deny

A = Admit
D = Deny

OBJ = Object
I = Document is incomplete

Response to CPH 6th Request for Admission:
Table A

CPH	126	MSC 0042248-0042275		A	OBJ	OBJ	OBJ	OBJ	A
CPH	128	MSC 0029199-0029201		A	OBJ	OBJ	OBJ	OBJ	A
CPH	129	MSC 0000513-0000541		A	OBJ	OBJ	OBJ	OBJ	A
CPH	130	CPH 0251869-0251889	HW	A	D	D	D	D	D
CPH	131	CPH 0251890-0251985		A	OBJ	OBJ	OBJ	OBJ	A
CPH	132	CPH 0636135-0636136	HW	A	D	D	D	D	-
CPH	133	MSC 0059244-0059266		A	OBJ	OBJ	OBJ	OBJ	A
CPH	135	MSC 0063735-0063804		A	D	D	D	D	D
CPH	136	MSC 0083748-0083904		A	OBJ	OBJ	OBJ	OBJ	A
CPH	137	MSC 0039543		A	OBJ	OBJ	OBJ	OBJ	A
CPH	138	CPH 1411216-1411300		A	D	D	D	D	D
CPH	139	MSC 0026540-0026544	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	140	CPH 0483399-0483407	HW	A	D	D	D	D	D
CPH	141	CPH 0483341-0483350	HW	A	D	D	D	D	D
CPH	142	CPH 0253547-0253555	HW	A	D	D	D	D	D
CPH	143	CPH 1026942-1026953		A	D	D	D	D	D
CPH	144	MSC 0016944	Incomp.	A	D	D	D	D	D
CPH	145	MSC 0028214-0028271	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	146	MSC 0080325-0080333	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	148	MSC 0047892		A	OBJ	OBJ	OBJ	OBJ	A
CPH	149	MSC 0047893		A	OBJ	OBJ	OBJ	OBJ	A
CPH	150	CPH 0470006-0470016	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	151	MSC 0065651-0065784	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	152	CPH 1145796	HW	A	D	D	D	D	-
CPH	153	MSC 0018885-0018942	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	154	CPH 1258265-1258266		W/O	D	D	D	D	-
CPH	155	CPH 1346133-1346250		A	OBJ	OBJ	OBJ	OBJ	A
CPH	156	CPH 1346276-1346342		A	D	D	D	D	D
CPH	157	MSC 0018702-0018703	HW	A	D	D	D	D	-
CPH	160	MSC 0003143	HW	A	D	D	D	D	D

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D = Deny

HW = Handwritten Marginalia
W/O = Morgan Stanley is without sufficient information to Admit or Deny

OBJ = Object
I = Document is incomplete

Response to CPH 6th Request for Admission:
Table A

CPH	162	MSC 0026888-0026891	HW	A	D	D	D	D	-
CPH	163	MSC 0080427-0080430		A	OBJ	OBJ	OBJ	OBJ	A
CPH	164	MSC 0045133-00445139		A	OBJ	OBJ	OBJ	OBJ	A
CPH	165			D	D	D	D	D	D
CPH	166	MSC 0045102-00445108		A	OBJ	OBJ	OBJ	OBJ	A
CPH	167			D	D	D	D	D	D
CPH	168			D	D	D	D	D	D
CPH	169	MSC 0044556-0044573		A	OBJ	OBJ	OBJ	OBJ	A
CPH	170	MSC 0042538-0042540		W/O	D	D	D	D	D
CPH	171			D	D	D	D	D	D
CPH	172	MSC 0044462		A	OBJ	OBJ	OBJ	OBJ	A
CPH	173	MSC 0043129		A	OBJ	OBJ	OBJ	OBJ	A
CPH	174	MSC 0042570		A	OBJ	OBJ	OBJ	OBJ	A
CPH	175			D	D	D	D	D	D
CPH	176			D	D	D	D	D	D
CPH	177	MSC 0085779		A	OBJ	OBJ	OBJ	OBJ	A
CPH	178	MSC 0084771-0084778		A	OBJ	OBJ	OBJ	OBJ	A
CPH	179	CPH 0635892-0635895		A	OBJ	OBJ	OBJ	OBJ	A
CPH	180	MSC 0029194-0029196		A	OBJ	OBJ	OBJ	OBJ	A
CPH	181	MSC 0006284-0006335		A	D	D	D	D	D
CPH	182	MSC 0004703-0004723		A	D	D	D	D	D
CPH	183	MSC 0063286-006330		A	OBJ	OBJ	OBJ	OBJ	A
CPH	184			D	D	D	D	D	D
CPH	186	MSC 0041901-0041912		A	OBJ	OBJ	OBJ	OBJ	A
CPH	187	MSC 0041870-0041888		A	OBJ	OBJ	OBJ	OBJ	A
CPH	187-A	CPH 0254621-0254640		A	D	D	D	D	D
CPH	188	CPH 1408952-1408956		A	OBJ	OBJ	OBJ	OBJ	A
CPH	189	CPH 0642933-0642937		A	OBJ	OBJ	OBJ	OBJ	A
CPH	190			D	D	D	D	D	D
CPH	194			D	D	D	D	D	D
CPH	195	MSC 0040237-0040305		A	D	D	D	D	D
CPH	196	MSC 0085612-0085613		A	OBJ	OBJ	OBJ	OBJ	A
CPH	200	CPH 0472360-0472361	HW	A	D	D	D	D	-
CPH	202	MSC 0003931	HW	A	OBJ	OBJ	OBJ	OBJ	A

A = Admit
D = Deny

HW = Handwritten Marginalia
W/O = Morgan Stanley is without sufficient information to Admit or Deny

OBJ = Object
I = Document is incomplete

Response to CPH 6th Request for Admission:
Table A

CPH	203	MSC 0042314-0042327		A	OBJ	OBJ	OBJ	OBJ	A
CPH	204	MSC 0042328-0042341		A	OBJ	OBJ	OBJ	OBJ	A
CPH	205	MSC 0004005-0004007		W/O	D	D	D	D	D
CPH	207	CPH 0471614-0471629		A	OBJ	OBJ	OBJ	OBJ	A
CPH	208	CPH 0632817-0632905		A	D	D	D	D	-
CPH	209	CPH 1348404-1348475		A	D	D	D	D	D
CPH	210	CPH 0632981-0632981		A	D	D	D	D	D
CPH	211	CPH 0633012-0633049		A	D	D	D	D	D
CPH	212	CPH 1257349-1257349		A	OBJ	OBJ	OBJ	OBJ	A
CPH	213	MSC 0029159-0029162		A	D	D	D	D	D
CPH	214	CPH 1257359		A	OBJ	OBJ	OBJ	OBJ	A
CPH	215			A	D	D	D	D	D
CPH	217	MSC 0045665-0045758		A	D	D	D	D	D
CPH	217-A	MSC 0080431-0080434		A	OBJ	OBJ	OBJ	OBJ	A
CPH	218	MSC 0004724-0004728	HW	A	D	D	D	D	D
CPH	218-A	MSC 0045760-0045761		A	OBJ	OBJ	OBJ	OBJ	A
CPH	219	MSC 0036347-0036349		A	OBJ	OBJ	OBJ	OBJ	A
CPH	220	CPH 0467090-0467126		A	D	D	D	D	D
CPH	221	MSC 0045474-0045475		A	OBJ	OBJ	OBJ	OBJ	A
CPH	222	MSC 0003431-0003464		A	OBJ	OBJ	OBJ	OBJ	A
CPH	223	MSC 0042482-0042483		A	OBJ	OBJ	OBJ	OBJ	A
CPH	224			D	D	D	D	D	D
CPH	225	CPH 0147626-0147627		A	D	D	D	D	-
CPH	226	CPH 0147608-0147616		A	D	D	D	D	-
CPH	227	CPH 0639174-0639182		A	D	D	D	D	-
CPH	228	MSC 0085750-0085751		A	OBJ	OBJ	OBJ	OBJ	A
CPH	229	MSC 0085763-0085765		A	OBJ	OBJ	OBJ	OBJ	A
CPH	230	CPH 0635890-0635891		A	D	D	D	D	D
CPH	232	MSC 0085589-0085609		A	OBJ	OBJ	OBJ	OBJ	A

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Response to CPH 6th Request for Admission:
Table A

CPH	233	MSC 0085274-0085283		A	OBJ	OBJ	OBJ	OBJ	A
CPH	234	MSC 0084771-0084778		A	OBJ	OBJ	OBJ	OBJ	A
CPH	235	MSC 0085726-0085727		A	OBJ	OBJ	OBJ	OBJ	A
CPH	238	CPH 1412552-1412570	HW	A	D	D	D	D	D
CPH	242	MSC 0045156		A	OBJ	OBJ	OBJ	OBJ	A
CPH	243	MSC 0026587-0026588	HW	A	D	D	D	D	D
CPH	244	MSC 0031982-0031984		A	OBJ	OBJ	OBJ	OBJ	A
CPH	245	MSC 0043210		A	OBJ	OBJ	OBJ	OBJ	A
CPH	246	CPH 0473192-0473193	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	247	MSC 0004132-0004143	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	248	MSC 0085175-0085181		A	OBJ	OBJ	OBJ	OBJ	A
CPH	249	MSC 0036633-0036634		A	OBJ	OBJ	OBJ	OBJ	A
CPH	250	CPH 0146467		A	OBJ	OBJ	OBJ	OBJ	A
CPH	251	MSC 0005547-0005599		A	D	D	D	D	D
CPH	252	MSC 0019638-0019725		A	D	D	D	D	D
CPH	255	MSC 0045317-0045318		A	OBJ	OBJ	OBJ	OBJ	A
CPH	256	MSC 0019097-0019114		A	D	D	D	D	D
CPH	257	FUNB 021139		A	D	D	D	D	D
CPH	258	FUNB 021243		A	D	D	D	D	D
CPH	260	CPH 0485371-0485376		A	D	D	D	D	D
CPH	261	MSC 0024383-0024451		A	D	D	D	D	D
CPH	262	MSC 0018660-0018725	HW	W/O	D	D	D	D	D
CPH	263	MSC 0018730-0018731	HW	W/O	D	D	D	D	D
CPH	264	MSC 0024863		W/O	D	D	D	D	D
CPH	265	MSC 0024864-0024866		W/O	D	D	D	D	D
CPH	266	CPH 1349253-1349282	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	272	CPH 0473148-0473165		A	OBJ	OBJ	OBJ	OBJ	A
CPH	273	MSC 0023225-0023229		A	D	D	D	D	-
CPH	274	MSC 0054921-0054925		A	D	D	D	D	-
CPH	275	MSC 0001575-0001579		A	OBJ	OBJ	OBJ	OBJ	A

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Response to CPH 6th Request for Admission:
Table A

CPH	277	MSC 0004673-0004702		A	OBJ	OBJ	OBJ	OBJ	A
CPH	278	MSC 0036700-0036720		A	D	D	D	D	A - HW D - Balance
CPH	279	MSC 0006375-0006432		A	OBJ	OBJ	OBJ	OBJ	A
CPH	280	MSC 0018885-0018942		A	OBJ	OBJ	OBJ	OBJ	A
CPH	281	MSC 0059244-0059266		A	OBJ	OBJ	OBJ	OBJ	A
CPH	284	MSC 0025887		A	D	D	D	D	-
		MSC 0015896-0015970		W/O	D	D	D	D	-
		MSC 0015626-0015703	Incomp.	W/O	D	D	D	D	-
		MSC 0020477-0020552		W/O	D	D	D	D	-
		MSC 0061553-0061621		W/O	D	D	D	D	-
		MSC 0061191-0061251	Incomp.	W/O	D	D	D	D	-
		MSC 0067528-0067602		W/O	D	D	D	D	-
		MSC 0072800-0072863	Incomp.	W/O	D	D	D	D	-
		MSC 0073484-0073562		W/O	D	D	D	D	-
		MSC 0067258-0067341		W/O	D	D	D	D	-
		MSC 0087405-0087490		W/O	D	D	D	D	-
		MSC 0070445-0070542		W/O	D	D	D	D	-
		MSC 0086753-0086799	Incomp.	W/O	D	D	D	D	-
		MSC 0092043-0092076		W/O	D	D	D	D	-
		MSC 0092077-0092111		W/O	D	D	D	D	-
		MSC 0092032-0092042		W/O	D	D	D	D	-
		MSC 0092146-0092177		W/O	D	D	D	D	-
		MSC 0092178-0092188		W/O	D	D	D	D	-
		MSC 0092112-0092133		W/O	D	D	D	D	-
		MSC 0092134-0092145		W/O	D	D	D	D	-

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Response to CPH 6th Request For Admission: Table B

Bates	RFA 6	RFA 7
MSC 0084771-0084778	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084779-0084792	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084793-0084811	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084812-0084813	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084814-0084820	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084821-0084826	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084827-0084832	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084833-0084834	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084835-0084844	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084845-0084859	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084860-0084861	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084862-0084870	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084871-0084887	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084888-0084905	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084906-0084910	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084911-0084926	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084927-0084946	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084947-0084960	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084961-0084975	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084976-0084994	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084995-0085012	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085013-0085033	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085034-0085055	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085056-0085057	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085058-0085075	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085076-0085098	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085099-0085108	A (per 11/5 Order)	A (per 11/5 Order)

A = Admit

Response to CPH 6th Request For Admission: Table B

MSC 0085109-0085122	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085123-0085136	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085137-0085153	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085154-0085174	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085175-0085191	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085192-0085206	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085207-0085231	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085232-0085250	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085251-0085273	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085274-0085297	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085298-0085314	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085315-0085333	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085334-0085351	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085352-0085357	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085358-0085373	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085374-0085390	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085391-0085402	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085403-0085419	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085420-0085435	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085436-0085452	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085453-0085471	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085472-0085493	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085494-0085514	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085515-0085524	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085525-0085540	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085541-0085557	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085558-0085571	A (per 11/5 Order)	A (per 11/5 Order)

A = Admit

Response to CPH 6th Request For Admission: Table B

MSC 0085572-0085588	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085589-0085609	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085610-0085622	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085623-0085642	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085643-0085660	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085661-0085663	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085664-0085684	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085685-0085699	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085700-0085721	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085722-0085747	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085748-0085760	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085761-0085776	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085777-0085783	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094003-0094007	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094008-0094010	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094011-0094012	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094013-0094015	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094016-0094018	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094019-0094020	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094021-0094022	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094023-0094025	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094026-0094028	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094029-0094032	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0095652-0095653	A (per 11/5 Order)	A (per 11/5 Order)

A = Admit

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

AGREED ORDER GRANTING MORGAN STANLEY'S MOTION TO EXTEND EXPERT DISCOVERY AND SUMMARY JUDGMENT DEADLINES BY ONE WEEK

THIS CAUSE having come before the Court on November 23, 2004 upon Morgan Stanley's Motion to Extend Expert Discovery and Summary Judgment Deadlines by One Week, and the Court having been advised of the agreement between the parties, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that:

1. Morgan Stanley's Motion to Extend Expert Discovery and Summary Judgment Deadlines by One Week is GRANTED in part.

2. The Court's Order of October 14, 2004 shall be amended as follows:

Initial Expert Disclosures	December 7, 2004
Responsive Expert Disclosures	December 17, 2004
Rebuttal Expert Disclosures	December 28, 2004
Depositions of Experts	December 28, 2004-January 14, 2005
Summary Judgment Briefs	December 10, 2004
Summary Judgment Response Briefs	December 23, 2004

Summary Judgment Reply Briefs January 6, 2005

All documents listed above shall be served on or before 5:00 p.m. via facsimile except for responsive expert disclosures on December 17, 2004 which shall be served on or before 3:00 p.m. via facsimile.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this ____ day of November, 2004.

SIGNED & DATED
NOV 23 2004
JUDGE ELIZABETH T. MAASS

ELIZABETH T. MAASS
Circuit Court Judge

Copies furnished to:

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Sherry, Bridget E.

From: DC Sharescan [DSharescan@kirkland.com]
Sent: Tuesday, November 30, 2004 11:21 AM
To: #MS-Coleman - K&E
Subject: Scanned document <2 pages> -- 11/30/2004 11:21:00 AM

20041123 Agreed Order Granting...

(See attached file: 20041123 Agreed Order Granting MS's Motion to Extend Expert Discovery and Summary Judgment Deadlines by One Week.pdf)

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.'S MOTION FOR A FINDING OF CONTEMPT AND FOR OTHER RELIEF DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, respectfully requests that this Court enter an Order finding Morgan Stanley in contempt for its disregard of a discovery Order that this Court entered on November 17, 2004. In support of this motion, CPH states as follows:

1. This motion arises as a result of Morgan Stanley's disregard of this Court's November 17, 2004 Order denying Morgan Stanley's motion for protective order concerning CPH's sixth set of requests for admission and CPH's notice of taking deposition dated October 22, 2004 — discovery that seeks authenticity, business record, and authorship information concerning certain specified documents. *See* Ex. A. Because the original scheduled date for the deposition had lapsed while Morgan Stanley's motion was pending, on November 22, CPH renoticed the deposition to take place on Wednesday, November 24 — the last day to take fact discovery. *See* Ex. B.

2. Thereafter, Morgan Stanley objected to CPH's deposition notice, contending that the notice did not give adequate time before the deposition and was otherwise unreasonable. *See* Ex. C. Morgan Stanley also refused to produce witnesses pursuant to several other deposition notices — effectively helping itself to the extension of the discovery cut-off that this Court repeatedly has denied Morgan Stanley.

3. The need for the deposition at issue — and for appropriate sanctions — is underscored by Morgan Stanley's Court-ordered response to CPH's sixth set of requests for admission — requests that sought admissions on authenticity, business record, and authorship issues. *See* Ex. D. In that response, which Morgan Stanley served on November 22, 2004, Morgan Stanley denied or objected to every prong of the business records exception for every document that CPH identified (with the exception of the personnel evaluations, as to which this Court has entered an Order on the business records issue). Morgan Stanley, however, did not explain the basis for any of its myriad objections and denials.

4. Morgan Stanley's refusal to produce a witness to address authenticity, business record, and authorship issues before the discovery cut-off constitutes a willful disregard of this Court's November 17 Order denying Morgan Stanley's motion for protective order. Consequently, CPH respectfully requests that this Court find Morgan Stanley in contempt, direct Morgan Stanley to provide a deposition witness immediately, and to enter an appropriate sanction for Morgan Stanley's deliberate disregard of this Court's Order.

Dated: November 23, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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#1182980

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 23rd day of Nov, 2004.

JACK SCAROLA
Florida Bar No.: 169440
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Barnhart & Shipley, P.A.
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and MacAndrews & Forbes Holdings, Inc.

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON MORGAN STANLEY & CO. INC.'S MOTION FOR PROTECTIVE ORDER CONCERNING COLEMAN (PARENT) HOLDINGS INC.'S SIXTH SET OF REQUESTS FOR ADMISSION AND CPH'S NOTICE OF TAKING DEPOSITION DATED OCTOBER 22, 2004

THIS CAUSE came before the Court November 16, 2004 on Morgan Stanley & Co. Inc.'s Motion for Protective Order Concerning Coleman (Parent) Holdings Inc.'s Sixth Set of Requests for Admission and CPH's Notice of Taking Deposition Dated October 22, 2004. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Morgan Stanley & Co. Inc.'s Motion for Protective Order Concerning Coleman (Parent) Holdings Inc.'s Sixth Set of Requests for Admission and CPH's Notice of Taking Deposition Dated October 22, 2004 is Denied.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 17 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
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West Palm Beach, FL 33401

Thomas D. Yannucci
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Washington DC 20005

EXHIBIT
tabbies
A

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

AMENDED NOTICE OF TAKING DEPOSITION

To:

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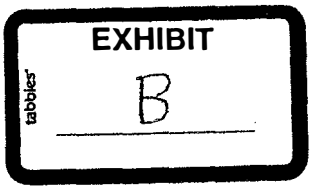
West Palm Beach, FL 33401

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings, Inc. will take the deposition upon oral examination of the following parties and witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co. on topics identified on Exhibit A.	November 24, 2004 at 9:30 a.m.

The deposition will be recorded by stenographic means at the offices of Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017-3004. The deposition will be taken before a person authorized to administer oaths and will continue day to day until complete.



I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to all counsel on the attached Service List, this 22nd day of November, 2004.

Dated: November 22, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: Deirdre Connell
One of Its Attorneys

Jerold S. Solovy
Michael T. Brody
Deirdre E. Connell
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Jack Scarola
SEARCY DENNEY SCAROLA BARNHART
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EXHIBIT A

You are hereby requested to respond to the following topics pursuant to the definitions set forth below.

RULE 1.310 TOPICS

1. The authenticity, source, creation, use, maintenance, and business purpose of documents produced and/or authored by Morgan Stanley and/or MSSF, bearing the following deposition exhibit number and/or Bates numbers, and information contained therein:

DEP EXHIBIT #	BATES RANGE
	MSC 0015896-0015970
	MSC 0015626-0015703
	MSC 0020477-0020552
	MSC 0061553-0061621
	MSC 0061191-0061251
	MSC 0067528-0067602
	MSC 0072800-0072863
	MSC 0073484-0073562
	MSC 0067258-0067341
	MSC 0087405-0087490
	MSC 0070445-0070542
	MSC 0086753-0086799
	MSC 0092043-0092076
	MSC 0092077-0092111

DEP EXHIBIT #	BATES RANGE
	MSC 0092146-0092177
	MSC 0092032-0092042
	MSC 0092178-0092188
	MSC 0092112-0092133
	MSC 0092134-0092145
CPH 003	MSC 0080435-0080437
CPH 004	MSC 0031171-0031176
CPH 005	MSC 0031177-0031220
CPH 006	MSC 0080438-0080439
CPH 009	CP 026286-026370
CPH 010	CP 033169-033240
CPH 011	SASMF 10699-10705
CPH 012	CPH 0012526-0012527
CPH 013	CPH 0635991-0635992
CPH 014	MSC 0016944-0016945

DEP EXHIBIT #	BATES RANGE
CPH 016	MSC 0028858
CPH 017	MS 00375-00381
CPH 024	DPW000001 - 000002
CPH 025	N/A
CPH 026	CPH1412961-1413007
CPH 027	MSC 0026219
CPH 028	MSC 0081555-0080760
CPH 029	MSC 0080440 - 0081556
CPH 031	CPH0635893
CPH 032	CPH0635894 - 0635895
CPH 033	MSC 0029176
CPH 034	CPH0520973 - 0520974
CPH 035	CPH1257351
CPH 036	CPH0639323 - 0639327
CPH 037	MSC 0045317 - 0045318

DEP EXHIBIT #	BATES RANGE
CPH 038	MSC 0041766 - 0041858
CPH 061	CPH0284977-0285008
CPH 062	CPH0283484
CPH 064	MSC 0028423
CPH 065	CPH0088703
CPH 066	CPH0038717
CPH 067	CPH0063827-0063833
CPH 068	MSC 0003995-0004001
CPH 069	MSC 0003894-0003930
CPH 070	SB237825-237830
CPH 071	MSC 0005984-0005995
CPH 072	MSC 0064865-0064866
CPH 074	MSC 0080356-0080358
CPH 075	SB0018202-0018288
CPH 076	MSC 0025829-0025886
CPH 078	MSC 0039543
CPH 079	MSC 0031855 – 0031856
CPH 080	CPH0465134
CPH 081	MSC 0036393 – 0036395
CPH 081A	N/A
CPH 082	CPH0469477-0469561
CPH 083	N/A

DEP EXHIBIT #	BATES RANGE
CPH 084	MSC 0033255 – 033263
CPH 084A	N/A
CPH 085	MSC 0036347 – 0036349
CPH 086	MSC 0045112 - 0045113
CPH 087	MSC 0035967-0035969
CPH 088	MSC 0031791 – 0031799
CPH 089	MSC 0083960 – 0084026
CPH 090	CPH1332631 – 1335633
CPH 091	N/A
CPH 092	MSC 0003389 - 0003415
CPH 093	N/A
CPH 094	N/A
CPH 095	MSC 0036112 – 0036113
CPH 096	CPH0472488 – 0472496
CPH 097	MSC 0033910 – 0033911
CPH 098	CPH0482089 – 0482098
CPH 099	N/A
CPH 100	MSC 0062860 – 0062896
CPH 110	CPH0038670 – 0038676
CPH 111	CPH0038700 – 0038706
CPH 112	CPH0129613 – 0129616
CPH 115	CPH0038700 – 0038706

DEP EXHIBIT #	BATES RANGE
CPH 117	CPH0038523 – 0038524
CPH 120	CPH0012522 – 0012524
CPH 121	CPH1145796
CPH 122	CPH0039327, CPH0038707
CPH 122	CPH0039327, CPH0038707
CPH 124	CPH0012464 – 0012466
CPH 125	MSC 0004673 - 0004702
CPH 126	MSC 0042248 - 0042275
CPH 128	MSC 0029199 - 0029201
CPH 129	MSC 000513 - 000541
CPH 130	CPH0251869 – 0251889
CPH 131	CPH0251890 – 0251985
CPH 132	CPH0636135 – 0636136
CPH 133	MSC 0059244 – 0059266
CPH 135	MSC 0063735 – 0063804
CPH 136	MSC 0083748 – 0083904
CPH 137	MSC 0039543
CPH 138	CPH1411216 – 1411300
CPH 139	MSC 0026540 – 0026544
CPH 140	CPH0483399 – 0483407
CPH 141	CPH 0483341 – 0483350
CPH 142	CPH 0253547 -- 0253555

DEP EXHIBIT #	BATES RANGE
CPH 143	CPH1026942-1026953
CPH 144	MSC 0016944
CPH 145	MSC 0028214 – 0028271
CPH 146	MSC 0080325 -- 0080333
CPH 148	MSC 0047892
CPH 149	MSC 0047893
CPH 150	CPH0470006-04700016
CPH 151	MSC 0065651 – 0065784
CPH 152	LAB 000043
CPH 153	MSC 0018885 – 0018942
CPH 154	CPH1258265 -- 1258266
CPH 155	CPH1346133 -- 1346250
CPH 156	CPH1346276 -- 1346342
CPH 157	MSC 0018702 -- 0018703
CPH 160	MSC 0003143
CPH 162	MSC 0026888 -- 0026891
CPH 163	MSC 0080427 -- 0080430
CPH 164	MSC 0045133-0045139
CPH 165	N/A
CPH 166	MSC 0045102-0045108
CPH 167	N/A
CPH 168	N/A

DEP EXHIBIT #	BATES RANGE
CPH 169	MSC 0044556-0044573
CPH 170	MSC 0042538-0042540
CPH 171	N/A
CPH 172	MSC 0044462
CPH 173	MSC 0043129
CPH 174	MSC 0042570
CPH 175	N/A
CPH 176	N/A
CPH 177	MSC 0085779
CPH 178	MSC 0084771-0084778
CPH 179	CPH0635892-0635895
CPH 180	MSC 0029194-0029196
CPH 181	MSC 0006284-0006335
CPH 182	CPH 1089795-1089815
CPH 183	MSC 0063286-0063330
CPH 184	N/A
CPH 186	MSC 0041901-0041912
CPH 187	MSC 0041870-0041888
CPH 187A	CP0254621-0254640
CPH 188	CPH1408952-1408956
CPH 189	CPH0642933-0642937
CPH 190	N/A

DEP EXHIBIT #	BATES RANGE
CPH 194	N/A
CPH 195	MSC 0040237-0040305
CPH 196	MSC 085612-0085613
CPH 200	CPH0472360-0472361
CPH 202	MSC 0003931
CPH 203	MSC 0042314-0042327
CPH 204	MSC 0042328-0042341
CPH 205	MSC 0004005-004007
CPH 207	CPH0471614-0471629
CPH 208	CPH632817-0632905
CPH 209	CPH1348404-1348475
CPH 210	CPH0632981
CPH 211	CPH0633012-0633049
CPH 212	CPH1257349
CPH 213	MSC 0029159-0029162
CPH 214	CPH127359
CPH 215	N/A
CPH 217	MSC 0045665-0045758
CPH 217A	MSC 0080431-0080434
CPH 218	MSC 0004724-0004728
CPH 218A	MSC 0045760-0045761
CPH 219	MSC 0036347-0036349

DEP EXHIBIT #	BATES RANGE
CPH 220	CPH0467090-0467126
CPH 221	MSC 0045474-0045475
CPH 222	MSC 0003431-0003464
CPH 223	MSC 0042482-0042483
CPH 224	N/A
CPH 225	CPH 0147626-0147627
CPH 226	CPH 0147607-0147616
CPH 227	CPH 0639174-0639182
CPH 228	MSC 0085750-0085751
CPH 229	MSC 0085763-0085765
CPH 230	CPH 0635890-0635891
CPH 232	MSC 0085589-0085609
CPH 233	MSC 0085274-0085283
CPH 234	MSC 0084771-0084778
CPH 235	MSC 0085726-0085727
CPH 238	CPH 1412552-1412570
CPH 242	MSC 0045156
CPH 243	MSC 0026587-0026588
CPH 244	MSC 0031982-0031984
CPH 245	MSC 0043210
CPH 246	CPH 0473192-0473193
CPH 247	MSC 0004132-0004143

DEP EXHIBIT #	BATES RANGE
CPH 248	MSC 0085175-0085181
CPH 249	MSC 0036633-0036634
CPH 250	CPH 0146467
CPH 251	MSC 0005547-0005599
CPH 252	MSC 0019638-0019725
CPH 255	MSC 0045317-0045318
CPH 256	MSC 0019097-0019116
CPH 257	FUNB 021139
CPH 258	FUNB 021243
CPH 260	CPH 0485371-0485376
CPH 261	MSC 0024383-0024451
CPH 262	MSC 0018660-0018725 *(18687-88)**
CPH 263	MSC 0018730-0018731
CPH 264	MSC 0024863
CPH 265	MSC 0024864-0024866
CPH 266	CPH 1349253-1349282
CPH 272	CPH0473148-0473165
CPH 273	MSC 0023225-0023229
CPH 274	MSC 0054921-0054925
CPH 275	MSC 0001575-0001579
CPH 277	MSC0004673-0004702
CPH 278	MSC 0036700-0036720

DEP EXHIBIT #	BATES RANGE
CPH 279	MSC 006375-006432
CPH 280	MSC 0018885-0018942
CPH 281	MSC 0059244-0059266
CPH 284	MSC 0025887
MS 013	MSC 0027828-0027829
MS 040	MSC 0000001-0000175
MS 048	CPH 0041655-0041661
MS 057	FUNB 016564-016567
MS 079	CPH 0467007
MS 080	CPH 1426289-1426296
MS 081	CPH 1421814-1421817
MS 082	CPH 1406962-1406964
MS 083	CPH 1427250-1427253
MS 085	CPH 1411216-1411300
MS 115	MSC 0063805-0063811
MS 166	CPH 1326487-1326662
MS 175	CPH 0482090-0482098
MS 182	CPH 1412533-1412551
MS 183	CPH 1109095-1109115
MS 189	CPH 1399821-1399822
MS 194	CPH 1185762-1185784
MS 238	CPH 1418423-1418499

DEFINITIONS

1. "CPH" means Coleman (Parent) Holdings, Inc., its predecessors, successors, subsidiaries, and present and former officers, directors, and employees.

2. "Morgan Stanley" means Morgan Stanley & Co., Inc. and any of its direct or indirect parents, affiliates, subsidiaries, and present and former officers, directors, partners, employees, representatives, and agents.

3. "MSSF" means Morgan Stanley Senior Funding, Inc. and any of its direct or indirect parents, affiliates, subsidiaries, and present and former officers, directors, partners, employees, representatives, and agents.

4. "Documents" shall be given the broad meaning provided in CPLR 3120 and refers to any form or means, whether physical, visual, or electronic, in or by which words, numbers, or ideas are recorded or preserved, whether fixed in tangible medium or electronically stored, including any and all drafts of any final document. The word "documents" shall include, by way of example and not by way of limitation, all of the following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, notes, messages, reports, studies, press releases, comparisons, books, accounts, checks, audio and video recordings and transcriptions thereof, pleadings, testimony, articles, bulletins, pamphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk calendars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, minutes for meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements,

memoranda of understanding, letters of intent, computer tapes, computer drives or memories, computer diskettes or disks, e-mail, CD-ROMs, or any other tangible thing on which any handwriting, typing, printing, photostatic, electronic, or other form of communication or information is recorded or reproduced, together with all notations on any of the foregoing, all originals, file copies, or other unique copies of the foregoing, and all versions or drafts thereof, whether used or not.

5. "You" or "Your" means Morgan Stanley and/or MSSF and any of its present and former partners, employees, representatives, and agents.

SERVICE LIST

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November 22, 2004

BY FACSIMILE

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: ***Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.***

Dear Mike:

I write in response to your multiple deposition notices and (at least) seven letters sent today while I was defending the individual and corporate representative depositions of Mr. Petrick and Mr. Bemis was conducting the deposition of Mr. Freed.

On Friday afternoon, Joe Ianno and I called you and Jeff Shaw from New York to discuss the depositions that would be going forward during the week of November 22. We went through the schedule of depositions each side could reasonably complete, and I repeated our prior offer to provide written responses to the outstanding Rule 1.310 deposition topics. On Sunday evening, I confirmed our Friday conversation in a letter and told you that CPH's deposition notices for the additional depositions you sent on Friday, November 19 (while we were flying back) were served well after 6 p.m. EST, and that your two-day notice for those depositions was not reasonable notice under Florida law.

Today you have served Morgan Stanley with at least two ***additional*** notices of deposition for Wednesday, at 9:30 a.m. in New York, the day before Thanksgiving.

- A Rule 1.310(b)(6) deposition on the CPH 7th Request for Production of Documents, to which Morgan Stanley has not responded because the request was facially improper when filed under the section 768.72(1), Fla. Stat.

- A Rule 1.310(b)(6) deposition of Morgan Stanley on the "authenticity, use, maintenance, and business purpose" of over 225 documents, consisting of thousands of pages.

EXHIBIT
tabbies
C

In addition to these deposition notices, you "offered" to provide Mr. Fasman for a deposition on Wednesday at 9:30 a.m. in response to Morgan Stanley's notice of deposition for November 10. CPH declined to appear for the deposition on that date and did not file a motion for protective order. Now, you suggest that both parties proceed with inefficient document custodian depositions on Wednesday, even though Morgan Stanley just served its responses to the 6th RFAs on that subject today, and CPH has not yet served its written responses regarding documents. That is unreasonable.

Based on your recent letters and deposition notices, this is the schedule that you propose for this week:

Deponent	Requested	Day	Location	Start
Todd Freed	CPH	November 22	Skadden	9:30 a.m.
Mitch Petrick	CPH	November 22	Esquire	10:15 a.m.
Rule 1.310 (10/8 notice Ex. A Topics 1-4)	CPH	November 22	Esquire	10:15 a.m.
Rule 1.310 (11/22 notice Ex. A re Sunbeam loan history, topics 1 and 2)	CPH[1]	November 22	Esquire	10:15 a.m.
Ruth Porat	CPH	November 23	Esquire	8:00 a.m.
Rule 1.310 (10/18 notice Ex. D Topics 1-3)	CPH	November 23	Esquire	8:00 a.m.
Alison Amorison	MS	November 23	Skadden	9:30 a.m.
Rule 1.310 (11/22 notice Ex. A re punitive damages)	CPH	November 24	Esquire	9:30 a.m.
Rule 1.310 (11/22 notice Ex. A re documents)	CPH	November 24	Esquire	9:30 a.m.
Rule 1.310 (11/22 notice Ex. A re Debenture trading, three topics)	CPH	November 24	Esquire	9:30 a.m.
Rule 1.310 (11/22 notice Ex. A re Coleman securities, 3 topics)	CPH	November 24	Esquire	9:30 a.m.

[1] The notice served after hours on Friday night for this deposition was issued by MAFCO, which is not a party to this litigation. The replacement notice you served for this deposition on Monday at 12:09 a.m. EST was faxed approximately an ***hour*** after the deposition was, according you, supposed to begin.

Rule 1.310(b)(6) (Corporate representative re: CPH documents)	MS	November 24	Somewhere in NYC	9:30 a.m.
Rule 1.310(b)(6) (Corporate representative on credit agreements).	MS	November 24	Somewhere in NYC	9:30 a.m.

Your purported attempts to schedule, on at most two days notice, ***six*** depositions in New York on Wednesday, November 24 2004, the day before Thanksgiving, for an action that your client chose to file in Florida, is unworkable We will proceed with the deposition schedule set forth in my November 21 letter. We will continue to work together in good faith to schedule the remaining discovery that needs to be completed.

Sincerely,

Thomas A. Clare

Thomas A. Clare

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark C. Hansen, Esq. (by facsimile)

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY & CO. INCORPORATED'S RESPONSES AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC.'S SIXTH SET OF REQUESTS FOR ADMISSION

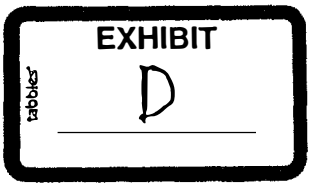
Defendant Morgan Stanley & Co. Incorporated ("MS & Co."), by its attorneys and pursuant to Florida Rule of Civil Procedure 1.370, hereby responds and objects to Coleman (Parent) Holdings Inc.'s ("CPH") Sixth Set of Requests for Admission.

INITIAL OBJECTIONS

1. MS & Co. objects to CPH's Sixth Set of Requests for Admission, including all Definitions, to the extent that they purport to impose upon MS & Co. any requirements that exceed or are otherwise inconsistent with the Florida Rules of Civil Procedure or any other applicable rule or court order.

2. MS & Co. objects to CPH's Sixth Set of Requests for Admission to the extent that they seek information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable privilege, doctrine, immunity or rule.

3. MS & Co. objects to the definition of "Morgan Stanley" to the extent that it includes MS & Co.'s counsel in this litigation and entities not a party to this action. Specifically, MS & Co. interprets these definitions to exclude Kirkland & Ellis LLP, Carlton Fields, P.A.,



Kellogg Huber, Hansen, Todd & Evans, PLLC and affiliates, parents, and others not a party to this action.

4. MS & Co. objects to the Requests for Admission as unduly burdensome, abusive, and vexatious, since many of them are duplicative and constitute an unnecessary waste of time and concern factual allegations uniquely within the possession of CPH, MAFCO, or third parties, which could be confirmed with less expense and burden on the parties through other techniques of discovery

5. In the instances where Morgan Stanley admits to Request One and Request Eight for a document, Morgan Stanley objects to the remaining Requests related to the same document because such Requests are redundant, unduly burdensome, and harassing.

6. In the instances where Morgan Stanley has noted that a document is incomplete, the responses below pertain only to the portion of the document identified in the respective Requests and Morgan Stanley reserves all other objections.

7. MS & Co. incorporates, as though fully set forth therein, these General Objections into each of the Responses set forth below.

RESPONSES

1. Admit that the documents listed in the attached Exhibits A and B are what they purport to be or are otherwise true and authentic copies of original documents within the meaning of Florida Evidence Code § 90.901.

RESPONSE: See the attached Table A. In the instances where there is a notation that the document bears handwritten marginalia ["HW"], Morgan Stanley is without sufficient information to make any admission and therefore denies the Request with respect to the handwritten marginalia.

2. Admit that the documents listed in the attached Exhibits A and B were made by Morgan Stanley at or near the time of the event recorded within the meaning of Florida Evidence Code § 90.803(6)(a).

RESPONSE: See the attached Table A. In the instances where there is a notation that the document bears handwritten marginalia, Morgan Stanley is without sufficient information to make any admission and therefore denies the Request with respect to the handwritten marginalia.

3. Admit that the documents listed in the attached Exhibits A and B were made by Morgan Stanley by or from information transmitted by a person with knowledge within the meaning of Florida Evidence Code § 90.803(6)(a).

RESPONSE: See the attached Table A. In the instances where there is a notation that the document bears handwritten marginalia, Morgan Stanley is without sufficient information to make any admission and therefore denies the Request with respect to the handwritten marginalia.

4. Admit that the documents listed in the attached Exhibits A and B were kept by Morgan Stanley in the course of a regularly conducted business activity within the meaning of Florida Evidence Code § 90.803(6)(a).

RESPONSE: See the attached Table A. In the instances where there is a notation that the document bears handwritten marginalia, Morgan Stanley is without sufficient information to make any admission and therefore denies the Request with respect to the handwritten marginalia.

5. Admit that it was Morgan Stanley's regular practice to make the documents listed in the attached Exhibits A and B within the meaning of Florida Evidence Code § 90.803(6)(a).

RESPONSE: See the attached Table A. In the instances where there is a notation that the document bears handwritten marginalia, Morgan Stanley is without sufficient information to make any admission and therefore denies the Request with respect to the handwritten marginalia.

6. Admit that the documents being [sic] Bates numbers Morgan Stanley Confidential 0084771 through 0085783, and Morgan Stanley Confidential 0094003 through 0094032 were made by Morgan Stanley at or near the time of the event recorded within the meaning of Florida Evidence Code § 90.803(6)(a).

RESPONSE: See the attached Table B.

7. Admit that the documents bearing Bates numbers Morgan Stanley Confidential 0084771 through 0085783, and Morgan Stanley Confidential 0094003 through 0094032 were made by Morgan Stanley by or from information transmitted by a person with knowledge within the meaning of Florida Evidence Code § 90.803(6)(a).

RESPONSE: See the attached Table B.

8. Admit that Morgan Stanley authored the documents listed in the attached Exhibit B.

RESPONSE: See the attached Table A. In the instances where there is a notation that the document bears handwritten marginalia, Morgan Stanley is without sufficient information to make any admission and therefore denies the Request with respect to the handwritten marginalia. Morgan Stanley denies that it "authored" CPH Exhibits 9 and 138 and MS Exhibits 85 and 238 {and any other version of the February 1998 Discussion Materials provided to CPH on February 23, 1998}. Morgan Stanley admits that Sunbeam provided Morgan Stanley certain information contained in those exhibits, that other information in those

exhibits was obtained from public records, and that Morgan Stanley assisted Sunbeam in the formatting and organization of such information. For MS Exhibit 183 and CPH Exhibit 278, Morgan Stanley admits that one of its employees "authored" the handwritten notations on that document, but denies that Morgan Stanley authored the underlying printed text.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 22nd day of November, 2004.

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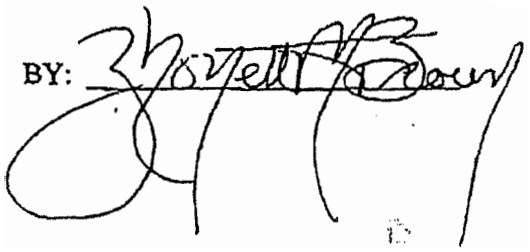
BY: 

SERVICE LIST

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Response to CPH 6th Request for Admission:
Table A

Party	Ex No.	Bates	Notes	RFA 1	RFA 2	RFA 3	RFA 4	RFA 5	RFA 8
MS	13	MSC 0027828-0027829	Incomp.	A	D	D	D	D	-
MS	40	MSC 0000001-0000175		A	D	D	D	D	D
MS	48	CPH 0041655-0041661		A	D	D	D	D	-
MS	57	FUNB016564-016567		A	OBJ	OBJ	OBJ	OBJ	A
MS	79	CPH 0467007	Incomp.	A	OBJ	OBJ	OBJ	OBJ	A
MS	80	CPH 1426289-01426296	HW	A	OBJ	OBJ	OBJ	OBJ	A
MS	81	CPH 1421814-1421817		A	OBJ	OBJ	OBJ	OBJ	A
MS	82	CPH 1406962-1406964	HW	A	OBJ	OBJ	OBJ	OBJ	A
MS	83	CPH 1427250-1427253	HW	A	OBJ	OBJ	OBJ	OBJ	A
MS	85	CPH 1411216-1411300		A	D	D	D	D	D
MS	115	MSC 0063805-0063811		A	D	D	D	D	-
MS	166	CPH 1362487-1326662		A	D	D	D	D	D
MS	175	CPH 0482090-0482098		A	OBJ	OBJ	OBJ	OBJ	A
MS	182	CPH 1412533-1412551	HW	A	D	D	D	D	D
MS	183	CPH 1109095-1109115		A	D	D	D	D	A - HW D - Balance
MS	189	CPH 1399821-1399822		A	OBJ	OBJ	OBJ	OBJ	A
MS	194	CPH 1185762-1185784		A	D	D	D	D	D
MS	238	CPH 1418423-1418499		A	D	D	D	D	D
CPH	3	MSC 0080435-0080437		A	OBJ	OBJ	OBJ	OBJ	A
CPH	4	MSC 0031171-0031176		A	OBJ	OBJ	OBJ	OBJ	A
CPH	5	MSC 0031177-0031220		A	OBJ	OBJ	OBJ	OBJ	A
CPH	6	MSC 0080438-0080439		A	OBJ	OBJ	OBJ	OBJ	A
CPH	9	CP 026286-026370		A	D	D	D	D	D
CPH	10	CP 033169-033240		A	D	D	D	D	D
CPH	11	SASMF 10699-10705		A	OBJ	OBJ	OBJ	OBJ	A
CPH	12	CPH 0012526-0012527		A	OBJ	OBJ	OBJ	OBJ	A
CPH	13	CPH 0635991-0635992		A	D	D	D	D	-

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Response to CPH 6th Request for Admission:
Table A

CPH	14	MSC 0016944-0016945		A	D	D	D	D	D
CPH	16	MSC 0028858		D	D	D	D	D	-
CPH	17	MSC 00375-00381		A	D	D	D	D	-
CPH	24	DPW000001-000002		A	D	D	D	D	D
CPH	25			A	D	D	D	D	-
CPH	26	CPH 1412961-1413007		A	OBJ	OBJ	OBJ	OBJ	A
CPH	27	MSC 0026219		A	OBJ	OBJ	OBJ	OBJ	A
CPH	28			A	OBJ	OBJ	OBJ	OBJ	A
CPH	29	MSC 0080440-0081556		A	OBJ	OBJ	OBJ	OBJ	A
CPH	31	CPH 0635893		A	OBJ	OBJ	OBJ	OBJ	A
CPH	32	CPH 0635894-0635895		A	OBJ	OBJ	OBJ	OBJ	-
CPH	33	MSC 0029176		A	OBJ	OBJ	OBJ	OBJ	A
CPH	34	CPH 0520973-0520974		A	OBJ	OBJ	OBJ	OBJ	A
CPH	35	CPH 1257351		A	OBJ	OBJ	OBJ	OBJ	A
CPH	36	CPH 0639323-0639327		A	D	D	D	D	-
CPH	37	MSC 0045317-0045318		A	OBJ	OBJ	OBJ	OBJ	A
CPH	38	MSC 0041766-0041858		A	OBJ	OBJ	OBJ	OBJ	A
CPH	61	CPH 0284977-0285008		A	OBJ	OBJ	OBJ	OBJ	A
CPH	62	CPH 0283484	HW	W/O	D	D	D	D	-
CPH	64	MSC 0028423		A	D	D	D	D	-
CPH	65	CPH 0088703		W/O	D	D	D	D	-
CPH	66	CPH 0038717		W/O	D	D	D	D	-
CPH	67	MSC 0063827-0063833		A	OBJ	OBJ	OBJ	OBJ	A
CPH	68	MSC 0003995-0004001		A	D	D	D	D	-
CPH	69	MSC 0003894-0003930		A	OBJ	OBJ	OBJ	OBJ	A
CPH	70	SB 237825-237830		A	OBJ	OBJ	OBJ	OBJ	A
CPH	71	MSC 0005984-0005995		A	OBJ	OBJ	OBJ	OBJ	A
CPH	72	MSC 0064865-0064866	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	74	MSC 0080356-0080358		A	OBJ	OBJ	OBJ	OBJ	A
CPH	75	SB 0018203-0018268	HW	A	D	D	D	D	D
CPH	76	MSC 0025829-0025886		A	OBJ	OBJ	OBJ	OBJ	A
CPH	78	MSC 0039543		A	OBJ	OBJ	OBJ	OBJ	A
CPH	79	MSC 0031855-0031856		A	OBJ	OBJ	OBJ	OBJ	A
CPH	80	CPH 0465134		A	D	D	D	D	-

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Response to CPH 6th Request for Admission:
Table A

CPH	81	MSC 0036393-0036395		A	OBJ	OBJ	OBJ	OBJ	A
CPH	81-A			D	D	D	D	D	D
CPH	82	CPH 0469477-0469561		A	OBJ	OBJ	OBJ	OBJ	A
CPH	83			D	D	D	D	D	D
CPH	84	MSC 0033255-0033263		A	OBJ	OBJ	OBJ	OBJ	A
CPH	84-A			D	D	D	D	D	D
CPH	85	MSC 0036347-0036349		A	OBJ	OBJ	OBJ	OBJ	A
CPH	86	MSC 0045112-0045113		A	OBJ	OBJ	OBJ	OBJ	A
CPH	87	MSC 0035967-0035969		A	OBJ	OBJ	OBJ	OBJ	A
CPH	88	MSC 0031791-0031799		A	OBJ	OBJ	OBJ	OBJ	A
CPH	89	MSC 0083960-0084026		A	OBJ	OBJ	OBJ	OBJ	A
CPH	90	CPH 1332631-1322633		A	OBJ	OBJ	OBJ	OBJ	A
CPH	91			D	D	D	D	D	D
CPH	92	MSC 0003389-0003415		A	OBJ	OBJ	OBJ	OBJ	A
CPH	93			D	D	D	D	D	D
CPH	94			D	D	D	D	D	D
CPH	95			A	OBJ	OBJ	OBJ	OBJ	A
CPH	96	CPH 0472488-0472496		A	OBJ	OBJ	OBJ	OBJ	A
CPH	97	MSC 0033910-0033911		A	OBJ	OBJ	OBJ	OBJ	A
CPH	98	CPH 0482089-0482098		A	OBJ	OBJ	OBJ	OBJ	A
CPH	99			D	D	D	D	D	D
CPH	100	MSC 0062860-0062896		A	OBJ	OBJ	OBJ	OBJ	A
CPH	110	CPH 0038670-0038676	HW	A	D	D	D	D	-
CPH	111	CPH 0038700-0038706	HW	A	D	D	D	D	-
CPH	112	CPH 0129613-0129616	HW	A	D	D	D	D	-
CPH	115	CPH 0038700-0038706	HW	A	D	D	D	D	-
CPH	117	CPH 0038523-0038524	HW	A	D	D	D	D	-
CPH	120	CPH 0012522-0012524		A	D	D	D	D	-
CPH	121	CPH 1145796	HW	A	D	D	D	D	-
CPH	122	CPH 0039327; CPH 0038707	HW	A	D	D	D	D	D
CPH	124	CPH 0012464-0012466		A	D	D	D	D	-
CPH	125	MSC 0004673-004702		A	OBJ	OBJ	OBJ	OBJ	A

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Response to CPH 6th Request for Admission:
Table A

CPH	126	MSC 0042248-0042275		A	OBJ	OBJ	OBJ	OBJ	A
CPH	128	MSC 0029199-0029201		A	OBJ	OBJ	OBJ	OBJ	A
CPH	129	MSC 0000513-0000541		A	OBJ	OBJ	OBJ	OBJ	A
CPH	130	CPH 0251869-0251889	HW	A	D	D	D	D	D
CPH	131	CPH 0251890-0251985		A	OBJ	OBJ	OBJ	OBJ	A
CPH	132	CPH 0636135-0636136	HW	A	D	D	D	D	-
CPH	133	MSC 0059244-0059266		A	OBJ	OBJ	OBJ	OBJ	A
CPH	135	MSC 0063735-0063804		A	D	D	D	D	D
CPH	136	MSC 0083748-0083904		A	OBJ	OBJ	OBJ	OBJ	A
CPH	137	MSC 0039543		A	OBJ	OBJ	OBJ	OBJ	A
CPH	138	CPH 1411216-1411300		A	D	D	D	D	D
CPH	139	MSC 0026540-0026544	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	140	CPH 0483399-0483407	HW	A	D	D	D	D	D
CPH	141	CPH 0483341-0483350	HW	A	D	D	D	D	D
CPH	142	CPH 0253547-0253555	HW	A	D	D	D	D	D
CPH	143	CPH 1026942-1026953		A	D	D	D	D	D
CPH	144	MSC 0016944	Incomp.	A	D	D	D	D	D
CPH	145	MSC 0028214-0028271	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	146	MSC 0080325-0080333	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	148	MSC 0047892		A	OBJ	OBJ	OBJ	OBJ	A
CPH	149	MSC 0047893		A	OBJ	OBJ	OBJ	OBJ	A
CPH	150	CPH 0470006-0470016	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	151	MSC 0065651-0065784	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	152	CPH 1145796	HW	A	D	D	D	D	-
CPH	153	MSC 0018885-0018942	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	154	CPH 1258265-1258266		W/O	D	D	D	D	-
CPH	155	CPH 1346133-1346250		A	OBJ	OBJ	OBJ	OBJ	A
CPH	156	CPH 1346276-1346342		A	D	D	D	D	D
CPH	157	MSC 0018702-0018703	HW	A	D	D	D	D	-
CPH	160	MSC 0003143	HW	A	D	D	D	D	D

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Response to CPH 6th Request for Admission:
Table A

CPH	162	MSC 0026888-0026891	HW	A	D	D	D	D	-
CPH	163	MSC 0080427-0080430		A	OBJ	OBJ	OBJ	OBJ	A
CPH	164	MSC 0045133-00445139		A	OBJ	OBJ	OBJ	OBJ	A
CPH	165			D	D	D	D	D	D
CPH	166	MSC 0045102-00445108		A	OBJ	OBJ	OBJ	OBJ	A
CPH	167			D	D	D	D	D	D
CPH	168			D	D	D	D	D	D
CPH	169	MSC 0044556-0044573		A	OBJ	OBJ	OBJ	OBJ	A
CPH	170	MSC 0042538-0042540		W/O	D	D	D	D	D
CPH	171			D	D	D	D	D	D
CPH	172	MSC 0044462		A	OBJ	OBJ	OBJ	OBJ	A
CPH	173	MSC 0043129		A	OBJ	OBJ	OBJ	OBJ	A
CPH	174	MSC 0042570		A	OBJ	OBJ	OBJ	OBJ	A
CPH	175			D	D	D	D	D	D
CPH	176			D	D	D	D	D	D
CPH	177	MSC 0085779		A	OBJ	OBJ	OBJ	OBJ	A
CPH	178	MSC 0084771-0084778		A	OBJ	OBJ	OBJ	OBJ	A
CPH	179	CPH 0635892-0635895		A	OBJ	OBJ	OBJ	OBJ	A
CPH	180	MSC 0029194-0029196		A	OBJ	OBJ	OBJ	OBJ	A
CPH	181	MSC 0006264-0006335		A	D	D	D	D	D
CPH	182	MSC 0004703-0004723		A	D	D	D	D	D
CPH	183	MSC 0063286-006330		A	OBJ	OBJ	OBJ	OBJ	A
CPH	184			D	D	D	D	D	D
CPH	186	MSC 0041901-0041912		A	OBJ	OBJ	OBJ	OBJ	A
CPH	187	MSC 0041870-0041888		A	OBJ	OBJ	OBJ	OBJ	A
CPH	187-A	CPH 0254621-0254640		A	D	D	D	D	D
CPH	188	CPH 1408952-1408956		A	OBJ	OBJ	OBJ	OBJ	A
CPH	189	CPH 0642933-0642937		A	OBJ	OBJ	OBJ	OBJ	A
CPH	190			D	D	D	D	D	D
CPH	194			D	D	D	D	D	D
CPH	195	MSC 0040237-0040305		A	D	D	D	D	D
CPH	196	MSC 0085612-0085613		A	OBJ	OBJ	OBJ	OBJ	A
CPH	200	CPH 0472360-0472361	HW	A	D	D	D	D	-
CPH	202	MSC 0003931	HW	A	OBJ	OBJ	OBJ	OBJ	A

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Response to CPH 6th Request for Admission:
Table A

CPH	203	MSC 0042314-0042327		A	OBJ	OBJ	OBJ	OBJ	A
CPH	204	MSC 0042328-0042341		A	OBJ	OBJ	OBJ	OBJ	A
CPH	205	MSC 0004005-0004007		W/O	D	D	D	D	D
CPH	207	CPH 0471614-0471629		A	OBJ	OBJ	OBJ	OBJ	A
CPH	208	CPH 0632817-0632905		A	D	D	D	D	-
CPH	209	CPH 1348404-1348475		A	D	D	D	D	D
CPH	210	CPH 0632981-0632981		A	D	D	D	D	D
CPH	211	CPH 0633012-0633049		A	D	D	D	D	D
CPH	212	CPH 1257349-1257349		A	OBJ	OBJ	OBJ	OBJ	A
CPH	213	MSC 0029159-0029162		A	D	D	D	D	D
CPH	214	CPH 1257359		A	OBJ	OBJ	OBJ	OBJ	A
CPH	215			A	D	D	D	D	D
CPH	217	MSC 0045665-0045758		A	D	D	D	D	D
CPH	217-A	MSC 0080431-0080434		A	OBJ	OBJ	OBJ	OBJ	A
CPH	218	MSC 0004724-0004728	HW	A	D	D	D	D	D
CPH	218-A	MSC 0045760-0045761		A	OBJ	OBJ	OBJ	OBJ	A
CPH	219	MSC 0036347-0036349		A	OBJ	OBJ	OBJ	OBJ	A
CPH	220	CPH 0467090-0467126		A	D	D	D	D	D
CPH	221	MSC 0045474-0045475		A	OBJ	OBJ	OBJ	OBJ	A
CPH	222	MSC 0003431-0003464		A	OBJ	OBJ	OBJ	OBJ	A
CPH	223	MSC 0042482-0042483		A	OBJ	OBJ	OBJ	OBJ	A
CPH	224			D	D	D	D	D	D
CPH	225	CPH 0147626-0147627		A	D	D	D	D	-
CPH	226	CPH 0147608-0147616		A	D	D	D	D	-
CPH	227	CPH 0639174-0639182		A	D	D	D	D	-
CPH	228	MSC 0085750-0085751		A	OBJ	OBJ	OBJ	OBJ	A
CPH	229	MSC 0085763-0085765		A	OBJ	OBJ	OBJ	OBJ	A
CPH	230	CPH 0635890-0635891		A	D	D	D	D	D
CPH	232	MSC 0085589-0085609		A	OBJ	OBJ	OBJ	OBJ	A

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Response to CPH 6th Request for Admission:
Table A

CPH	233	MSC 0085274-0085283		A	OBJ	OBJ	OBJ	OBJ	A
CPH	234	MSC 0084771-0084778		A	OBJ	OBJ	OBJ	OBJ	A
CPH	235	MSC 0085726-0085727		A	OBJ	OBJ	OBJ	OBJ	A
CPH	238	CPH 1412552-1412570	HW	A	D	D	D	D	D
CPH	242	MSC 0045156		A	OBJ	OBJ	OBJ	OBJ	A
CPH	243	MSC 0026587-0026588	HW	A	D	D	D	D	D
CPH	244	MSC 0031982-0031984		A	OBJ	OBJ	OBJ	OBJ	A
CPH	245	MSC 0043210		A	OBJ	OBJ	OBJ	OBJ	A
CPH	246	CPH 0473192-0473193	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	247	MSC 0004132-0004143	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	248	MSC 0085175-0085181		A	OBJ	OBJ	OBJ	OBJ	A
CPH	249	MSC 0036633-0036634		A	OBJ	OBJ	OBJ	OBJ	A
CPH	250	CPH 0146467		A	OBJ	OBJ	OBJ	OBJ	A
CPH	251	MSC 0005547-0005599		A	D	D	D	D	D
CPH	252	MSC 0019638-0019725		A	D	D	D	D	D
CPH	255	MSC 0045317-0045318		A	OBJ	OBJ	OBJ	OBJ	A
CPH	256	MSC 0019097-0019114		A	D	D	D	D	D
CPH	257	FUNB 021139		A	D	D	D	D	D
CPH	258	FUNB 021243		A	D	D	D	D	D
CPH	260	CPH 0485371-0485376		A	D	D	D	D	D
CPH	261	MSC 0024383-0024451		A	D	D	D	D	D
CPH	262	MSC 0018660-0018725	HW	W/O	D	D	D	D	D
CPH	263	MSC 0018730-0018731	HW	W/O	D	D	D	D	D
CPH	264	MSC 0024863		W/O	D	D	D	D	D
CPH	265	MSC 0024864-0024866		W/O	D	D	D	D	D
CPH	266	CPH 1349253-1349282	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	272	CPH 0473148-0473165		A	OBJ	OBJ	OBJ	OBJ	A
CPH	273	MSC 0023225-0023229		A	D	D	D	D	-
CPH	274	MSC 0054921-0054925		A	D	D	D	D	-
CPH	275	MSC 0001575-0001579		A	OBJ	OBJ	OBJ	OBJ	A

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Response to CPH 6th Request for Admission:
Table A

CPH	277	MSC 0004673-0004702		A	OBJ	OBJ	OBJ	OBJ	A
CPH	278	MSC 0036700-0036720		A	D	D	D	D	A - HW D - Balance
CPH	279	MSC 0006375-0006432		A	OBJ	OBJ	OBJ	OBJ	A
CPH	280	MSC 0018885-0018942		A	OBJ	OBJ	OBJ	OBJ	A
CPH	281	MSC 0059244-0059266		A	OBJ	OBJ	OBJ	OBJ	A
CPH	284	MSC 0025887		A	D	D	D	D	-
		MSC 0015896-0015970		W/O	D	D	D	D	-
		MSC 0015626-0015703	Incomp.	W/O	D	D	D	D	-
		MSC 0020477-0020552		W/O	D	D	D	D	-
		MSC 0061553-0061621		W/O	D	D	D	D	-
		MSC 0061191-0061251	Incomp.	W/O	D	D	D	D	-
		MSC 0067528-0067602		W/O	D	D	D	D	-
		MSC 0072800-0072863	Incomp.	W/O	D	D	D	D	-
		MSC 0073484-0073562		W/O	D	D	D	D	-
		MSC 0067258-0067341		W/O	D	D	D	D	-
		MSC 0087405-0087490		W/O	D	D	D	D	-
		MSC 0070445-0070542		W/O	D	D	D	D	-
		MSC 0086753-0086799	Incomp.	W/O	D	D	D	D	-
		MSC 0092043-0092076		W/O	D	D	D	D	-
		MSC 0092077-0092111		W/O	D	D	D	D	-
		MSC 0092032-0092042		W/O	D	D	D	D	-
		MSC 0092146-0092177		W/O	D	D	D	D	-
		MSC 0092178-0092188		W/O	D	D	D	D	-
		MSC 0092112-0092133		W/O	D	D	D	D	-
		MSC 0092134-0092145		W/O	D	D	D	D	-

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Response to CPH 6th Request For Admission: Table B

Bates	RFA 6	RFA 7
MSC 0084771-0084778	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084779-0084792	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084793-0084811	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084812-0084813	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084814-0084820	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084821-0084826	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084827-0084832	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084833-0084834	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084835-0084844	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084845-0084859	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084860-0084861	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084862-0084870	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084871-0084887	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084888-0084905	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084906-0084910	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084911-0084926	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084927-0084946	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084947-0084960	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084961-0084975	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084976-0084994	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084995-0085012	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085013-0085033	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085034-0085055	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085056-0085057	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085058-0085075	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085076-0085098	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085099-0085108	A (per 11/5 Order)	A (per 11/5 Order)

A = Admit

Response to CPH 6th Request For Admission: Table B

MSC 0085109-0085122	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085123-0085136	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085137-0085153	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085154-0085174	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085175-0085191	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085192-0085206	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085207-0085231	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085232-0085250	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085251-0085273	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085274-0085297	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085298-0085314	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085315-0085333	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085334-0085351	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085352-0085357	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085358-0085373	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085374-0085390	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085391-0085402	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085403-0085419	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085420-0085435	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085436-0085452	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085453-0085471	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085472-0085493	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085494-0085514	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085515-0085524	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085525-0085540	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085541-0085557	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085558-0085571	A (per 11/5 Order)	A (per 11/5 Order)

A = Admit

Response to CPH 6th Request For Admission: Table B

MSC 0085572-0085588	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085589-0085609	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085610-0085622	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085623-0085642	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085643-0085660	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085661-0085663	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085664-0085684	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085685-0085699	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085700-0085721	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085722-0085747	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085748-0085760	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085761-0085776	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085777-0085783	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094003-0094007	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094008-0094010	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094011-0094012	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094013-0094015	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094016-0094018	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094019-0094020	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094021-0094022	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094023-0094025	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094026-0094028	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094029-0094032	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0095652-0095653	A (per 11/5 Order)	A (per 11/5 Order)

A = Admit

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S MOTION FOR A FINDING OF CONTEMPT AND FOR OTHER RELIEF DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, respectfully requests that this Court enter an Order finding Morgan Stanley in contempt for its disregard of a discovery Order that this Court entered on November 17, 2004. In support of this motion, CPH states as follows:

1. This motion arises as a result of Morgan Stanley's disregard of this Court's November 17, 2004 Order denying Morgan Stanley's motion for protective order concerning CPH's sixth set of requests for admission and CPH's notice of taking deposition dated October 22, 2004 — discovery that seeks authenticity, business record, and authorship information concerning certain specified documents. *See* Ex. A. Because the original scheduled date for the deposition had lapsed while Morgan Stanley's motion was pending, on November 22, CPH renoticed the deposition to take place on Wednesday, November 24 — the last day to take fact discovery. *See* Ex. B.

2. Thereafter, Morgan Stanley objected to CPH's deposition notice, contending that the notice did not give adequate time before the deposition and was otherwise unreasonable. *See* Ex. C. Morgan Stanley also refused to produce witnesses pursuant to several other deposition notices — effectively helping itself to the extension of the discovery cut-off that this Court repeatedly has denied Morgan Stanley.

3. The need for the deposition at issue — and for appropriate sanctions — is underscored by Morgan Stanley's Court-ordered response to CPH's sixth set of requests for admission — requests that sought admissions on authenticity, business record, and authorship issues. *See* Ex. D. In that response, which Morgan Stanley served on November 22, 2004, Morgan Stanley denied or objected to every prong of the business records exception for every document that CPH identified (with the exception of the personnel evaluations, as to which this Court has entered an Order on the business records issue). Morgan Stanley, however, did not explain the basis for any of its myriad objections and denials.

4. Morgan Stanley's refusal to produce a witness to address authenticity, business record, and authorship issues before the discovery cut-off constitutes a willful disregard of this Court's November 17 Order denying Morgan Stanley's motion for protective order. Consequently, CPH respectfully requests that this Court find Morgan Stanley in contempt, direct Morgan Stanley to provide a deposition witness immediately, and to enter an appropriate sanction for Morgan Stanley's deliberate disregard of this Court's Order.

Dated: November 23, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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West Palm Beach, Florida 33402-3626
(561) 686-6300

#1182980

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 23 day of Nov, 2004.

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Florida Bar No.: 169440
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Barnhart & Shipley, P.A.
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and MacAndrews & Forbes Holdings, Inc.

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON MORGAN STANLEY & CO. INC.'S MOTION FOR PROTECTIVE ORDER CONCERNING COLEMAN (PARENT) HOLDINGS INC.'S SIXTH SET OF REQUESTS FOR ADMISSION AND CPH'S NOTICE OF TAKING DEPOSITION DATED OCTOBER 22, 2004

THIS CAUSE came before the Court November 16, 2004 on Morgan Stanley & Co. Inc.'s Motion for Protective Order Concerning Coleman (Parent) Holdings Inc.'s Sixth Set of Requests for Admission and CPH's Notice of Taking Deposition Dated October 22, 2004. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Morgan Stanley & Co. Inc.'s Motion for Protective Order Concerning Coleman (Parent) Holdings Inc.'s Sixth Set of Requests for Admission and CPH's Notice of Taking Deposition Dated October 22, 2004 is Denied.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 17 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci
655 15th Street, NW, Suite 1200
Washington DC 20005

EXHIBIT
tabbies
A

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

AMENDED NOTICE OF TAKING DEPOSITION

To:

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Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings, Inc. will take the deposition upon oral examination of the following parties and witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co. on topics identified on Exhibit A.	November 24, 2004 at 9:30 a.m.

The deposition will be recorded by stenographic means at the offices of Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017-3004. The deposition will be taken before a person authorized to administer oaths and will continue day to day until complete.

EXHIBIT
tabbies B

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to all counsel on the attached Service List, this 22nd day of November, 2004.

Dated: November 22, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: Deirdre Connell
One of Its Attorneys

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Michael T. Brody
Deirdre E. Connell
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Jack Scarola
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EXHIBIT A

You are hereby requested to respond to the following topics pursuant to the definitions set forth below.

RULE 1.310 TOPICS

1. The authenticity, source, creation, use, maintenance, and business purpose of documents produced and/or authored by Morgan Stanley and/or MSSF, bearing the following deposition exhibit number and/or Bates numbers, and information contained therein:

DEP EXHIBIT #	BATES RANGE
	MSC 0015896-0015970
	MSC 0015626-0015703
	MSC 0020477-0020552
	MSC 0061553-0061621
	MSC 0061191-0061251
	MSC 0067528-0067602
	MSC 0072800-0072863
	MSC 0073484-0073562
	MSC 0067258-0067341
	MSC 0087405-0087490
	MSC 0070445-0070542
	MSC 0086753-0086799
	MSC 0092043-0092076
	MSC 0092077-0092111

DEP EXHIBIT #	BATES RANGE
	MSC 0092146-0092177
	MSC 0092032-0092042
	MSC 0092178-0092188
	MSC 0092112-0092133
	MSC 0092134-0092145
CPH 003	MSC 0080435-0080437
CPH 004	MSC 0031171-0031176
CPH 005	MSC 0031177-0031220
CPH 006	MSC 0080438-0080439
CPH 009	CP 026286-026370
CPH 010	CP 033169-033240
CPH 011	SASMF 10699-10705
CPH 012	CPH 0012526-0012527
CPH 013	CPH 0635991-0635992
CPH 014	MSC 0016944-0016945

DEP EXHIBIT #	BATES RANGE
CPH 016	MSC 0028858
CPH 017	MS 00375-00381
CPH 024	DPW000001 - 000002
CPH 025	N/A
CPH 026	CPH1412961-1413007
CPH 027	MSC 0026219
CPH 028	MSC 0081555-0080760
CPH 029	MSC 0080440 - 0081556
CPH 031	CPH0635893
CPH 032	CPH0635894 - 0635895
CPH 033	MSC 0029176
CPH 034	CPH0520973 - 0520974
CPH 035	CPH1257351
CPH 036	CPH0639323 - 0639327
CPH 037	MSC 0045317 - 0045318

DEP EXHIBIT #	BATES RANGE
CPH 038	MSC 0041766 - 0041858
CPH 061	CPH0284977-0285008
CPH 062	CPH0283484
CPH 064	MSC 0028423
CPH 065	CPH0088703
CPH 066	CPH0038717
CPH 067	CPH0063827-0063833
CPH 068	MSC 0003995-0004001
CPH 069	MSC 0003894-0003930
CPH 070	SB237825-237830
CPH 071	MSC 0005984-0005995
CPH 072	MSC 0064865-0064866
CPH 074	MSC 0080358-0080358
CPH 075	SB0018202-0018288
CPH 076	MSC 0025829-0025886
CPH 078	MSC 0039543
CPH 079	MSC 0031855 – 0031856
CPH 080	CPH0465134
CPH 081	MSC 0036393 – 0036395
CPH 081A	N/A
CPH 082	CPH0469477-0469561
CPH 083	N/A

DEP EXHIBIT #	BATES RANGE
CPH 084	MSC 0033255 – 033263
CPH 084A	N/A
CPH 085	MSC 0036347 – 0036349
CPH 086	MSC 0045112 - 0045113
CPH 087	MSC 0035967-0035969
CPH 088	MSC 0031791 – 0031799
CPH 089	MSC 0083960 – 0084026
CPH 090	CPH1332631 – 1335633
CPH 091	N/A
CPH 092	MSC 0003389 - 0003415
CPH 093	N/A
CPH 094	N/A
CPH 095	MSC 0036112 – 0036113
CPH 096	CPH0472488 – 0472496
CPH 097	MSC 0033910 – 0033911
CPH 098	CPH0482089 – 0482098
CPH 099	N/A
CPH 100	MSC 0062860 – 0062896
CPH 110	CPH0038670 – 0038676
CPH 111	CPH0038700 – 0038706
CPH 112	CPH0129613 – 0129616
CPH 115	CPH0038700 – 0038706

DEP EXHIBIT #	BATES RANGE
CPH 117	CPH0038523 – 0038524
CPH 120	CPH0012522 – 0012524
CPH 121	CPH1145796
CPH 122	CPH0039327, CPH0038707
CPH 122	CPH0039327, CPH0038707
CPH 124	CPH0012464 – 0012466
CPH 125	MSC 0004673 - 0004702
CPH 126	MSC 0042248 - 0042275
CPH 128	MSC 0029199 - 0029201
CPH 129	MSC 000513 - 000541
CPH 130	CPH0251869 – 0251889
CPH 131	CPH0251890 – 0251985
CPH 132	CPH0636135 – 0636136
CPH 133	MSC 0059244 – 0059266
CPH 135	MSC 0063735 – 0063804
CPH 136	MSC 0083748– 0083904
CPH 137	MSC 0039543
CPH 138	CPH1411216 – 1411300
CPH 139	MSC 0026540 – 0026544
CPH 140	CPH0483399 – 0483407
CPH 141	CPH 0483341 – 0483350
CPH 142	CPH 0253547 -- 0253555

DEP EXHIBIT #	BATES RANGE
CPH 143	CPH1026942-1026953
CPH 144	MSC 0016944
CPH 145	MSC 0028214 -- 0028271
CPH 146	MSC 0080325 -- 0080333
CPH 148	MSC 0047892
CPH 149	MSC 0047893
CPH 150	CPH0470006-04700016
CPH 151	MSC 0065651 -- 0065784
CPH 152	LAB 000043
CPH 153	MSC 0018885 -- 0018942
CPH 154	CPH1258265 -- 1258266
CPH 155	CPH1346133 -- 1346250
CPH 156	CPH1346276 -- 1346342
CPH 157	MSC 0018702 -- 0018703
CPH 160	MSC 0003143
CPH 162	MSC 0026888 -- 0026891
CPH 163	MSC 0080427 -- 0080430
CPH 164	MSC 0045133-0045139
CPH 165	N/A
CPH 166	MSC 0045102-0045108
CPH 167	N/A
CPH 168	N/A

DEP EXHIBIT #	BATES RANGE
CPH 169	MSC 0044556-0044573
CPH 170	MSC 0042538-0042540
CPH 171	N/A
CPH 172	MSC 0044462
CPH 173	MSC 0043129
CPH 174	MSC 0042570
CPH 175	N/A
CPH 176	N/A
CPH 177	MSC 0085779
CPH 178	MSC 0084771-0084778
CPH 179	CPH0635892-0635895
CPH 180	MSC 0029194-0029196
CPH 181	MSC 0006284-0006335
CPH 182	CPH 1089795-1089815
CPH 183	MSC 0063286-0063330
CPH 184	N/A
CPH 186	MSC 0041901-0041912
CPH 187	MSC 0041870-0041888
CPH 187A	CP0254621-0254640
CPH 188	CPH1408952-1408956
CPH 189	CPH0642933-0642937
CPH 190	N/A

DEP EXHIBIT #	BATES RANGE
CPH 194	N/A
CPH 195	MSC 0040237-0040305
CPH 196	MSC 085612-0085613
CPH 200	CPH0472360-0472361
CPH 202	MSC 0003931
CPH 203	MSC 0042314-0042327
CPH 204	MSC 0042328-0042341
CPH 205	MSC 0004005-004007
CPH 207	CPH0471614-0471629
CPH 208	CPH632817-0632905
CPH 209	CPH1348404-1348475
CPH 210	CPH0632981
CPH 211	CPH0633012-0633049
CPH 212	CPH1257349
CPH 213	MSC 0029159-0029162
CPH 214	CPH127359
CPH 215	N/A
CPH 217	MSC 0045665-0045758
CPH 217A	MSC 0080431-0080434
CPH 218	MSC 0004724-0004728
CPH 218A	MSC 0045760-0045761
CPH 219	MSC 0036347-0036349

DEP EXHIBIT #	BATES RANGE
CPH 220	CPH0467090-0467126
CPH 221	MSC 0045474-0045475
CPH 222	MSC 0003431-0003464
CPH 223	MSC 0042482-0042483
CPH 224	N/A
CPH 225	CPH 0147626-0147627
CPH 226	CPH 0147607-0147616
CPH 227	CPH 0639174-0639182
CPH 228	MSC 0085750-0085751
CPH 229	MSC 0085763-0085765
CPH 230	CPH 0635890-0635891
CPH 232	MSC 0085589-0085609
CPH 233	MSC 0085274-0085283
CPH 234	MSC 0084771-0084778
CPH 235	MSC 0085726-0085727
CPH 238	CPH 1412552-1412570
CPH 242	MSC 0045156
CPH 243	MSC 0026587-0026588
CPH 244	MSC 0031982-0031984
CPH 245	MSC 0043210
CPH 246	CPH 0473192-0473193
CPH 247	MSC 0004132-0004143

DEP EXHIBIT #	BATES RANGE
CPH 248	MSC 0085175-0085181
CPH 249	MSC 0036633-0036634
CPH 250	CPH 0146467
CPH 251	MSC 0005547-0005599
CPH 252	MSC 0019638-0019725
CPH 255	MSC 0045317-0045318
CPH 256	MSC 0019097-0019116
CPH 257	FUNB 021139
CPH 258	FUNB 021243
CPH 260	CPH 0485371-0485376
CPH 261	MSC 0024383-0024451
CPH 262	MSC 0018660-0018725 *(18687-88)**
CPH 263	MSC 0018730-0018731
CPH 264	MSC 0024863
CPH 265	MSC 0024864-0024866
CPH 266	CPH 1349253-1349282
CPH 272	CPH0473148-0473165
CPH 273	MSC 0023225-0023229
CPH 274	MSC 0054921-0054925
CPH 275	MSC 0001575-0001579
CPH 277	MSC0004673-0004702
CPH 278	MSC 0036700-0036720

DEP EXHIBIT #	BATES RANGE
CPH 279	MSC 006375-006432
CPH 280	MSC 0018885-0018942
CPH 281	MSC 0059244-0059266
CPH 284	MSC 0025887
MS 013	MSC 0027828-0027829
MS 040	MSC 0000001-0000175
MS 048	CPH 0041655-0041661
MS 057	FUNB 016564-016567
MS 079	CPH 0467007
MS 080	CPH 1426289-1426296
MS 081	CPH 1421814-1421817
MS 082	CPH 1406962-1406964
MS 083	CPH 1427250-1427253
MS 085	CPH 1411216-1411300
MS 115	MSC 0063805-0063811
MS 166	CPH 1326487-1326662
MS 175	CPH 0482090-0482098
MS 182	CPH 1412533-1412551
MS 183	CPH 1109095-1109115
MS 189	CPH 1399821-1399822
MS 194	CPH 1185762-1185784
MS 238	CPH 1418423-1418499

DEFINITIONS

1. "CPH" means Coleman (Parent) Holdings, Inc., its predecessors, successors, subsidiaries, and present and former officers, directors, and employees.

2. "Morgan Stanley" means Morgan Stanley & Co., Inc. and any of its direct or indirect parents, affiliates, subsidiaries, and present and former officers, directors, partners, employees, representatives, and agents.

3. "MSSF" means Morgan Stanley Senior Funding, Inc. and any of its direct or indirect parents, affiliates, subsidiaries, and present and former officers, directors, partners, employees, representatives, and agents.

4. "Documents" shall be given the broad meaning provided in CPLR 3120 and refers to any form or means, whether physical, visual, or electronic, in or by which words, numbers, or ideas are recorded or preserved, whether fixed in tangible medium or electronically stored, including any and all drafts of any final document. The word "documents" shall include, by way of example and not by way of limitation, all of the following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, notes, messages, reports, studies, press releases, comparisons, books, accounts, checks, audio and video recordings and transcriptions thereof, pleadings, testimony, articles, bulletins, pamphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk calendars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, minutes for meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements,

memoranda of understanding, letters of intent, computer tapes, computer drives or memories, computer diskettes or disks, e-mail, CD-ROMs, or any other tangible thing on which any handwriting, typing, printing, photostatic, electronic, or other form of communication or information is recorded or reproduced, together with all notations on any of the foregoing, all originals, file copies, or other unique copies of the foregoing, and all versions or drafts thereof, whether used or not.

5. "You" or "Your" means Morgan Stanley and/or MSSF and any of its present and former partners, employees, representatives, and agents.

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November 22, 2004

BY FACSIMILE

Michael Brody, Esq.
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Re: ***Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.***

Dear Mike:

I write in response to your multiple deposition notices and (at least) seven letters sent today while I was defending the individual and corporate representative depositions of Mr. Petrick and Mr. Bemis was conducting the deposition of Mr. Freed.

On Friday afternoon, Joe Ianno and I called you and Jeff Shaw from New York to discuss the depositions that would be going forward during the week of November 22. We went through the schedule of depositions each side could reasonably complete, and I repeated our prior offer to provide written responses to the outstanding Rule 1.310 deposition topics. On Sunday evening, I confirmed our Friday conversation in a letter and told you that CPH's deposition notices for the additional depositions you sent on Friday, November 19 (while we were flying back) were served well after 6 p.m. EST, and that your two-day notice for those depositions was not reasonable notice under Florida law.

Today you have served Morgan Stanley with at least two ***additional*** notices of deposition for Wednesday, at 9:30 a.m. in New York, the day before Thanksgiving.

- A Rule 1.310(b)(6) deposition on the CPH 7th Request for Production of Documents, to which Morgan Stanley has not responded because the request was facially improper when filed under the section 768.72(1), Fla. Stat.
- A Rule 1.310(b)(6) deposition of Morgan Stanley on the "authenticity, use, maintenance, and business purpose" of over 225 documents, consisting of thousands of pages.

EXHIBIT
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In addition to these deposition notices, you "offered" to provide Mr. Fasman for a deposition on Wednesday at 9:30 a.m. in response to Morgan Stanley's notice of deposition for November 10. CPH declined to appear for the deposition on that date and did not file a motion for protective order. Now, you suggest that both parties proceed with inefficient document custodian depositions on Wednesday, even though Morgan Stanley just served its responses to the 6th RFAs on that subject today, and CPH has not yet served its written responses regarding documents. That is unreasonable.

Based on your recent letters and deposition notices, this is the schedule that you propose for this week:

Deponent	Requested	Day	Location	Start
Todd Freed	CPH	November 22	Skadden	9:30 a.m.
Mitch Petrick	CPH	November 22	Esquire	10:15 a.m.
Rule 1.310 (10/8 notice Ex. A Topics 1-4)	CPH	November 22	Esquire	10:15 a.m.
Rule 1.310 (11/22 notice Ex. A re Sunbeam loan history, topics 1 and 2)	CPH[1]	November 22	Esquire	10:15 a.m.
Ruth Porat	CPH	November 23	Esquire	8:00 a.m.
Rule 1.310 (10/18 notice Ex. D Topics 1-3)	CPH	November 23	Esquire	8:00 a.m.
Alison Amorison	MS	November 23	Skadden	9:30 a.m.
Rule 1.310 (11/22 notice Ex. A re punitive damages)	CPH	November 24	Esquire	9:30 a.m.
Rule 1.310 (11/22 notice Ex. A re documents)	CPH	November 24	Esquire	9:30 a.m.
Rule 1.310 (11/22 notice Ex. A re Debenture trading, three topics)	CPH	November 24	Esquire	9:30 a.m.
Rule 1.310 (11/22 notice Ex. A re Coleman securities, 3 topics)	CPH	November 24	Esquire	9:30 a.m.

[1] The notice served after hours on Friday night for this deposition was issued by MAFCO, which is not a party to this litigation. The replacement notice you served for this deposition on Monday at 12:09 a.m. EST was faxed approximately an *hour* after the deposition was, according you, supposed to begin.

Rule 1.310(b)(6) (Corporate representative re: CPH documents)	MS	November 24	Somewhere in NYC	9:30 a.m.
Rule 1.310(b)(6) (Corporate representative on credit agreements).	MS	November 24	Somewhere in NYC	9:30 a.m.

Your purported attempts to schedule, on at most two days notice, *six* depositions in New York on Wednesday, November 24 2004, the day before Thanksgiving, for an action that your client chose to file in Florida, is unworkable We will proceed with the deposition schedule set forth in my November 21 letter. We will continue to work together in good faith to schedule the remaining discovery that needs to be completed.

Sincerely,

Thomas A. Clare

Thomas A. Clare

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark C. Hansen, Esq. (by facsimile)

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY & CO. INCORPORATED'S RESPONSES AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC.'S SIXTH SET OF REQUESTS FOR ADMISSION

Defendant Morgan Stanley & Co. Incorporated ("MS & Co."), by its attorneys and pursuant to Florida Rule of Civil Procedure 1.370, hereby responds and objects to Coleman (Parent) Holdings Inc.'s ("CPH") Sixth Set of Requests for Admission.

INITIAL OBJECTIONS

1. MS & Co. objects to CPH's Sixth Set of Requests for Admission, including all Definitions, to the extent that they purport to impose upon MS & Co. any requirements that exceed or are otherwise inconsistent with the Florida Rules of Civil Procedure or any other applicable rule or court order.

2. MS & Co. objects to CPH's Sixth Set of Requests for Admission to the extent that they seek information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable privilege, doctrine, immunity or rule.

3. MS & Co. objects to the definition of "Morgan Stanley" to the extent that it includes MS & Co.'s counsel in this litigation and entities not a party to this action. Specifically, MS & Co. interprets these definitions to exclude Kirkland & Ellis LLP, Carlton Fields, P.A.,

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Kellogg Huber, Hansen, Todd & Evans, PLLC and affiliates, parents, and others not a party to this action.

4. MS & Co. objects to the Requests for Admission as unduly burdensome, abusive, and vexatious, since many of them are duplicative and constitute an unnecessary waste of time and concern factual allegations uniquely within the possession of CPH, MAFCO, or third parties, which could be confirmed with less expense and burden on the parties through other techniques of discovery

5. In the instances where Morgan Stanley admits to Request One and Request Eight for a document, Morgan Stanley objects to the remaining Requests related to the same document because such Requests are redundant, unduly burdensome, and harassing.

6. In the instances where Morgan Stanley has noted that a document is incomplete, the responses below pertain only to the portion of the document identified in the respective Requests and Morgan Stanley reserves all other objections.

7. MS & Co. incorporates, as though fully set forth therein, these General Objections into each of the Responses set forth below.

RESPONSES

1. Admit that the documents listed in the attached Exhibits A and B are what they purport to be or are otherwise true and authentic copies of original documents within the meaning of Florida Evidence Code § 90.901.

RESPONSE: See the attached Table A. In the instances where there is a notation that the document bears handwritten marginalia ["HW"], Morgan Stanley is without sufficient information to make any admission and therefore denies the Request with respect to the handwritten marginalia.

2. Admit that the documents listed in the attached Exhibits A and B were made by Morgan Stanley at or near the time of the event recorded within the meaning of Florida Evidence Code § 90.803(6)(a).

RESPONSE: See the attached Table A. In the instances where there is a notation that the document bears handwritten marginalia, Morgan Stanley is without sufficient information to make any admission and therefore denies the Request with respect to the handwritten marginalia.

3. Admit that the documents listed in the attached Exhibits A and B were made by Morgan Stanley by or from information transmitted by a person with knowledge within the meaning of Florida Evidence Code § 90.803(6)(a).

RESPONSE: See the attached Table A. In the instances where there is a notation that the document bears handwritten marginalia, Morgan Stanley is without sufficient information to make any admission and therefore denies the Request with respect to the handwritten marginalia.

4. Admit that the documents listed in the attached Exhibits A and B were kept by Morgan Stanley in the course of a regularly conducted business activity within the meaning of Florida Evidence Code § 90.803(6)(a).

RESPONSE: See the attached Table A. In the instances where there is a notation that the document bears handwritten marginalia, Morgan Stanley is without sufficient information to make any admission and therefore denies the Request with respect to the handwritten marginalia.

5. Admit that it was Morgan Stanley's regular practice to make the documents listed in the attached Exhibits A and B within the meaning of Florida Evidence Code § 90.803(6)(a).

RESPONSE: See the attached Table A. In the instances where there is a notation that the document bears handwritten marginalia, Morgan Stanley is without sufficient information to make any admission and therefore denies the Request with respect to the handwritten marginalia.

6. Admit that the documents being [sic] Bates numbers Morgan Stanley Confidential 0084771 through 0085783, and Morgan Stanley Confidential 0094003 through 0094032 were made by Morgan Stanley at or near the time of the event recorded within the meaning of Florida Evidence Code § 90.803(6)(a).

RESPONSE: See the attached Table B.

7. Admit that the documents bearing Bates numbers Morgan Stanley Confidential 0084771 through 0085783, and Morgan Stanley Confidential 0094003 through 0094032 were made by Morgan Stanley by or from information transmitted by a person with knowledge within the meaning of Florida Evidence Code § 90.803(6)(a).

RESPONSE: See the attached Table B.

8. Admit that Morgan Stanley authored the documents listed in the attached Exhibit B.

RESPONSE: See the attached Table A. In the instances where there is a notation that the document bears handwritten marginalia, Morgan Stanley is without sufficient information to make any admission and therefore denies the Request with respect to the handwritten marginalia. Morgan Stanley denies that it "authored" CPH Exhibits 9 and 138 and MS Exhibits 85 and 238 (and any other version of the February 1998 Discussion Materials provided to CPH on February 23, 1998). Morgan Stanley admits that Sunbeam provided Morgan Stanley certain information contained in those exhibits, that other information in those

exhibits was obtained from public records, and that Morgan Stanley assisted Sunbeam in the formatting and organization of such information. For MS Exhibit 183 and CPH Exhibit 278, Morgan Stanley admits that one of its employees "authored" the handwritten notations on that document, but denies that Morgan Stanley authored the underlying printed text.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 22nd day of November, 2004.

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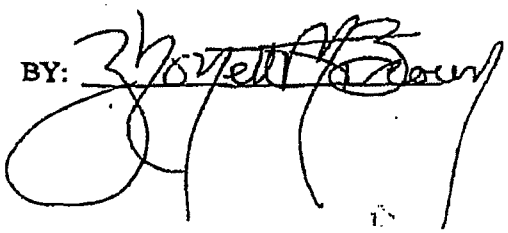
BY: 

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Response to CPH 6th Request for Admission:
Table A

Party	Exhibit No.	Bates	Notes	RFA 1	RFA 2	RFA 3	RFA 4	RFA 5	RFA 6
MS	13	MSC 0027828-0027829	Incomp.	A	D	D	D	D	-
MS	40	MSC 0000001-0000175		A	D	D	D	D	D
MS	48	CPH 0041655-0041661		A	D	D	D	D	-
MS	57	FUNB016564-016567		A	OBJ	OBJ	OBJ	OBJ	A
MS	79	CPH 0467007	Incomp.	A	OBJ	OBJ	OBJ	OBJ	A
MS	80	CPH 1426289-01426296	HW	A	OBJ	OBJ	OBJ	OBJ	A
MS	81	CPH 1421814-1421817		A	OBJ	OBJ	OBJ	OBJ	A
MS	82	CPH 1406962-1406964	HW	A	OBJ	OBJ	OBJ	OBJ	A
MS	83	CPH 1427250-1427253	HW	A	OBJ	OBJ	OBJ	OBJ	A
MS	85	CPH 1411216-1411300		A	D	D	D	D	D
MS	115	MSC 0063805-0063811		A	D	D	D	D	-
MS	166	CPH 1362487-1326682		A	D	D	D	D	D
MS	175	CPH 0482090-0482098		A	OBJ	OBJ	OBJ	OBJ	A
MS	182	CPH 1412533-1412551	HW	A	D	D	D	D	D
MS	183	CPH 1109095-1109115		A	D	D	D	D	A - HW D - Balance
MS	189	CPH 1399821-1399822		A	OBJ	OBJ	OBJ	OBJ	A
MS	194	CPH 1185762-1185764		A	D	D	D	D	D
MS	238	CPH 1418423-1418499		A	D	D	D	D	D
CPH	3	MSC 0080435-0080437		A	OBJ	OBJ	OBJ	OBJ	A
CPH	4	MSC 0031171-0031176		A	OBJ	OBJ	OBJ	OBJ	A
CPH	5	MSC 0031177-0031220		A	OBJ	OBJ	OBJ	OBJ	A
CPH	6	MSC 0080438-0080439		A	OBJ	OBJ	OBJ	OBJ	A
CPH	9	CP 026286-026370		A	D	D	D	D	D
CPH	10	CP 033169-033240		A	D	D	D	D	D
CPH	11	SASMF 10699-10705		A	OBJ	OBJ	OBJ	OBJ	A
CPH	12	CPH 0012526-0012527		A	OBJ	OBJ	OBJ	OBJ	A
CPH	13	CPH 0635991-0635992		A	D	D	D	D	-

A = Admit
D = Deny

HW = Handwritten Marginalia
W/O = Morgan Stanley is without sufficient information to Admit or Deny

OBJ = Object
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Response to CPH 6th Request for Admission:
Table A

CPH	14	MSC 0016944-0016945		A	D	D	D	D	D
CPH	16	MSC 0028858		D	D	D	D	D	-
CPH	17	MSC 00375-00381		A	D	D	D	D	-
CPH	24	DPW000001-000002		A	D	D	D	D	D
CPH	25			A	D	D	D	D	-
CPH	26	CPH 1412981-1413007		A	OBJ	OBJ	OBJ	OBJ	A
CPH	27	MSC 0026219		A	OBJ	OBJ	OBJ	OBJ	A
CPH	28			A	OBJ	OBJ	OBJ	OBJ	A
CPH	29	MSC 0080440-0081556		A	OBJ	OBJ	OBJ	OBJ	A
CPH	31	CPH 0635893		A	OBJ	OBJ	OBJ	OBJ	A
CPH	32	CPH 0635894-0635895		A	OBJ	OBJ	OBJ	OBJ	-
CPH	33	MSC 0029176		A	OBJ	OBJ	OBJ	OBJ	A
CPH	34	CPH 0520973-0520974		A	OBJ	OBJ	OBJ	OBJ	A
CPH	35	CPH 1257351		A	OBJ	OBJ	OBJ	OBJ	A
CPH	36	CPH 0639323-0639327		A	D	D	D	D	-
CPH	37	MSC 0045317-0045318		A	OBJ	OBJ	OBJ	OBJ	A
CPH	38	MSC 0041766-0041858		A	OBJ	OBJ	OBJ	OBJ	A
CPH	61	CPH 0284977-0285008		A	OBJ	OBJ	OBJ	OBJ	A
CPH	62	CPH 0283484	HW	W/O	D	D	D	D	-
CPH	64	MSC 0028423		A	D	D	D	D	-
CPH	65	CPH 0088703		W/O	D	D	D	D	-
CPH	66	CPH 0038717		W/O	D	D	D	D	-
CPH	67	MSC 0063827-0063833		A	OBJ	OBJ	OBJ	OBJ	A
CPH	68	MSC 0003995-0004001		A	D	D	D	D	-
CPH	69	MSC 0003894-0003930		A	OBJ	OBJ	OBJ	OBJ	A
CPH	70	SB 237825-237830		A	OBJ	OBJ	OBJ	OBJ	A
CPH	71	MSC 0005984-0005995		A	OBJ	OBJ	OBJ	OBJ	A
CPH	72	MSC 0064865-0064866	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	74	MSC 0080356-0080358		A	OBJ	OBJ	OBJ	OBJ	A
CPH	75	SB 0018203-0018288	HW	A	D	D	D	D	D
CPH	76	MSC 0025829-0025886		A	OBJ	OBJ	OBJ	OBJ	A
CPH	78	MSC 0039543		A	OBJ	OBJ	OBJ	OBJ	A
CPH	79	MSC 0031855-0031856		A	OBJ	OBJ	OBJ	OBJ	A
CPH	80	CPH 0465134		A	D	D	D	D	-

A = Admit
D = Deny

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W/O = Morgan Stanley is without sufficient information to Admit or Deny

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Response to CPH 6th Request for Admission:
Table A

CPH	81	MSC 0036393-0036395		A	OBJ	OBJ	OBJ	OBJ	A
CPH	81-A			D	D	D	D	D	D
CPH	82	CPH 0469477-0469561		A	OBJ	OBJ	OBJ	OBJ	A
CPH	83			D	D	D	D	D	D
CPH	84	MSC 0033255-0033263		A	OBJ	OBJ	OBJ	OBJ	A
CPH	84-A			D	D	D	D	D	D
CPH	85	MSC 0036347-0036349		A	OBJ	OBJ	OBJ	OBJ	A
CPH	86	MSC 0045112-0045113		A	OBJ	OBJ	OBJ	OBJ	A
CPH	87	MSC 0035967-0035969		A	OBJ	OBJ	OBJ	OBJ	A
CPH	88	MSC 0031791-0031799		A	OBJ	OBJ	OBJ	OBJ	A
CPH	89	MSC 0083960-0084026		A	OBJ	OBJ	OBJ	OBJ	A
CPH	90	CPH 1322631-1322633		A	OBJ	OBJ	OBJ	OBJ	A
CPH	91			D	D	D	D	D	D
CPH	92	MSC 0003389-0003415		A	OBJ	OBJ	OBJ	OBJ	A
CPH	93			D	D	D	D	D	D
CPH	94			D	D	D	D	D	D
CPH	95			A	OBJ	OBJ	OBJ	OBJ	A
CPH	96	CPH 0472488-0472496		A	OBJ	OBJ	OBJ	OBJ	A
CPH	97	MSC 0033910-0033911		A	OBJ	OBJ	OBJ	OBJ	A
CPH	98	CPH 0482089-0482098		A	OBJ	OBJ	OBJ	OBJ	A
CPH	99			D	D	D	D	D	D
CPH	100	MSC 0062860-0062896		A	OBJ	OBJ	OBJ	OBJ	A
CPH	110	CPH 0038670-0038676	HW	A	D	D	D	D	-
CPH	111	CPH 0038700-0038706	HW	A	D	D	D	D	-
CPH	112	CPH 0129613-0129616	HW	A	D	D	D	D	-
CPH	115	CPH 0038700-0038706	HW	A	D	D	D	D	-
CPH	117	CPH 0038523-0038524	HW	A	D	D	D	D	-
CPH	120	CPH 0012522-0012524		A	D	D	D	D	-
CPH	121	CPH 1145796	HW	A	D	D	D	D	-
CPH	122	CPH 0039327; CPH 0038707	HW	A	D	D	D	D	D
CPH	124	CPH 0012464-0012466		A	D	D	D	D	-
CPH	125	MSC 0004673-004702		A	OBJ	OBJ	OBJ	OBJ	A

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Response to CPH 6th Request for Admission:
Table A

CPH	126	MSC 0042248-0042275		A	OBJ	OBJ	OBJ	OBJ	A
CPH	128	MSC 0029199-0029201		A	OBJ	OBJ	OBJ	OBJ	A
CPH	129	MSC 0000513-0000541		A	OBJ	OBJ	OBJ	OBJ	A
CPH	130	CPH 0251869-0251889	HW	A	D	D	D	D	D
CPH	131	CPH 0251890-0251985		A	OBJ	OBJ	OBJ	OBJ	A
CPH	132	CPH 0636135-0636136	HW	A	D	D	D	D	-
CPH	133	MSC 0059244-0059266		A	OBJ	OBJ	OBJ	OBJ	A
CPH	135	MSC 0063735-0063804		A	D	D	D	D	D
CPH	136	MSC 0083748-0083904		A	OBJ	OBJ	OBJ	OBJ	A
CPH	137	MSC 0039543		A	OBJ	OBJ	OBJ	OBJ	A
CPH	138	CPH 1411216-1411300		A	D	D	D	D	D
CPH	139	MSC 0026540-0026544	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	140	CPH 0483399-0483407	HW	A	D	D	D	D	D
CPH	141	CPH 0483341-0483350	HW	A	D	D	D	D	D
CPH	142	CPH 0253547-0253555	HW	A	D	D	D	D	D
CPH	143	CPH 1026942-1026953		A	D	D	D	D	D
CPH	144	MSC 0016944	Incomp.	A	D	D	D	D	D
CPH	145	MSC 0028214-0028271	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	146	MSC 0080325-0080333	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	148	MSC 0047892		A	OBJ	OBJ	OBJ	OBJ	A
CPH	149	MSC 0047893		A	OBJ	OBJ	OBJ	OBJ	A
CPH	150	CPH 0470006-0470016	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	151	MSC 0065651-0065784	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	152	CPH 1145796	HW	A	D	D	D	D	-
CPH	153	MSC 0018885-0018942	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	154	CPH 1258265-1258266		W/O	D	D	D	D	-
CPH	155	CPH 1346133-1346250		A	OBJ	OBJ	OBJ	OBJ	A
CPH	156	CPH 1346276-1346342		A	D	D	D	D	D
CPH	157	MSC 0018702-0018703	HW	A	D	D	D	D	-
CPH	160	MSC 0003143	HW	A	D	D	D	D	D

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Response to CPH 6th Request for Admission:
Table A

CPH	162	MSC 0026888-0026891	HW	A	D	D	D	D	-
CPH	163	MSC 0080427-0080430		A	OBJ	OBJ	OBJ	OBJ	A
CPH	164	MSC 0045133-00445139		A	OBJ	OBJ	OBJ	OBJ	A
CPH	165			D	D	D	D	D	D
CPH	166	MSC 0045102-00445108		A	OBJ	OBJ	OBJ	OBJ	A
CPH	167			D	D	D	D	D	D
CPH	168			D	D	D	D	D	D
CPH	169	MSC 0044556-0044573		A	OBJ	OBJ	OBJ	OBJ	A
CPH	170	MSC 0042538-0042540		W/O	D	D	D	D	D
CPH	171			D	D	D	D	D	D
CPH	172	MSC 0044462		A	OBJ	OBJ	OBJ	OBJ	A
CPH	173	MSC 0043129		A	OBJ	OBJ	OBJ	OBJ	A
CPH	174	MSC 0042570		A	OBJ	OBJ	OBJ	OBJ	A
CPH	175			D	D	D	D	D	D
CPH	176			D	D	D	D	D	D
CPH	177	MSC 0085779		A	OBJ	OBJ	OBJ	OBJ	A
CPH	178	MSC 0084771-0084778		A	OBJ	OBJ	OBJ	OBJ	A
CPH	179	CPH 0635892-0635895		A	OBJ	OBJ	OBJ	OBJ	A
CPH	180	MSC 0029194-0029196		A	OBJ	OBJ	OBJ	OBJ	A
CPH	181	MSC 0006284-0006335		A	D	D	D	D	D
CPH	182	MSC 0004703-0004723		A	D	D	D	D	D
CPH	183	MSC 0063286-008330		A	OBJ	OBJ	OBJ	OBJ	A
CPH	184			D	D	D	D	D	D
CPH	186	MSC 0041901-0041912		A	OBJ	OBJ	OBJ	OBJ	A
CPH	187	MSC 0041870-0041888		A	OBJ	OBJ	OBJ	OBJ	A
CPH	187-A	CPH 0254621-0254640		A	D	D	D	D	D
CPH	188	CPH 1408952-1408956		A	OBJ	OBJ	OBJ	OBJ	A
CPH	189	CPH 0642933-0642937		A	OBJ	OBJ	OBJ	OBJ	A
CPH	190			D	D	D	D	D	D
CPH	194			D	D	D	D	D	D
CPH	195	MSC 0040237-0040305		A	D	D	D	D	D
CPH	196	MSC 0085612-0085613		A	OBJ	OBJ	OBJ	OBJ	A
CPH	200	CPH 0472360-0472361	HW	A	D	D	D	D	-
CPH	202	MSC 0003931	HW	A	OBJ	OBJ	OBJ	OBJ	A

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Response to CPH 6th Request for Admission:
Table A

CPH	203	MSC 0042314-0042327		A	OBJ	OBJ	OBJ	OBJ	A
CPH	204	MSC 0042328-0042341		A	OBJ	OBJ	OBJ	OBJ	A
CPH	205	MSC 0004005-0004007		W/O	D	D	D	D	D
CPH	207	CPH 0471614-0471629		A	OBJ	OBJ	OBJ	OBJ	A
CPH	208	CPH 0632817-0632905		A	D	D	D	D	-
CPH	209	CPH 1348404-1348475		A	D	D	D	D	D
CPH	210	CPH 0632981-0632981		A	D	D	D	D	D
CPH	211	CPH 0633012-0633049		A	D	D	D	D	D
CPH	212	CPH 1257349-1257349		A	OBJ	OBJ	OBJ	OBJ	A
CPH	213	MSC 0029159-0029162		A	D	D	D	D	D
CPH	214	CPH 1257359		A	OBJ	OBJ	OBJ	OBJ	A
CPH	215			A	D	D	D	D	D
CPH	217	MSC 0045665-0045758		A	D	D	D	D	D
CPH	217-A	MSC 0080431-0080434		A	OBJ	OBJ	OBJ	OBJ	A
CPH	218	MSC 0004724-0004726	HW	A	D	D	D	D	D
CPH	218-A	MSC 0045760-0045781		A	OBJ	OBJ	OBJ	OBJ	A
CPH	219	MSC 0036347-0036349		A	OBJ	OBJ	OBJ	OBJ	A
CPH	220	CPH 0467090-0467126		A	D	D	D	D	D
CPH	221	MSC 0045474-0045475		A	OBJ	OBJ	OBJ	OBJ	A
CPH	222	MSC 0003431-0003464		A	OBJ	OBJ	OBJ	OBJ	A
CPH	223	MSC 0042482-0042483		A	OBJ	OBJ	OBJ	OBJ	A
CPH	224			D	D	D	D	D	D
CPH	225	CPH 0147626-0147627		A	D	D	D	D	-
CPH	226	CPH 0147608-0147616		A	D	D	D	D	-
CPH	227	CPH 0639174-0639182		A	D	D	D	D	-
CPH	228	MSC 0085750-0085751		A	OBJ	OBJ	OBJ	OBJ	A
CPH	229	MSC 0085763-0085765		A	OBJ	OBJ	OBJ	OBJ	A
CPH	230	CPH 0635890-0635891		A	D	D	D	D	D
CPH	232	MSC 0085589-0085609		A	OBJ	OBJ	OBJ	OBJ	A

HW = Handwritten Marginalia

A = Admit
D = Deny

W/O = Morgan Stanley is without sufficient information to Admit or Deny

OBJ = Object
I = Document is incomplete

Response to CPH 6th Request for Admission:
Table A

CPH	233	MSC 0085274-0085283		A	OBJ	OBJ	OBJ	OBJ	A
CPH	234	MSC 0084771-0084778		A	OBJ	OBJ	OBJ	OBJ	A
CPH	235	MSC 0085726-0085727		A	OBJ	OBJ	OBJ	OBJ	A.
CPH	238	CPH 1412552-1412570	HW	A	D	D	D	D	D
CPH	242	MSC 0045156		A	OBJ	OBJ	OBJ	OBJ	A
CPH	243	MSC 0026587-0026588	HW	A	D	D	D	D	D
CPH	244	MSC 0031982-0031984		A	OBJ	OBJ	OBJ	OBJ	A
CPH	245	MSC 0043210		A	OBJ	OBJ	OBJ	OBJ	A
CPH	246	CPH 0473192-0473193	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	247	MSC 0004132-0004143	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	248	MSC 0085175-0085181		A	OBJ	OBJ	OBJ	OBJ	A
CPH	249	MSC 0036633-0036634		A	OBJ	OBJ	OBJ	OBJ	A
CPH	250	CPH 0146467		A	OBJ	OBJ	OBJ	OBJ	A
CPH	251	MSC 0005547-0005599		A	D	D	D	D	D
CPH	252	MSC 0019638-0019725		A	D	D	D	D	D
CPH	255	MSC 0045317-0045318		A	OBJ	OBJ	OBJ	OBJ	A
CPH	256	MSC 0019097-0019114		A	D	D	D	D	D
CPH	257	FUNB 021139		A	D	D	D	D	D
CPH	258	FUNB 021243		A	D	D	D	D	D
CPH	260	CPH 0485371-0485376		A	D	D	D	D	D
CPH	261	MSC 0024383-0024451		A	D	D	D	D	D
CPH	262	MSC 0018660-0018725	HW	W/O	D	D	D	D	D
CPH	263	MSC 0018730-0018731	HW	W/O	D	D	D	D	D
CPH	264	MSC 0024863		W/O	D	D	D	D	D
CPH	265	MSC 0024864-0024866		W/O	D	D	D	D	D
CPH	266	CPH 1349253-1349282	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	272	CPH 0473148-0473165		A	OBJ	OBJ	OBJ	OBJ	A
CPH	273	MSC 0023225-0023229		A	D	D	D	D	-
CPH	274	MSC 0054921-0054925		A	D	D	D	D	-
CPH	275	MSC 0001575-0001579		A	OBJ	OBJ	OBJ	OBJ	A

A = Admit
D = Deny

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W/O = Morgan Stanley is without sufficient information to Admit or Deny

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Response to CPH 6th Request for Admission:
Table A

CPH	277	MSC 0004673-0004702		A	OBJ	OBJ	OBJ	OBJ	A
CPH	278	MSC 0036700-0036720		A	D	D	D	D	A - HW D - Balance
CPH	279	MSC 0006375-0006432		A	OBJ	OBJ	OBJ	OBJ	A
CPH	280	MSC 0018885-0018942		A	OBJ	OBJ	OBJ	OBJ	A
CPH	281	MSC 0059244-0059266		A	OBJ	OBJ	OBJ	OBJ	A
CPH	284	MSC 0025887		A	D	D	D	D	-
		MSC 0015896-0015970		W/O	D	D	D	D	-
		MSC 0015628-0015703	Incomp.	W/O	D	D	D	D	-
		MSC 0020477-0020552		W/O	D	D	D	D	-
		MSC 0061553-0061621		W/O	D	D	D	D	-
		MSC 0061191-0061251	Incomp.	W/O	D	D	D	D	-
		MSC 0067528-0067602		W/O	D	D	D	D	-
		MSC 0072800-0072863	Incomp.	W/O	D	D	D	D	-
		MSC 0073484-0073562		W/O	D	D	D	D	-
		MSC 0067258-0067341		W/O	D	D	D	D	-
		MSC 0087405-0087490		W/O	D	D	D	D	-
		MSC 0070445-0070542		W/O	D	D	D	D	-
		MSC 0086753-0086799	Incomp.	W/O	D	D	D	D	-
		MSC 0092043-0092076		W/O	D	D	D	D	-
		MSC 0092077-0092111		W/O	D	D	D	D	-
		MSC 0092032-0092042		W/O	D	D	D	D	-
		MSC 0092146-0092177		W/O	D	D	D	D	-
		MSC 0092178-0092188		W/O	D	D	D	D	-
		MSC 0092112-0092133		W/O	D	D	D	D	-
		MSC 0092134-0092145		W/O	D	D	D	D	-

A = Admit
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W/O = Morgan Stanley is without sufficient information to Admit or Deny

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Response to CPH 6th Request For Admission: Table B

Bates	RFA 6	RFA 7
MSC 0084771-0084778	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084779-0084792	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084793-0084811	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084812-0084813	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084814-0084820	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084821-0084826	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084827-0084832	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084833-0084834	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084835-0084844	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084845-0084859	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084860-0084861	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084862-0084870	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084871-0084887	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084888-0084905	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084906-0084910	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084911-0084926	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084927-0084946	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084947-0084960	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084961-0084975	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084976-0084994	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084995-0085012	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085013-0085033	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085034-0085055	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085056-0085057	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085058-0085075	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085076-0085098	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085099-0085108	A (per 11/5 Order)	A (per 11/5 Order)

A = Admit

Response to CPH 6th Request For Admission: Table B

MSC 0085109-0085122	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085123-0085136	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085137-0085153	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085154-0085174	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085175-0085191	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085192-0085206	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085207-0085231	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085232-0085250	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085251-0085273	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085274-0085297	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085298-0085314	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085315-0085333	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085334-0085351	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085352-0085357	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085358-0085373	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085374-0085390	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085391-0085402	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085403-0085419	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085420-0085435	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085436-0085452	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085453-0085471	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085472-0085493	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085494-0085514	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085515-0085524	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085525-0085540	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085541-0085557	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085558-0085571	A (per 11/5 Order)	A (per 11/5 Order)

A = Admit

Response to CPH 6th Request For Admission: Table B

MSC 0085572-0085588	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085589-0085609	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085610-0085622	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085623-0085642	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085643-0085660	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085661-0085663	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085664-0085684	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085685-0085699	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085700-0085721	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085722-0085747	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085748-0085760	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085761-0085776	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085777-0085783	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094003-0094007	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094008-0094010	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094011-0094012	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094013-0094015	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094016-0094018	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094019-0094020	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094021-0094022	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094023-0094025	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094026-0094028	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094029-0094032	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0095652-0095653	A (per 11/5 Order)	A (per 11/5 Order)

A = Admit

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO ENFORCE STIPULATION CONCERNING PURPORTED MISREPRESENTATIONS AND OMISSIONS

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, respectfully requests that this Court enter an Order enforcing the stipulation attached hereto as Exhibit 1. In support of this motion, CPH states as follows:

1. This motion arises because Morgan Stanley has refused to provide an appropriate stipulation in accordance with this Court's November 5, 2004 Order on Morgan Stanley's motion for protective order concerning a Rule 1.310 deposition notice that CPH served on Morgan Stanley. In the deposition notice, CPH requested a corporate representative to testify about the purported misrepresentations and omissions of CPH and associated companies, including the purported misrepresentations about the supposed synergies that would result from Sunbeam's acquisition of Coleman. *See* Ex. 2 (topics listed in Exhibit A). Morgan Stanley filed a motion for protective order to bar that deposition, and on November 5, 2004, this Court ruled as follows (Ex. 3):

> [I]f Defendant stipulates in writing by 12 noon November 5, 2004 that it does not contend that Plaintiff or any of its affiliates or related entities made any misrepresentation or omission in connection with the transaction forming the subject matter of Plaintiff's Complaint other than as alleged in paragraph 43 of its Answer [relating to synergies], Exhibit A to the Motion shall be deemed amended by interlineation to designate a corporate representative for the matters raised by paragraph 43 only. Whether or not the stipulation is made amending Exhibit A by interlineation, the Motion is hereby Denied.

2. Just before Noon on November 5, Morgan Stanley faxed a letter to CPH, representing that Morgan Stanley would not attempt to assert at trial that CPH or any associated company made any misrepresentation or omission, including but not limited to a misrepresentation or omission concerning synergies. Morgan Stanley further proposed that it would amend paragraph 43 of its amended answer to delete the reference to synergies. *See* Ex. 4.

3. CPH has been seeking to reduce Morgan Stanley's representations to a stipulation — with no success. CPH sent Morgan Stanley a proposed stipulation in the form attached hereto as Exhibit 1, but to date, Morgan Stanley has refused to indicate whether the form of the stipulation is acceptable. Consequently, CPH respectfully requests that this Court enforce the attached stipulation, and direct Morgan Stanley to amend paragraph 43 of its amended answer to delete the reference to synergies.

Dated: November 23, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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Ronald L. Marmer
Jeffrey T. Shaw
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One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNEY SCAROLA
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2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

#1182537

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 23 day of Nov, 2004.

JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
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2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
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Attorneys for Coleman(Parent)Holdings Inc.
and MacAndrews & Forbes Holdings, Inc.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff(s),

vs.

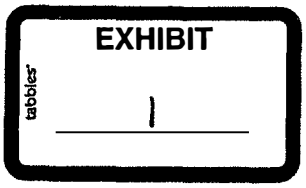
MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5045 AI

STIPULATION

Morgan Stanley & Co. Inc. ("Morgan Stanley"), by and through its undersigned attorneys, and Coleman (Parent) Holdings Inc. ("CPH"), by and through its undersigned attorneys, stipulate as follows:

CPH, MacAndrews & Forbes Holdings Inc., The Coleman Company, Inc., and their parents, affiliates, subsidiaries, agents, officers, accountants, or financial advisors did not make any misrepresentations or omissions to Morgan Stanley & Co., Sunbeam Corporation, or any of their parents, affiliates subsidiaries, officers, assigns, accountants, or financial advisors in connection with Sunbeam Corporation's acquisition of The Coleman Company, Inc.



Dated: _____

BY: _____

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Jerold S. Solovy
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Counsel for Coleman (Parent) Holdings Inc.

Dated: _____

BY: _____

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Facsimile: (202) 326-7999

Counsel for Morgan Stanley & Co. Incorporated

ORDER APPROVING STIPULATION

THIS CAUSE, having come before the Court upon the foregoing stipulation, and after having reviewed the agreement of the parties, the Court approves the stipulation.

DONE AND ORDERED in chambers in West Palm Beach, Florida this _____ day of November, 2004.

Elizabeth Maass
Circuit Judge

Copies furnished to:

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Document Number: 1178199

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.
MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,
vs.
MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

CASE NO. CA 03-5165 AI

NOTICE OF TAKING VIDEOTAPED DEPOSITIONS

To:
Thomas A. Clare, Esq.
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655 Fifteenth Street, N.W.
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Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
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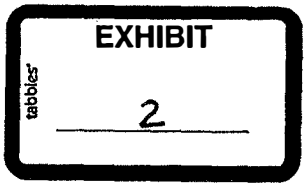
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following parties and witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Ruth Porat	November 23-24, 2004
Michael Rankowitz	November 4, 2004
Morgan Stanley & Co., Inc. on the topics identified on Exhibit A.	October 25, 2004
Morgan Stanley & Co., Inc. on the topics identified on Exhibit B.	November 10, 2004
Morgan Stanley & Co., Inc. on the topics identified on Exhibit C.	October 27, 2004
Morgan Stanley & Co., Inc. on the topics identified on Exhibit D.	November 3, 2004



All of the depositions will be conducted at Esquire Deposition Services, 216 East 45th Street, New York, NY 10017 and will begin at 9:30 a.m. The depositions will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until completed.

With respect to the depositions of Morgan Stanley & Co., Inc. ("MS&Co.") identified above, please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List this 18th day of October 2004.

Dated: October 18, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: Andrea Conrad
One of Its Attorneys

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Document Number: 1167384

SERVICE LIST

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Exhibit A

CORPORATE DEPOSITION TOPICS

1. All misrepresentations and/or omissions which MS&Co. or any of its affilliates contends were committed by or on behalf of MacAndrews & Forbes Holdings Inc., Coleman (Parent) Holdings Inc. ("CPH"), or The Coleman Company, Inc. in connection with Sunbeam's acquisition of CPH's interest in The Coleman Company, Inc., including, but not limited to the following:

A. The identities of the individuals who allegedly made misrepresentations and/or omissions that were allegedly relied upon.

B. The individual(s) to whom the alleged misrepresentations and/or omissions were made;

C. The date and time that each alleged misrepresentation and/or omission was made;

D. The identities of the individuals who relied upon the alleged misrepresentations and/or omissions;

E. The reliance of each individual on the alleged misrepresentations and/or omissions.

Exhibit B

CORPORATE DEPOSITION TOPICS

1. The value of American Household, Inc. on the following dates: (a) February 6, 2001; and (b) September 20, 2004.

2. The value of MS&Co.'s or any of its affilliates' interest in American Household, Inc. on the following dates: (a) February 6, 2001; and (b) September 20, 2004.

Exhibit C

CORPORATE DEPOSITION TOPICS

1. All fees, expenses, other compensation, or assets billed by or otherwise due to Morgan Stanley & Co., Inc. ("MS&Co."), Morgan Stanley Senior Funding, Inc. ("MSSF"), or any of their affiliates concerning or on behalf of Sunbeam Corp. (including American Household, Inc.) and all fees, expenses, other compensation, or assets paid or provided by or on behalf of Sunbeam Corp. (including American Household, Inc.) to MS&Co., MSSF, or any of their affiliates.

Exhibit D

CORPORATE DEPOSITION TOPICS

1. All of the procedures of, rules for, and activities of the Equity Commitment Committee in 1997 and 1998.

2. The role of the Equity Commitment Committee in 1997 and 1998.

3. All documents typically or ordinarily generated by and for the Equity Commitment Committee in the course of a transaction in 1997 and 1998.

4. All of the procedures of, rules for, and activities of the Leveraged Finance Commitment Committee and/or the Leveraged Finance Committee from 1997 to the present.

5. The role of the Leveraged Finance Commitment Committee and/or the Leveraged Finance Committee in 1997 and 1998.

6. All documents typically or ordinarily generated by and for the Leveraged Finance Commitment Committee and/or the Leveraged Finance Committee in the course of a transaction in 1997 and 1998.

7. The process, procedures, and requirements for preparing, approving, or issuing "highly confident" letters in 1997 and 1998.

8. All non-transaction specific documents generated in connection with preparing, approving, or issuing "highly confident" letters in 1997 and 1998.

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

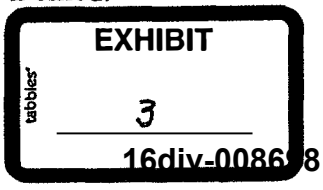
MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER ON MOTION FOR PROTECTIVE ORDER CONCERNING THE NOTICE OF TAKING VIDEOTAPED DEPOSITIONS SERVED BY COLEMAN (PARENT) HOLDINGS, INC. ON OCTOBER 18, 2004

THIS CAUSE came before the Court November 4, 2004 on Defendant Morgan Stanley & Co. Inc.'s Motion for Protective Order Concerning the Notice of Taking Videotaped Depositions Served by Coleman (Parent) Holdings, Inc. on October 18, 2004, with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that if Defendant stipulates in writing by 12 noon November 5, 2004 that it does not contend that Plaintiff or any of its affiliates or related entities made any misrepresentation or omission in connection with the transaction forming the subject matter of Plaintiff's Complaint other than as alleged in paragraph 43 of its Answer, Exhibit A to the Motion shall be deemed amended by interlineation to designate a corporate representative for the matters raised by paragraph 43 only. Whether or not the stipulation is made amending Exhibit A by interlineation, the Motion is hereby Denied.



DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 5 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci
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ST. PETERSBURG
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TAMPA
WEST PALM BEACH

CARLTON FIELDS
ATTORNEYS AT LAW

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222 Lakeview Avenue, Suite 1400
West Palm Beach, Florida 33401-6149
P.O. Box 150
West Palm Beach, Florida 33402-0150

561.659.7070
561.659.7368 fax
www.carltonfields.com

November 5, 2004

VIA FACSIMILE AND FEDERAL EXPRESS

Jack Scarola, Esq.
Searcy, Denney, et al.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33401

Jerold Solovy, Esq.
Jenner & Block LLP
One IBM Plaza
330 N. Wabash, Suite 4400
Chicago, IL 60611

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co. Inc.*

Dear Jack and Jerry:

Pursuant to the Court's ruling on November 4, 2004 with regard to Morgan Stanley's Motion for Protective Order regarding CPH's Notice of Taking Videotaped Depositions, please be advised that Morgan Stanley is not asserting that CPH or any of its affiliates or related entities made any misrepresentations or omissions in connection with the transaction forming the subject matter of CPH's complaint.

Further, with regard to synergies, Morgan Stanley proposes to delete the language "and on synergy analyses which MS&Co. received from CPH." from paragraph 43 of the Amended Answer and Amended Affirmative Defenses. Thus, this obviates the need for a deposition entirely on this topic.

Please contact me if there are any questions.

Sincerely,

Joseph Ianno, Jr.

/jed

cc: Thomas Clare (w/encl.)

WPB#566938.8

EXHIBIT
tabbies
4

Sherry, Bridget E.

From: Thomas Clare [tclare@kirkland.com]
Sent: Tuesday, November 23, 2004 7:57 PM
To: #MS-Coleman - K&E
Subject: Fw: Scanned document <17 pages> -- 11/23/2004 6:40:31 PM

20041123 CPH Motion to Enforce Stipulation

****
The information contained in this communication is
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return e-mail or by e-mail to postmaster@kirkland.com, and
destroy this communication and all copies thereof,
including all attachments.
****

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE IN OPPOSITION TO NON-PARTY SUNBEAM'S MOTION FOR PROTECTIVE ORDER ON RECORDS CUSTODIAN DEPOSITION

On November 16, 2004, Sunbeam Corporation (n/k/a American Household, Inc.) filed a motion for protective order to prevent a Sunbeam records custodian deposition from going forward. As the deposition notice reflects, CPH seeks basic authenticity, business record, and authorship information about approximately two boxes of Sunbeam documents that CPH may use at trial. Sunbeam objects to the deposition on the grounds that the parties have not attempted to reach any stipulations concerning the documents and that a Sunbeam records custodian should not be burdened with having to sit for a deposition until that happens.

CPH respectfully requests that this Court direct the Sunbeam records custodian to appear for the deposition that CPH previously noticed. CPH repeatedly has invited Morgan Stanley to attempt to reach stipulations concerning third-party documents, but to date, Morgan Stanley has not done so. CPH therefore has no alternative but to seek the authenticity, business record, and authorship information that it needs directly from Sunbeam.

The burden involved is not great — only two boxes of documents are involved — and CPH expects that the deposition can be completed in a few hours. Consequently, CPH respectfully requests that this Court direct a Sunbeam records custodian to appear promptly for a

deposition, to answer questions about the Sunbeam documents set forth in the deposition notice attached hereto as Exhibit A.

Dated: November 23, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

#1182933

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 23 day of Nov, 2004.

JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 684-5816
Attorneys for Coleman(Parent)Holdings Inc.
and MacAndrews & Forbes Holdings, Inc.

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITION

To: Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
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Washington, D.C. 20005

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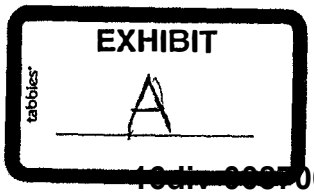
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings, Inc., hereby notices the deposition upon oral examination of the Custodian of Records, Sunbeam Corporation (k/n/a American Household, Inc.) pursuant to Florida Rule of Civil Procedure 1.410 on the date and at the time set forth below:

Custodian of Records Sunbeam Corporation (n/k/a American Household, Inc.)	November 2, 2004 at 9:30 a.m.

The deposition will be conducted on the topics set forth in the attached Subpoena. The



deposition will be recorded by stenographic means at the offices of Searcy Denney Scarola Barnhart & Shipley, P.C., 2139 Palm Beach Lakes Blvd., West Palm Beach, Florida. The deposition will be taken before a person authorized to administer oaths and will continue until completed.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and by Federal Express to all counsel on the attached Service List, this 22 day of Oct., 2004.

COLEMAN (PARENT) HOLDINGS, INC.

By: _____
One of Its Attorneys

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Robert T. Markowski
Deirdre E. Connell
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West Palm Beach, FL 33409
(561) 686-6300

CHICAGO_1169875_1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 12 day of October, 2004.

JACK SCAROLA
Florida Bar No.: 169440
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2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
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Fax: (561) 684-5816
Attorneys for Coleman(Parent)Holdings Inc.
and MacAndrews & Forbes Holdings, Inc.

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Todd & Evans, P.L.L.C.
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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH, COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,
vs.
MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,
vs.
MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

SUBPOENA DUCES TECUM

THE STATE OF FLORIDA

TO: Custodian of Records
Sunbeam Corporation
(n/k/a American Household, Inc.)
2381 Executive Center Drive
Boca Raton, Florida 33431

YOU ARE COMMANDED to appear at Scarcy Denney Scarola Barnhart & Shipley, P.A., 2139 Palm Beach Lakes Boulevard, West Palm Beach, FL, 33409 pursuant to the subpoena issued by the Circuit Court of the Fifteenth Judicial District of Florida and Florida Rule of Civil Procedure 1.310 on November 2, 2004 at 9:30 a.m., and to give testimony with respect to the topics specified on the attached Rider.

If you fail to:

1) Appear as specified; or

2) Object to this subpoena,

You may be in contempt of court. You are subpoenaed to appear by the following attorney, and unless excused from this subpoena by this attorney or the court, you shall respond to this subpoena as directed.

DATED this 22nd day of October, 2004.

Jack Scarola, Esq.
Florida Bar No.: 169440
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 478-0754

Jerold S. Solovy, Esq.
JENNER & BLOCK LLP
One IBM Plaza
Chicago, IL 60611
Phone: (312) 222-9350
Fax: (312) 527-0484

Attorneys for CPH and MAFCO

RIDER
to
SUBPOENA DUCES TECUM TO
CUSTODIAN OF RECORDS OF NON-PARTY
SUNBEAM CORPORATION (N/K/A AMERICAN HOUSEHOLD, INC.)

You are hereby requested to respond to the following topics pursuant to the definitions contained herein:

RULE 1.310 TOPICS

1. The authenticity, source, creation, use, maintenance, and business purpose of documents produced by Sunbeam to Coleman (Parent) Holdings, Inc. in the course of litigation, bearing the Bates numbers identified in Exhibit A, and information contained therein.

2. The authenticity, source, creation, use, maintenance, and business purpose of the documents identified in Exhibit B, and information contained therein. (Copies of the documents identified in Exhibit B are being provided under separate cover).

DEFINITIONS

1. "Sunbeam" means Sunbeam Corporation and any of its predecessors, successors, subsidiaries, and present and former officers, directors, employees, representatives, and agents.

2. "American Household" or "AHI" means American Household, Inc. and any of its predecessors, successors, subsidiaries, and present and former officers, directors, employees, representatives, and agents.

3. "Documents" shall be given the broad meaning provided in Rule 1.350 in the Florida Rules of Civil Procedure and refers to any form or means, whether physical, visual, or electronic, in or by which words, numbers, or ideas are recorded or preserved, whether fixed in tangible medium or electronically stored, including any and all drafts of any final document. The word "documents" shall include, by way of example and not by way of limitation, all of

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the following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, notes, messages, reports, studies, press releases, comparisons, books, accounts, checks, audio and video recordings and transcriptions thereof, pleadings, testimony, articles, bulletins, pamphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk calendars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, minutes for meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements, memoranda of understanding, letters of intent, computer tapes, computer drives or memories, computer diskettes or disks, e-mail, CD-ROMs, or any other tangible thing on which any handwriting, typing, printing, photostatic, electronic, or other form of communication or information is recorded or reproduced, together with all notations on any of the foregoing, all originals, file copies, or other unique copies of the foregoing, and all versions or drafts thereof, whether used or not.

EXHIBIT A
SUBPOENA DUCES TECUM TO
CUSTODIAN OF RECORDS OF NON-PARTY
SUNBEAM CORPORATION (N/K/A AMERICAN HOUSEHOLD, INC.)

The following documents were produced by Sunbeam to Coleman (Parent) Holdings, Inc. in the course of litigation, bearing the Bates Numbers identified below.

EX. #	SUNBEAM BATES NUMBER
CPH 016	SB 0018286
CPH 034	SB 286348-286349
CPH 039	SB 085634-085635
CPH 040	SB 043025
CPH 041	SB 068782
CPH 042	SB 047885
CPH 043	SB 074537
CPH 044	SB 044796-044797
CPH 045	SB 081468-081470
CPH 046	SB 230568-230571
CPH 047	SB 230564-230567
CPH 048	SB 230560-230563
CPH 049	SB 045020-045027
CPH 050	SB 272842-272846
CPH 051	SB 049919-049922
CPH 052	SB 043614
CPH 053	SB 272908-272912
CPH 054	SB 044305-044306

EX. #	SUNBEAM BATES NUMBER
CPH 055	SB 044304
CPH 056	SB 054613-054658
CPH 058	SB 050134-050144
CPH 059	SB 050136
CPH 060	SB 050145-050146
CPH 061	SB 047906-047937
CPH 062	SB 0046413
CPH 063	SB 050206-050210
CPH 064	SB 0018286
CPH 070	SB 237825-237830
CPH 073	SB 352272-352273
CPH 075	SB 0018203-0018288
CPH 080	SB 230485
CPH 082	SB 234816-234900
CPH 096	SB 237789-237797
CPH 098	SB 247390-247399
CPH 130	SB 0013021-0013041
CPH 131	SB 0013042-0013137

EX. #	SUNBEAM BATES NUMBER
CPH 140	SB 248700-248708
CPH 141	SB 248642-248651
CPH 142	SB 0014697-0014705
CPH 147	SB 088157-088188
CPH 150	SB 235345-235355
CPH 187A	SB 0015771-0015790
CPH 191	SB 248716-248719
CPH 200	SB 237661-237662
CPH 207	SB 236953-236968
CPH 220	SB 232429-232465
CPH 243	SB 088523-088524
CPH 246	SB 238493-238494
CPH 259	SB 253322-253327
CPH 260	SB 250672-250677
CPH 272	SB 238449-238466
CPH 276	SB 0012251-0012274
MS 175	SB 247391-247399

EXHIBIT B
SUBPOENA DUCES TECUM TO
CUSTODIAN OF RECORDS OF NON-PARTY
SUNBEAM CORPORATION (N/K/A AMERICAN HOUSEHOLD, INC.)

Copies of the following documents are being provided to AHI under separate cover:

EX. #	BATES RANGE
CPH 009	CP 026286-026370
CPH 010	CP 033169-033240
CPH 011	SASMF 10699-10705
CPH 012	CPH 0012526-0012527
CPH 013	CPH 0635991-0635992
CPH 014	MSC 0016944-0016945
CPH 022	CPH0084462-0084532
CPH 025	N/A
CPH 026	CPH1412961-1413007
CPH 030	CPH1122102 - 1122103
CPH 031	CPH0635893
CPH 032	CPH0635894 - 0635895
CPH 036	CPH0639323 - 0639327
CPH 057	CPH0131143-0131148
CPH 065	CPH0088703
CPH 066	CPH0038717
CPH 069	MSC 0003894-0003930
CPH 074	MSC 0080356-0080358
CPH 085	MSC 0036347 – 0036349

EX. #	BATES RANGE
CPH 086	MSC 0045112 - 0045113
CPH 090	CPH1332631 – 1335633
CPH 092	MSC 0003389 - 0003415
CPH 100	MSC 0062860 – 0062896
CPH 110	CPH0038670 – 0038676
CPH 111	CPH0038700 – 0038706
CPH 112	CPH0129613 – 0129616
CPH 115	CPH0038700 – 0038706
CPH 117	CPH0038523 – 0038524
CPH 120	CPH0012522 – 0012524
CPH 121	CPH1145796
CPH 122	CPH0039327, CPH0038707
CPH 124	CPH0012464 – 0012466
CPH 132	CPH0636135 – 0636136
CPH 134	CPH0146910 – 00146913
CPH 135	MSC 0063735 – 0063804
CPH 138	CPH1411216 – 1411300
CPH 143	CPH1026942-1026953
CPH 144	MSC 0016944

EX. #	BATES RANGE
CPH 151	MSC 0065651 – 0065784
CPH 152	LAB 000043
CPH 155	CPH1346133 -- 1346250
CPH 156	CPH1346276 -- 1346342
CPH 160	MSC 0003143
CPH 161	CPH1010442 -- 1010444
CPH 164	MSC 0045133-0045139
CPH 166	MSC 0045102-0045108
CPH 169	MSC 0044556-0044573
CPH 170	MSC 0042538-0042540
CPH 174	MSC 0042570
CPH 179	CPH0635892-0635895
CPH 182	CPH 1089795-1089815
CPH 189	CPH0642933-0642937
CPH 193	CPH1418971-1418974
CPH 195	MSC 0040237-0040305
CPH 202	MSC 0003931
CPH 206	CPH0648779-0648791
CPH 208	CPH632817-0632905
CPH 209	CPH1348404-1348475
CPH 210	CPH0632981
CPH 211	CPH0633012-0633049

EX. #	BATES RANGE
CPH 215	None
CPH 216	CPH0632906-0632937
CPH 217	MSC 0045665-0045758
CPH 218A	MSC 0045760- 0045761
CPH 219	MSC 0036347- 0036349
CPH 222	MSC 0003431- 0003464
CPH 223	MSC 0042482- 0042483
CPH 225	CPH0147626-0147627
CPH 226	CPH0147607-0147616
CPH 227	CPH0639174-0639182
CPH 231	CPH1398266-1398501
CPH 237	CSFBC 0001623-0001648
CPH 238	CPH 1412552-1412570
CPH 250	CPH 0146467
CPH 251	MSC 0005547-0005599
CPH 252	MSC 0019638-0019725
CPH 253	CPH 1409707-1409980
CPH 256	MSC 0019097- 0019116
CPH 257	FUNB 021139
CPH 258	FUNB 021243
CPH 261	MSC 0024383- 0024451
CPH 267	CLN 11731- 11749

EX. #	BATES RANGE
CPH 268	CLN 11768- 11782
CPH 269	CLN 11783- 11790
CPH 270	CLN 11791- 11801
CPH 271	CLN 11802- 11814
CPH 278	MSC 006375-006432
CPH162	MSC 0026888 -- 0026891
MS 040	MSC 0000001-0000175
MS 080	CPH1426289-1426296
MS 081	CPH1421814-1421817
MS 082	CPH1406962-1406964
MS 083	CPH1427250-1427253
MS 085	CPH1411216-1411300
MS 109	CPH1042288-1042317
MS 115	MSC 0063805-0063811
MS 166	CPH1326487-1326662
MS 182	CPH1412533- 1412551
MS 183	CPH1109095- 1109115
MS 194	CPH1185762-1185784
MS 238	CPH1418423- 1418499
MS 279	CPH1398266- 1398537

EX. #	BATES RANGE
	MSC 0015896-0015970
	CLN 51657-51733
	MSC 0015626-0015703
	MSC 0020477- 0020552
	MSC 0061553- 0061621
	MSC 0061191- 0061251
	MSC 0067528- 0067602
	MSC 0072800- 0072863
	MSC 0073484- 0073562
	MSC 0067258- 0067341
	MSC 0087405- 0087490
	MSC 0070445- 0070542
	MSC 0086753- 0086799
	MSC 0092043- 0092076
	MSC 0092077- 0092111
	MSC 0092146-0092177
	MSC 0092032- 0092042
	MSC 0092178- 0092188
	MSC 0092112- 0092133
	MSC 0092134- 0092145

COUNSEL LIST

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TODD & EVANS, P.L.L.C.
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Suite 400
Washington, D.C. 20036-3206

Joseph Ianno, Jr., Esq.
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Suite 1400
West Palm Beach, FL 33401

CHICAGO_1168907_3

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE IN OPPOSITION TO NON-PARTY SUNBEAM'S MOTION FOR PROTECTIVE ORDER ON RECORDS CUSTODIAN DEPOSITION

On November 16, 2004, Sunbeam Corporation (n/k/a American Household, Inc.) filed a motion for protective order to prevent a Sunbeam records custodian deposition from going forward. As the deposition notice reflects, CPH seeks basic authenticity, business record, and authorship information about approximately two boxes of Sunbeam documents that CPH may use at trial. Sunbeam objects to the deposition on the grounds that the parties have not attempted to reach any stipulations concerning the documents and that a Sunbeam records custodian should not be burdened with having to sit for a deposition until that happens.

CPH respectfully requests that this Court direct the Sunbeam records custodian to appear for the deposition that CPH previously noticed. CPH repeatedly has invited Morgan Stanley to attempt to reach stipulations concerning third-party documents, but to date, Morgan Stanley has not done so. CPH therefore has no alternative but to seek the authenticity, business record, and authorship information that it needs directly from Sunbeam.

The burden involved is not great — only two boxes of documents are involved — and CPH expects that the deposition can be completed in a few hours. Consequently, CPH respectfully requests that this Court direct a Sunbeam records custodian to appear promptly for a

deposition, to answer questions about the Sunbeam documents set forth in the deposition notice attached hereto as Exhibit A.

Dated: November 23, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNEY SCAROLA
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2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

#1182933

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 23 day of Nov., 2004.

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Barnhart & Shipley, P.A.
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Attorneys for Coleman(Parent)Holdings Inc.
and MacAndrews & Forbes Holdings, Inc.

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITION

To: Thomas A. Clare, Esq.
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Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings, Inc., hereby notices the deposition upon oral examination of the Custodian of Records, Sunbeam Corporation (k/n/a American Household, Inc.) pursuant to Florida Rule of Civil Procedure 1.410 on the date and at the time set forth below:

Custodian of Records Sunbeam Corporation (n/k/a American Household, Inc.)	November 2, 2004 at 9:30 a.m.

The deposition will be conducted on the topics set forth in the attached Subpoena. The

deposition will be recorded by stenographic means at the offices of Searcy Denney Scarola Barnhart & Shipley, P.C., 2139 Palm Beach Lakes Blvd., West Palm Beach, Florida. The deposition will be taken before a person authorized to administer oaths and will continue until completed.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and by Federal Express to all counsel on the attached Service List, this 22 day of Oct., 2004.

COLEMAN (PARENT) HOLDINGS, INC.

By: _____
One of Its Attorneys

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CHICAGO_1169875_1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 22 day of October, 2004.

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,
vs.
MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,
vs.
MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

SUBPOENA DUCES TECUM

THE STATE OF FLORIDA

TO: Custodian of Records
Sunbeam Corporation
(n/k/a American Household, Inc.)
2381 Executive Center Drive
Boca Raton, Florida 33431

YOU ARE COMMANDED to appear at Searcy Denney Scarola Barnhart & Shipley, P.A., 2139 Palm Beach Lakes Boulevard, West Palm Beach, FL, 33409 pursuant to the subpoena issued by the Circuit Court of the Fifteenth Judicial District of Florida and Florida Rule of Civil Procedure 1.310 on November 2, 2004 at 9:30 a.m., and to give testimony with respect to the topics specified on the attached Rider.

If you fail to:

1) Appear as specified; or

2) Object to this subpoena,

Coleman (Parent) Holdings, Inc. vs Morgan Stanley & Co., Inc.
2003 CA 005045 AI
Subpoena Duces Tecum

You may be in contempt of court. You are subpoenaed to appear by the following attorney, and unless excused from this subpoena by this attorney or the court, you shall respond to this subpoena as directed.

DATED this 22nd day of October, 2004.

Jack Scarola, Esq.
Florida Bar No.: 169440
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Fax: (312) 527-0484

Attorneys for CPH and MAFCO

RIDER
to
SUBPOENA DUCES TECUM TO
CUSTODIAN OF RECORDS OF NON-PARTY
SUNBEAM CORPORATION (N/K/A AMERICAN HOUSEHOLD, INC.)

You are hereby requested to respond to the following topics pursuant to the definitions contained herein:

RULE 1.310 TOPICS

1. The authenticity, source, creation, use, maintenance, and business purpose of documents produced by Sunbeam to Coleman (Parent) Holdings, Inc. in the course of litigation, bearing the Bates numbers identified in Exhibit A, and information contained therein.

2. The authenticity, source, creation, use, maintenance, and business purpose of the documents identified in Exhibit B, and information contained therein. (Copies of the documents identified in Exhibit B are being provided under separate cover).

DEFINITIONS

1. "Sunbeam" means Sunbeam Corporation and any of its predecessors, successors, subsidiaries, and present and former officers, directors, employees, representatives, and agents.

2. "American Household" or "AHI" means American Household, Inc. and any of its predecessors, successors, subsidiaries, and present and former officers, directors, employees, representatives, and agents.

3. "Documents" shall be given the broad meaning provided in Rule 1.350 in the Florida Rules of Civil Procedure and refers to any form or means, whether physical, visual, or electronic, in or by which words, numbers, or ideas are recorded or preserved, whether fixed in tangible medium or electronically stored, including any and all drafts of any final document. The word "documents" shall include, by way of example and not by way of limitation, all of

the following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, notes, messages, reports, studies, press releases, comparisons, books, accounts, checks, audio and video recordings and transcriptions thereof, pleadings, testimony, articles, bulletins, pamphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk calendars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, minutes for meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements, memoranda of understanding, letters of intent, computer tapes, computer drives or memories, computer diskettes or disks, e-mail, CD-ROMs, or any other tangible thing on which any handwriting, typing, printing, photostatic, electronic, or other form of communication or information is recorded or reproduced, together with all notations on any of the foregoing, all originals, file copies, or other unique copies of the foregoing, and all versions or drafts thereof, whether used or not.

EXHIBIT A
SUBPOENA DUCES TECUM TO
CUSTODIAN OF RECORDS OF NON-PARTY
SUNBEAM CORPORATION (N/K/A AMERICAN HOUSEHOLD, INC.)

The following documents were produced by Sunbeam to Coleman (Parent) Holdings, Inc. in the course of litigation, bearing the Bates Numbers identified below.

EX. #	SUNBEAM BATES NUMBER
CPH 016	SB 0018286
CPH 034	SB 286348-286349
CPH 039	SB 085634-085635
CPH 040	SB 043025
CPH 041	SB 068782
CPH 042	SB 047885
CPH 043	SB 074537
CPH 044	SB 044796-044797
CPH 045	SB 081468-081470
CPH 046	SB 230568-230571
CPH 047	SB 230564-230567
CPH 048	SB 230560-230563
CPH 049	SB 045020-045027
CPH 050	SB 272842-272846
CPH 051	SB 049919-049922
CPH 052	SB 043614
CPH 053	SB 272908-272912
CPH 054	SB 044305-044306

EX. #	SUNBEAM BATES NUMBER
CPH 055	SB 044304
CPH 056	SB 054613-054658
CPH 058	SB 050134-050144
CPH 059	SB 050136
CPH 060	SB 050145-050146
CPH 061	SB 047906-047937
CPH 062	SB 0046413
CPH 063	SB 050206-050210
CPH 064	SB 0018286
CPH 070	SB 237825-237830
CPH 073	SB 352272-352273
CPH 075	SB 0018203-0018288
CPH 080	SB 230485
CPH 082	SB 234816-234900
CPH 096	SB 237789-237797
CPH 098	SB 247390-247399
CPH 130	SB 0013021-0013041
CPH 131	SB 0013042-0013137

EX. #	SUNBEAM BATES NUMBER
CPH 140	SB 248700-248708
CPH 141	SB 248642-248651
CPH 142	SB 0014697-0014705
CPH 147	SB 088157-088188
CPH 150	SB 235345-235355
CPH 187A	SB 0015771-0015790
CPH 191	SB 248716-248719
CPH 200	SB 237661-237662
CPH 207	SB 236953-236968
CPH 220	SB 232429-232465
CPH 243	SB 088523-088524
CPH 246	SB 238493-238494
CPH 259	SB 253322-253327
CPH 260	SB 250672-250677
CPH 272	SB 238449-238466
CPH 276	SB 0012251-0012274
MS 175	SB 247391-247399

EXHIBIT B
SUBPOENA DUCES TECUM TO
CUSTODIAN OF RECORDS OF NON-PARTY
SUNBEAM CORPORATION (N/K/A AMERICAN HOUSEHOLD, INC.)

Copies of the following documents are being provided to AHI under separate cover:

EX. #	BATES RANGE
CPH 009	CP 026286-026370
CPH 010	CP 033169-033240
CPH 011	SASMF 10699-10705
CPH 012	CPH 0012526-0012527
CPH 013	CPH 0635991-0635992
CPH 014	MSC 0016944-0016945
CPH 022	CPH0084462-0084532
CPH 025	N/A
CPH 026	CPH1412961-1413007
CPH 030	CPH1122102 - 1122103
CPH 031	CPH0635893
CPH 032	CPH0635894 - 0635895
CPH 036	CPH0639323 - 0639327
CPH 057	CPH0131143-0131148
CPH 065	CPH0088703
CPH 066	CPH0038717
CPH 069	MSC 0003894-0003930
CPH 074	MSC 0080356-0080358
CPH 085	MSC 0036347 – 0036349

EX. #	BATES RANGE
CPH 086	MSC 0045112 - 0045113
CPH 090	CPH1332631 – 1335633
CPH 092	MSC 0003389 - 0003415
CPH 100	MSC 0062860 – 0062896
CPH 110	CPH0038670 – 0038676
CPH 111	CPH0038700 – 0038706
CPH 112	CPH0129613 – 0129616
CPH 115	CPH0038700 – 0038706
CPH 117	CPH0038523 – 0038524
CPH 120	CPH0012522 – 0012524
CPH 121	CPH1145796
CPH 122	CPH0039327, CPH0038707
CPH 124	CPH0012464 – 0012466
CPH 132	CPH0636135 – 0636136
CPH 134	CPH0146910 – 00146913
CPH 135	MSC 0063735 – 0063804
CPH 138	CPH1411216 – 1411300
CPH 143	CPH1026942-1026953
CPH 144	MSC 0016944

EX. #	BATES RANGE
CPH 151	MSC 0065651 – 0065784
CPH 152	LAB 000043
CPH 155	CPH1346133 -- 1346250
CPH 156	CPH1346276 -- 1346342
CPH 160	MSC 0003143
CPH 161	CPH1010442 -- 1010444
CPH 164	MSC 0045133-0045139
CPH 166	MSC 0045102-0045108
CPH 169	MSC 0044556-0044573
CPH 170	MSC 0042538-0042540
CPH 174	MSC 0042570
CPH 179	CPH0635892-0635895
CPH 182	CPH 1089795-1089815
CPH 189	CPH0642933-0642937
CPH 193	CPH1418971-1418974
CPH 195	MSC 0040237-0040305
CPH 202	MSC 0003931
CPH 206	CPH0648779-0648791
CPH 208	CPH632817-0632905
CPH 209	CPH1348404-1348475
CPH 210	CPH0632981
CPH 211	CPH0633012-0633049

EX. #	BATES RANGE
CPH 215	None
CPH 216	CPH0632906-0632937
CPH 217	MSC 0045665-0045758
CPH 218A	MSC 0045760- 0045761
CPH 219	MSC 0036347- 0036349
CPH 222	MSC 0003431- 0003464
CPH 223	MSC 0042482- 0042483
CPH 225	CPH0147626-0147627
CPH 226	CPH0147607-0147616
CPH 227	CPH0639174-0639182
CPH 231	CPH1398266-1398501
CPH 237	CSFBC 0001623-0001648
CPH 238	CPH 1412552-1412570
CPH 250	CPH 0146467
CPH 251	MSC 0005547-0005599
CPH 252	MSC 0019638-0019725
CPH 253	CPH 1409707-1409980
CPH 256	MSC 0019097- 0019116
CPH 257	FUNB 021139
CPH 258	FUNB 021243
CPH 261	MSC 0024383- 0024451
CPH 267	CLN 11731- 11749

EX. #	BATES RANGE
CPH 268	CLN 11768-11782
CPH 269	CLN 11783-11790
CPH 270	CLN 11791-11801
CPH 271	CLN 11802-11814
CPH 278	MSC 006375-006432
CPH162	MSC 0026888 -- 0026891
MS 040	MSC 0000001-0000175
MS 080	CPH1426289-1426296
MS 081	CPH1421814-1421817
MS 082	CPH1406962-1406964
MS 083	CPH1427250-1427253
MS 085	CPH1411216-1411300
MS 109	CPH1042288-1042317
MS 115	MSC 0063805-0063811
MS 166	CPH1326487-1326662
MS 182	CPH1412533-1412551
MS 183	CPH1109095-1109115
MS 194	CPH1185762-1185784
MS 238	CPH1418423-1418499
MS 279	CPH1398266-1398537

EX. #	BATES RANGE
	MSC 0015896-0015970
	CLN 51657-51733
	MSC 0015626-0015703
	MSC 0020477-0020552
	MSC 0061553-0061621
	MSC 0061191-0061251
	MSC 0067528-0067602
	MSC 0072800-0072863
	MSC 0073484-0073562
	MSC 0067258-0067341
	MSC 0087405-0087490
	MSC 0070445-0070542
	MSC 0086753-0086799
	MSC 0092043-0092076
	MSC 0092077-0092111
	MSC 0092146-0092177
	MSC 0092032-0092042
	MSC 0092178-0092188
	MSC 0092112-0092133
	MSC 0092134-0092145

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CHICAGO_1168907_3

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE TO MORGAN STANLEY'S MOTION TO REMOVE CONFIDENTIALITY DESIGNATIONS

On July 30, 2004, Morgan Stanley filed a motion to lift confidentiality designations, identifying 15 of CPH's filings that Morgan Stanley believes should not be filed under seal (interestingly, although Morgan Stanley filed numerous pleadings under seal in the same period for basically the same reasons, Morgan Stanley does not make a similar request with regard to its own filings). CPH has reviewed the filings in question and has determined that each was filed under seal solely because the filings refer to the terms of the Andersen settlement agreement, and because CPH has a contractual obligation to attempt to protect the confidentiality of those settlement terms. Due to those contractual obligations, CPH cannot consent to the relief requested by Morgan Stanley.

Dated: November 23, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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Ronald L. Marmer
Jeffrey T. Shaw
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 23rd day of Nov., 2004.

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MOTION FOR PROTECTIVE ORDER

Defendant Morgan Stanley & Co. Inc. ("Morgan Stanley") requests that this Court enter a Protective Order pursuant to Fla. R. Civ. P. 1.280(c) concerning several Notices of Taking Videotaped Depositions served by Plaintiff as set forth below. In support of this Motion, Morgan Stanley states as follows:

I. Plaintiff's deposition notice for a corporate representative concerning debentures

1. On November 17, 2004, this Court entered an Order overruling Morgan Stanley's Motion for a Protective Order to produce documents and to produce a corporate representative to testify concerning trading activity by Morgan Stanley related to Sunbeam debentures.

2. On November 19, 2004 at 6:17 p.m., Morgan Stanley received a Notice of Taking Deposition purporting to schedule a deposition for November 24, 2004 at 9:30 in New York City. A copy of the deposition notice is attached hereto as Exhibit "A." Morgan Stanley objected to the deposition because insufficient notice was given. A copy of this correspondence is attached hereto as Exhibit "B."

3. However, based upon Plaintiff's argument to this Court and reasons for this discovery, Morgan Stanley suggested that a written response could be provided to Plaintiff that

would provide all of the necessary information requested by Plaintiff. Such an offer was clearly reasonable since Plaintiff's counsel unilaterally took the same action with respect to a corporate representative deposition of Plaintiff. See correspondence attached hereto as Exhibit "C."

WHEREFORE, Morgan Stanley respectfully requests that this Court enter an Order requiring Plaintiff to accept a written response in lieu of a deposition or in the alternative, requiring the deposition to be rescheduled to a date and time mutually convenient for counsel and the witness and award such other and further relief as is just and proper.

II. Plaintiff's deposition notice for a corporate representative concerning Coleman Escrow Notes

4. On November 17, 2004, this Court entered an Order overruling Morgan Stanley's Motion for a Protective Order and required Morgan Stanley to produce documents and respond to interrogatories concerning trading activity by Morgan Stanley related to Coleman Escrow Notes and related documents. The Court required Morgan Stanley to produce documents and respond to the interrogatories on or before November 23, 2004. The Court did not address the Motion for Protective Order concerning the Rule 1.310(b)(6) deposition on this topic.

5. On November 19, 2004 at 6:17 p.m., Morgan Stanley received a Notice of Taking Deposition purporting to schedule a deposition for November 24, 2004 at 9:30 in New York City on this topic. A copy of the deposition notice is attached hereto as Exhibit "D." Morgan Stanley objected to the deposition because insufficient notice was given.

6. Because Morgan Stanley has not responded to the discovery, counsel submits that a deposition is premature at this time. Morgan Stanley will timely comply with the Court's Order. After CPH receives the written discovery, a deposition may be unnecessary.

WHEREFORE, Morgan Stanley respectfully requests that this Court enter an Order requiring the deposition to be rescheduled to a date and time mutually convenient for counsel and the witness and award such other and further relief as is just and proper.

III. Plaintiff's deposition notice for a corporate representative concerning authenticity of hundreds of deposition exhibits

7. On November 19, 2004, counsel received this Court's order overruling Morgan Stanley's motion for protective order concerning CPH's Sixth Request for Admissions.

8. On November 22, 2004, Morgan Stanley timely served its Responses to CPH's Sixth Request for Admissions pursuant to the Court's Order.

9. However, on November 22, 2004 at 1:04 p.m., prior to receiving Morgan Stanley's Response to the Sixth Request for Admissions, CPH served a deposition notice for a corporate representative to testify as to the authenticity of these documents. A copy of the deposition notice is attached hereto as Exhibit "E."

10. Serving the deposition notice prior to receiving the discovery responses clearly demonstrates the harassing nature of this request. Had CPH waited to receive the discovery responses, CPH would have learned that Morgan Stanley did not object to authenticity of a number of documents, thus, the deposition notice could have been narrowly tailored.

11. Moreover, CPH has provided insufficient notice for this deposition.

WHEREFORE, Morgan Stanley respectfully requests that this Court enter an Order requiring the deposition to be rescheduled to a date and time mutually convenient for counsel and the witness and award such other and further relief as is just and proper.

IV. Plaintiff's deposition notice for a corporate representative concerning punitive damages

12. On November 22, 2004, counsel received this Court's order permitting CPH to assert claims for punitive damages.

13. Immediately after receiving the Court's Order, at 2:12 p.m. that same day, CPH demanded that Morgan Stanley produce documents pursuant to the Seventh Request for Production. In addition, CPH demanded that Morgan Stanley produce a corporate representative to testify concerning financial information allegedly relevant to punitive damages. CPH unilaterally scheduled the deposition for November 24, 2004 at 9:30 a.m. A copy of the deposition notice is attached hereto as Exhibit "F."

14. With regard to the Seventh Request for Production, CPH is not entitled to any documents as Morgan Stanley's substantive objections to the Request have not been resolved either through agreement of the parties or by this Court.

15. With regard to the deposition, the scope of the requested areas of inquiry is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Further, the scope of the areas of inquiry exceeds the permissible scope of financial discovery even with the claims for punitive damages. Finally, CPH has provided insufficient notice for this deposition.

WHEREFORE, Morgan Stanley respectfully requests that this Court enter an Order requiring the deposition to be rescheduled to a date and time mutually convenient for counsel and the witness and award such other and further relief as is just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 23rd day of November, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
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BY: Joseph Ianno, Jr.
Joseph Ianno, Jr.
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Jerold S. Solovy
Michael Brody
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One IBM Plaza, Suite 400
Chicago, IL 60611

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,
vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,
vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

AMENDED NOTICE OF TAKING VIDEOTAPED DEPOSITION

To: Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
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Mark C. Hansen, Esq.
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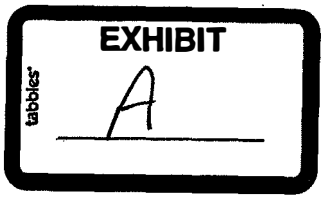
Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings, Inc. ("CPH") will take the deposition upon oral examination of the following party pursuant to Florida Rule of Civil Procedure 1.310 on the date set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co., Inc. on the topic identified on Exhibit A.	November 24, 2004 at 9:30 a.m.

The deposition will be conducted at Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017. The deposition will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until completed.

Please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.



I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to all counsel on the attached Service List this 19th day of November 2004.

Dated: November 19, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

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SEARCY DENNEY SCAROLA BARNHART
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SERVICE LIST

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Joseph Ianno, Jr., Esq.
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Exhibit A

CORPORATE DEPOSITION TOPIC

1. All transactions involving Subordinated Debentures (as defined in the Definitions and Instructions set forth in CPH's First Request for Production of Documents served on May 9, 2003), including but not limited to: (i) all transactions in which Morgan Stanley bought or sold any Subordinated Debentures or any interest therein; ~~(ii) all communications with any Morgan Stanley customer or counter-party to any trade involving Morgan Stanley as a broker or principal relating to the Subordinated Debentures;~~ (iii) any market for the Subordinated Debentures; and (iv) the purchase price, other costs in connection with the purchase, sales price, other costs in connection with the sale, gains, losses, and amount or rate of return on any purchase or sale of Subordinated Debentures or any interest therein.

2. Morgan Stanley's gains, losses, and amount or rate of return in connection with the purchase or sale of Subordinated Debentures or any interest therein.

3. The documents produced by Morgan Stanley at Morgan Stanley Confidential 0096879 to 0096972 and Morgan Stanley Confidential 0102880 to 0103433, including but not limited to: (1) the authenticity, source, creation, use, maintenance and business purpose of the documents; and (2) the explanation of the documents and the information contained therein.

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

655 Fifteenth Street, N.W.
Washington, D.C. 20005

202 879-5000

Facsimile:
202 879-5200

www.kirkland.com

November 21, 2004

BY FACSIMILE

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: ***Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.***

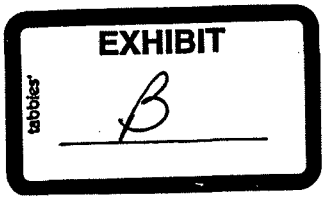
Dear Mike:

I write to confirm our telephone conversation on Friday afternoon regarding the deposition schedule for next week, and in response to the deposition notices you served after business hours on Friday evening. To summarize, we intend to proceed with the following depositions:

Deponent	Requested	Day	Location	Start
Todd Freed	CPH	Monday	Skadden	9:30 a.m.
Mitch Petrick	CPH	Monday	Esquire	10:15 a.m.
Rule 1.310 (10/8 notice Ex. A Topics 1-4)	CPH	Monday	Esquire	10:15 a.m.
Ruth Porat	CPH	Tuesday	Esquire	8:00 a.m.
Rule 1.310 (10/18 notice Ex. D Topics 1-3)	CPH	Tuesday	Esquire	8:00 a.m.
Bill Reid	MS	Tuesday	K&E (NY)	9:30 a.m.
Alison Amorison	MS	Tuesday	Skadden	9:30 a.m.

Ms. Porat is unable to continue her deposition beyond 1p.m. on Tuesday and is not available to resume the deposition on Wednesday. In the event that additional time is necessary, we will provide you with proposed dates to complete the deposition. During our telephone conversation on Friday, I offered to make Ms. Porat available for several hours on Monday afternoon to complete the corporate representative portion of Ms. Porat's deposition, a proposal that would have allowed CPH more time on Tuesday for Ms. Porat's individual deposition. You declined my offer.

You informed me that none of the Bank of New York depositions are going forward on November 23 as noticed. You assured me that you would inform me immediately if any of those depositions are going to go forward on that date. Given the need to send additional counsel to



Jacksonville, FL or New York City if the depositions are going to go forward, please inform us no later than noon on Monday if either of those depositions will proceed.

The Amended Deposition Notice you served for November 22 at 10:15 a.m. is invalid. MacAndrews & Forbes Holdings Inc. is not a party to the litigation and cannot issue a deposition notice. Even if it could, the notice period is inadequate. The notice was not served until after 6:00 p.m. EDT on Friday evening, yet purports to require Morgan Stanley to produce a corporate representative on those topics at 10:15 a.m. on Monday morning. Moreover, even if the deposition had been properly noticed and timely served on Friday evening, it is impractical to believe that a corporate representative could be prepared to provide testimony on such short notice. Morgan Stanley objects to the deposition notice on these grounds.

The Amended Deposition Notices you served for November 24 regarding the Sunbeam debenture and Coleman securities topics suffer from many of the same flaws. The deposition notices for these topics were not served until after 6:00 p.m. EDT on Friday evening, yet purport to require Morgan Stanley to produce corporate representatives to testify on six different topics just two business days after the effective service date, on the day before Thanksgiving. Even if witnesses could be found to provide testimony on these multiple topics on such short notice, it would be impossible for counsel to prepare the witness for Rule 1.310 testimony given the other depositions listed above. Morgan Stanley objects to the deposition notice on these grounds.

If we are able to come to an agreement on the deposition notices served on November 19, we will not object to those depositions being taken, if necessary, after the discovery deadlines.

We have not yet been able to serve Mr. Uzzi. Our efforts to do so continue.

Sincerely,

Thomas A. Clare

Thomas A. Clare

cc: Joseph Ianno, Esq. (by facsimile)
John Scarol, Esq. (by facsimile)
Mark C. Hansen, Esq. (by facsimile)

JENNER&BLOCK

November 19, 2004

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By Telecopy

Thomas A. Clare, Esq.
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Tom:

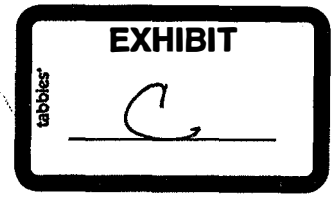
I write in response to your letter asking us to produce a corporate representative to testify about Morgan Stanley's deposition topic number 5. I enclose a written submission that should provide you with the information that you requested in that topic. I believe that this written submission obviates the need for a deposition.

The enclosed written submission has been designated confidential under the Stipulated Confidentiality Order.

Very truly yours,

Michael T. Brody

MTB:cjg
Enclosure
cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.



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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI
Plaintiff,
vs.

MORGAN STANLEY & CO., INC.,
Defendant.

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI
Plaintiff,
vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

AMENDED NOTICE OF TAKING VIDEOTAPED DEPOSITION

To: Thomas A. Clare, Esq.
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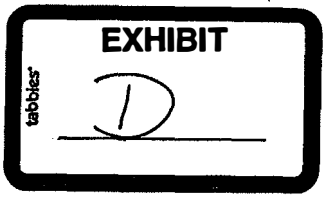
Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings, Inc. will take the deposition upon oral examination of the following parties and witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co., Inc. on topics identified on Exhibit A.	November 24, 2004 at 1:00 p.m.

The deposition will be conducted at Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017. The deposition will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until completed.

Please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.



I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to all counsel on the attached Service List this 19th day of November 2004.

Dated: November 19, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
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West Palm Beach, FL 33401

Exhibit A

CORPORATE DEPOSITION TOPICS

1. For the time period January 1, 1996 to the present, any purchase or sale by MS&Co. (or any of its affiliates, subsidiaries, divisions, predecessors, and successors) of Coleman Escrow Corp. Senior Secured First and Second Priority Discount Notes due 2001, which are described in CPH 0473148-CPH 0473165 and Morgan Stanley Confidential 0001575-0001579, and any other Security (as defined in 15 U.S.C. 77b(a)(1)), or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc.

2. For the time period January 1, 1996 to the present, all reasons why MS&Co. (or any of its affiliates, subsidiaries, divisions, predecessors, and successors) purchased or sold the Coleman Escrow Notes described in Topic No. 1, and any other Security (as defined in 15 U.S.C. 77b(a)(1)), or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc., and the identity of the person(s) and/or committee(s) that made the decision to purchase or sell the Coleman Escrow Notes and the Securities.

3. For the time period January 1, 1996 to the present, MS&Co.'s (or any of its affiliates', subsidiaries', divisions', predecessors', and successors') purchase price, other costs in connection with the purchase, sales price, other costs in connection with the sale, gains, losses, and amount or rate of return on any purchase or sale of Coleman Escrow Corp. Notes described in Topic No. 1, and any other Security (as defined in 15 U.S.C. 77b(a)(1)), or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc.

JENNER&BLOCK

November 22, 2004

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By Telecopy

Thomas A. Clare, Esq.
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Tom:

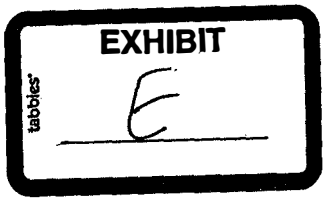
I write to follow up on our conversation yesterday concerning Morgan Stanley's responses to CPH's Sixth Set of Requests for Admission and CPH's Notice of Taking Deposition Dated October 22, 2004.

On Friday, November 19, 2004, we received the Court's Order denying your motion for protective order concerning that discovery. Accordingly, we expect to receive Morgan Stanley's responses to the Sixth Set of Requests for Admission when they are due, which is today. We also intend to take the corporate representative deposition, and I enclose an amended notice for that deposition. We are willing to accept the enclosed stipulation in lieu of that deposition if Morgan Stanley executes and returns it to us by Tuesday, November 23, 2004 at 12:00 p.m. EST.

Very truly yours,

Michael T. Brody

MTB:cjg
cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.



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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

AMENDED NOTICE OF TAKING DEPOSITION

To:

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
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Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings, Inc. will take the deposition upon oral examination of the following parties and witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co. on topics identified on Exhibit A.	November 24, 2004 at 9:30 a.m.

The deposition will be recorded by stenographic means at the offices of Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017-3004. The deposition will be taken before a person authorized to administer oaths and will continue day to day until complete.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to all counsel on the attached Service List, this 22nd day of November, 2004.

Dated: November 22, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Michael T. Brody
Deirdre E. Connell
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
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EXHIBIT A

You are hereby requested to respond to the following topics pursuant to the definitions set forth below.

RULE 1.310 TOPICS

1. The authenticity, source, creation, use, maintenance, and business purpose of documents produced and/or authored by Morgan Stanley and/or MSSF, bearing the following deposition exhibit number and/or Bates numbers, and information contained therein:

DEP EXHIBIT #	BATES RANGE
	MSC 0015896-0015970
	MSC 0015626-0015703
	MSC 0020477-0020552
	MSC 0061553-0061621
	MSC 0061191-0061251
	MSC 0067528-0067602
	MSC 0072800-0072863
	MSC 0073484-0073562
	MSC 0067258-0067341
	MSC 0087405-0087490
	MSC 0070445-0070542
	MSC 0086753-0086799
	MSC 0092043-0092076
	MSC 0092077-0092111

DEP EXHIBIT #	BATES RANGE
	MSC 0092146-0092177
	MSC 0092032-0092042
	MSC 0092178-0092188
	MSC 0092112-0092133
	MSC 0092134-0092145
CPH 003	MSC 0080435-0080437
CPH 004	MSC 0031171-0031176
CPH 005	MSC 0031177-0031220
CPH 006	MSC 0080438-0080439
CPH 009	CP 026286-026370
CPH 010	CP 033169-033240
CPH 011	SASMF 10699-10705
CPH 012	CPH 0012526-0012527
CPH 013	CPH 0635991-0635992
CPH 014	MSC 0016944-0016945

DEP EXHIBIT #	BATES RANGE
CPH 016	MSC 0028858
CPH 017	MS 00375-00381
CPH 024	DPW000001 - 000002
CPH 025	N/A
CPH 026	CPH1412961-1413007
CPH 027	MSC 0026219
CPH 028	MSC 0081555-0080760
CPH 029	MSC 0080440 - 0081556
CPH 031	CPH0635893
CPH 032	CPH0635894 - 0635895
CPH 033	MSC 0029176
CPH 034	CPH0520973 - 0520974
CPH 035	CPH1257351
CPH 036	CPH0639323 - 0639327
CPH 037	MSC 0045317 - 0045318

DEP EXHIBIT #	BATES RANGE
CPH 038	MSC 0041766 - 0041858
CPH 061	CPH0284977-0285008
CPH 062	CPH0283484
CPH 064	MSC 0028423
CPH 065	CPH0088703
CPH 066	CPH0038717
CPH 067	CPH0063827-0063833
CPH 068	MSC 0003995-0004001
CPH 069	MSC 0003894-0003930
CPH 070	SB237825-237830
CPH 071	MSC 0005984-0005995
CPH 072	MSC 0064865-0064866
CPH 074	MSC 0080356-0080358
CPH 075	SB0018202-0018288
CPH 076	MSC 0025829-0025886
CPH 078	MSC 0039543
CPH 079	MSC 0031855 – 0031856
CPH 080	CPH0465134
CPH 081	MSC 0036393 – 0036395
CPH 081A	N/A
CPH 082	CPH0469477-0469561
CPH 083	N/A

DEP EXHIBIT #	BATES RANGE
CPH 084	MSC 0033255 – 033263
CPH 084A	N/A
CPH 085	MSC 0036347 – 0036349
CPH 086	MSC 0045112 - 0045113
CPH 087	MSC 0035967-0035969
CPH 088	MSC 0031791 – 0031799
CPH 089	MSC 0083960 – 0084026
CPH 090	CPH1332631 – 1335633
CPH 091	N/A
CPH 092	MSC 0003389 - 0003415
CPH 093	N/A
CPH 094	N/A
CPH 095	MSC 0036112 – 0036113
CPH 096	CPH0472488 – 0472496
CPH 097	MSC 0033910 – 0033911
CPH 098	CPH0482089 – 0482098
CPH 099	N/A
CPH 100	MSC 0062860 – 0062896
CPH 110	CPH0038670 – 0038676
CPH 111	CPH0038700 – 0038706
CPH 112	CPH0129613 – 0129616
CPH 115	CPH0038700 – 0038706

DEP EXHIBIT #	BATES RANGE
CPH 117	CPH0038523 – 0038524
CPH 120	CPH0012522 – 0012524
CPH 121	CPH1145796
CPH 122	CPH0039327, CPH0038707
CPH 122	CPH0039327, CPH0038707
CPH 124	CPH0012464 – 0012466
CPH 125	MSC 0004673 - 0004702
CPH 126	MSC 0042248 - 0042275
CPH 128	MSC 0029199 - 0029201
CPH 129	MSC 000513 - 000541
CPH 130	CPH0251869 – 0251889
CPH 131	CPH0251890 – 0251985
CPH 132	CPH0636135 – 0636136
CPH 133	MSC 0059244 – 0059266
CPH 135	MSC 0063735 – 0063804
CPH 136	MSC 0083748 – 0083904
CPH 137	MSC 0039543
CPH 138	CPH1411216 – 1411300
CPH 139	MSC 0026540 – 0026544
CPH 140	CPH0483399 – 0483407
CPH 141	CPH 0483341 – 0483350
CPH 142	CPH 0253547 -- 0253555

DEP EXHIBIT #	BATES RANGE
CPH 143	CPH1026942-1026953
CPH 144	MSC 0016944
CPH 145	MSC 0028214 – 0028271
CPH 146	MSC 0080325 – 0080333
CPH 148	MSC 0047892
CPH 149	MSC 0047893
CPH 150	CPH0470006-04700016
CPH 151	MSC 0065651 – 0065784
CPH 152	LAB 000043
CPH 153	MSC 0018885 – 0018942
CPH 154	CPH1258265 -- 1258266
CPH 155	CPH1346133 -- 1346250
CPH 156	CPH1346276 -- 1346342
CPH 157	MSC 0018702 -- 0018703
CPH 160	MSC 0003143
CPH 162	MSC 0026888 -- 0026891
CPH 163	MSC 0080427 -- 0080430
CPH 164	MSC 0045133-0045139
CPH 165	N/A
CPH 166	MSC 0045102-0045108
CPH 167	N/A
CPH 168	N/A

DEP EXHIBIT #	BATES RANGE
CPH 169	MSC 0044556-0044573
CPH 170	MSC 0042538-0042540
CPH 171	N/A
CPH 172	MSC 0044462
CPH 173	MSC 0043129
CPH 174	MSC 0042570
CPH 175	N/A
CPH 176	N/A
CPH 177	MSC 0085779
CPH 178	MSC 0084771-0084778
CPH 179	CPH0635892-0635895
CPH 180	MSC 0029194-0029196
CPH 181	MSC 0006284-0006335
CPH 182	CPH 1089795-1089815
CPH 183	MSC 0063286-0063330
CPH 184	N/A
CPH 186	MSC 0041901-0041912
CPH 187	MSC 0041870-0041888
CPH 187A	CP0254621-0254640
CPH 188	CPH1408952-1408956
CPH 189	CPH0642933-0642937
CPH 190	N/A

DEP EXHIBIT #	BATES RANGE
CPH 194	N/A
CPH 195	MSC 0040237-0040305
CPH 196	MSC 085612-0085613
CPH 200	CPH0472360-0472361
CPH 202	MSC 0003931
CPH 203	MSC 0042314-0042327
CPH 204	MSC 0042328-0042341
CPH 205	MSC 0004005-004007
CPH 207	CPH0471614-0471629
CPH 208	CPH632817-0632905
CPH 209	CPH1348404-1348475
CPH 210	CPH0632981
CPH 211	CPH0633012-0633049
CPH 212	CPH1257349
CPH 213	MSC 0029159-0029162
CPH 214	CPH127359
CPH 215	N/A
CPH 217	MSC 0045665-0045758
CPH 217A	MSC 0080431-0080434
CPH 218	MSC 0004724-0004728
CPH 218A	MSC 0045760-0045761
CPH 219	MSC 0036347-0036349

DEP EXHIBIT #	BATES RANGE
CPH 220	CPH0467090-0467126
CPH 221	MSC 0045474-0045475
CPH 222	MSC 0003431-0003464
CPH 223	MSC 0042482-0042483
CPH 224	N/A
CPH 225	CPH 0147626-0147627
CPH 226	CPH 0147607-0147616
CPH 227	CPH 0639174-0639182
CPH 228	MSC 0085750-0085751
CPH 229	MSC 0085763-0085765
CPH 230	CPH 0635890-0635891
CPH 232	MSC 0085589-0085609
CPH 233	MSC 0085274-0085283
CPH 234	MSC 0084771-0084778
CPH 235	MSC 0085726-0085727
CPH 238	CPH 1412552-1412570
CPH 242	MSC 0045156
CPH 243	MSC 0026587-0026588
CPH 244	MSC 0031982-0031984
CPH 245	MSC 0043210
CPH 246	CPH 0473192-0473193
CPH 247	MSC 0004132-0004143

DEP EXHIBIT #	BATES RANGE
CPH 248	MSC 0085175-0085181
CPH 249	MSC 0036633-0036634
CPH 250	CPH 0146467
CPH 251	MSC 0005547-0005599
CPH 252	MSC 0019638-0019725
CPH 255	MSC 0045317-0045318
CPH 256	MSC 0019097-0019116
CPH 257	FUNB 021139
CPH 258	FUNB 021243
CPH 260	CPH 0485371-0485376
CPH 261	MSC 0024383-0024451
CPH 262	MSC 0018660-0018725 *(18687-88)**
CPH 263	MSC 0018730-0018731
CPH 264	MSC 0024863
CPH 265	MSC 0024864-0024866
CPH 266	CPH 1349253-1349282
CPH 272	CPH0473148-0473165
CPH 273	MSC 0023225-0023229
CPH 274	MSC 0054921-0054925
CPH 275	MSC 0001575-0001579
CPH 277	MSC0004673-0004702
CPH 278	MSC 0036700-0036720

DEP EXHIBIT #	BATES RANGE
CPH 279	MSC 006375-006432
CPH 280	MSC 0018885-0018942
CPH 281	MSC 0059244-0059266
CPH 284	MSC 0025887
MS 013	MSC 0027828-0027829
MS 040	MSC 0000001-0000175
MS 048	CPH 0041655-0041661
MS 057	FUNB 016564-016567
MS 079	CPH 0467007
MS 080	CPH 1426289-1426296
MS 081	CPH 1421814-1421817
MS 082	CPH 1406962-1406964
MS 083	CPH 1427250-1427253
MS 085	CPH 1411216-1411300
MS 115	MSC 0063805-0063811
MS 166	CPH 1326487-1326662
MS 175	CPH 0482090-0482098
MS 182	CPH 1412533-1412551
MS 183	CPH 1109095-1109115
MS 189	CPH 1399821-1399822
MS 194	CPH 1185762-1185784
MS 238	CPH 1418423-1418499

DEFINITIONS

1. "CPH" means Coleman (Parent) Holdings, Inc., its predecessors, successors, subsidiaries, and present and former officers, directors, and employees.

2. "Morgan Stanley" means Morgan Stanley & Co., Inc. and any of its direct or indirect parents, affiliates, subsidiaries, and present and former officers, directors, partners, employees, representatives, and agents.

3. "MSSF" means Morgan Stanley Senior Funding, Inc. and any of its direct or indirect parents, affiliates, subsidiaries, and present and former officers, directors, partners, employees, representatives, and agents.

4. "Documents" shall be given the broad meaning provided in CPLR 3120 and refers to any form or means, whether physical, visual, or electronic, in or by which words, numbers, or ideas are recorded or preserved, whether fixed in tangible medium or electronically stored, including any and all drafts of any final document. The word "documents" shall include, by way of example and not by way of limitation, all of the following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, notes, messages, reports, studies, press releases, comparisons, books, accounts, checks, audio and video recordings and transcriptions thereof, pleadings, testimony, articles, bulletins, pamphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk calendars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, minutes for meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements,

memoranda of understanding, letters of intent, computer tapes, computer drives or memories, computer diskettes or disks, e-mail, CD-ROMs, or any other tangible thing on which any handwriting, typing, printing, photostatic, electronic, or other form of communication or information is recorded or reproduced, together with all notations on any of the foregoing, all originals, file copies, or other unique copies of the foregoing, and all versions or drafts thereof, whether used or not.

5. "You" or "Your" means Morgan Stanley and/or MSSF and any of its present and former partners, employees, representatives, and agents.

SERVICE LIST

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Washington, D.C. 20036-3209

CHICAGO_1182401_1

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

CASE NO.: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

STIPULATION

Subject to its objection on relevance grounds, Morgan Stanley & Co. stipulates to the admission in evidence of the documents listed in the attached Exhibit. A. Morgan Stanley & Co. hereby waives any other objections to the admission of the documents listed in Exhibit A in evidence, including but not limited to objections to authenticity, hearsay, and foundation.

MORGAN STANLEY & CO.

BY: _____

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KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

COLEMAN (PARENT) HOLDINGS INC.

BY: _____

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Dated: November 23, 2004

ORDER APPROVING STIPULATION

THIS CAUSE, having come before the Court upon the foregoing stipulation, and after having reviewed the agreement of the parties, the Court approves the stipulation.

DONE AND ORDERED in chambers in West Palm Beach, Florida this _____ day of November, 2004.

Elizabeth Maass
Circuit Judge

Copies furnished to:

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West Palm Beach, FL 33409

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CHICAGO_1182454_2
CHICAGO_1182454_2

EXHIBIT A

DEP EXHIBIT #	BATES RANGE
	MSC 0015896-0015970
	MSC 0015626-0015703
	MSC 0020477-0020552
	MSC 0061553-0061621
	MSC 0061191-0061251
	MSC 0067528-0067602
	MSC 0072800-0072863
	MSC 0073484-0073562
	MSC 0067258-0067341
	MSC 0087405-0087490
	MSC 0070445-0070542
	MSC 0086753-0086799
	MSC 0092043-0092076
	MSC 0092077-0092111
	MSC 0092146-0092177
	MSC 0092032-0092042
	MSC 0092178-0092188
	MSC 0092112-0092133
	MSC 0092134-0092145
CPH 003	MSC 0080435-0080437

DEP EXHIBIT #	BATES RANGE
CPH 004	MSC 0031171-0031176
CPH 005	MSC 0031177-0031220
CPH 006	MSC 0080438-0080439
CPH 009	CP 026286-026370
CPH 010	CP 033169-033240
CPH 011	SASMF 10699-10705
CPH 012	CPH 0012526-0012527
CPH 013	CPH 0635991-0635992
CPH 014	MSC 0016944-0016945
CPH 016	MSC 0028858
CPH 017	MS 00375-00381
CPH 024	DPW000001 - 000002
CPH 025	N/A
CPH 026	CPH1412961-1413007
CPH 027	MSC 0026219
CPH 028	MSC 0081555-0080760
CPH 029	MSC 0080440 - 0081556
CPH 031	CPH0635893
CPH 032	CPH0635894 - 0635895
CPH 033	MSC 0029176
CPH 034	CPH0520973 - 0520974

DEP EXHIBIT #	BATES RANGE
CPH 035	CPH1257351
CPH 036	CPH0639323 - 0639327
CPH 037	MSC 0045317 - 0045318
CPH 038	MSC 0041766 - 0041858
CPH 061	CPH0284977-0285008
CPH 062	CPH0283484
CPH 064	MSC 0028423
CPH 065	CPH0088703
CPH 066	CPH0038717
CPH 067	CPH0063827-0063833
CPH 068	MSC 0003995-0004001
CPH 069	MSC 0003894-0003930
CPH 070	SB237825-237830
CPH 071	MSC 0005984-0005995
CPH 072	MSC 0064865-0064866
CPH 074	MSC 0080356-0080358
CPH 075	SB0018202-0018288
CPH 076	MSC 0025829-0025886
CPH 078	MSC 0039543
CPH 079	MSC 0031855 – 0031856
CPH 080	CPH0465134

DEP EXHIBIT #	BATES RANGE
CPH 081	MSC 0036393 – 0036395
CPH 081A	N/A
CPH 082	CPH0469477-0469561
CPH 083	N/A
CPH 084	MSC 0033255 – 033263
CPH 084A	N/A
CPH 085	MSC 0036347 – 0036349
CPH 086	MSC 0045112 - 0045113
CPH 087	MSC 0035967-0035969
CPH 088	MSC 0031791 – 0031799
CPH 089	MSC 0083960 – 0084026
CPH 090	CPH1332631 – 1335633
CPH 091	N/A
CPH 092	MSC 0003389 - 0003415
CPH 093	N/A
CPH 094	N/A
CPH 095	MSC 0036112 – 0036113
CPH 096	CPH0472488 – 0472496
CPH 097	MSC 0033910 – 0033911
CPH 098	CPH0482089 – 0482098
CPH 099	N/A
CPH 100	MSC 0062860 – 0062896

DEP EXHIBIT #	BATES RANGE
CPH 110	CPH0038670 – 0038676
CPH 111	CPH0038700 – 0038706
CPH 112	CPH0129613 – 0129616
CPH 115	CPH0038700 – 0038706
CPH 117	CPH0038523 – 0038524
CPH 120	CPH0012522 – 0012524
CPH 121	CPH1145796
CPH 122	CPH0039327, CPH0038707
CPH 122	CPH0039327, CPH0038707
CPH 124	CPH0012464 – 0012466
CPH 125	MSC 0004673 - 0004702
CPH 126	MSC 0042248 - 0042275
CPH 128	MSC 0029199 - 0029201
CPH 129	MSC 000513 - 000541
CPH 130	CPH0251869 – 0251889
CPH 131	CPH0251890 – 0251985
CPH 132	CPH0636135 – 0636136
CPH 133	MSC 0059244 – 0059266
CPH 135	MSC 0063735 – 0063804
CPH 136	MSC 0083748 – 0083904
CPH 137	MSC 0039543
CPH 138	CPH1411216 – 1411300

DEP EXHIBIT #	BATES RANGE
CPH 139	MSC 0026540 – 0026544
CPH 140	CPH0483399 – 0483407
CPH 141	CPH 0483341 – 0483350
CPH 142	CPH 0253547 – 0253555
CPH 143	CPH1026942-1026953
CPH 144	MSC 0016944
CPH 145	MSC 0028214 – 0028271
CPH 146	MSC 0080325 -- 0080333
CPH 148	MSC 0047892
CPH 149	MSC 0047893
CPH 150	CPH0470006-04700016
CPH 151	MSC 0065651 – 0065784
CPH 152	LAB 000043
CPH 153	MSC 0018885 – 0018942
CPH 154	CPH1258265 -- 1258266
CPH 155	CPH1346133 -- 1346250
CPH 156	CPH1346276 -- 1346342
CPH 157	MSC 0018702 – 0018703
CPH 160	MSC 0003143
CPH 162	MSC 0026888 -- 0026891
CPH 163	MSC 0080427 – 0080430
CPH 164	MSC 0045133-0045139

DEP EXHIBIT #	BATES RANGE
CPH 165	N/A
CPH 166	MSC 0045102-0045108
CPH 167	N/A
CPH 168	N/A
CPH 169	MSC 0044556-0044573
CPH 170	MSC 0042538-0042540
CPH 171	N/A
CPH 172	MSC 0044462
CPH 173	MSC 0043129
CPH 174	MSC 0042570
CPH 175	N/A
CPH 176	N/A
CPH 177	MSC 0085779
CPH 178	MSC 0084771-0084778
CPH 179	CPH0635892-0635895
CPH 180	MSC 0029194-0029196
CPH 181	MSC 0006284-0006335
CPH 182	CPH 1089795-1089815
CPH 183	MSC 0063286-0063330
CPH 184	N/A
CPH 186	MSC 0041901-0041912
CPH 187	MSC 0041870-0041888

DEP EXHIBIT #	BATES RANGE
CPH 187A	CP0254621-0254640
CPH 188	CPH1408952-1408956
CPH 189	CPH0642933-0642937
CPH 190	N/A
CPH 194	N/A
CPH 195	MSC 0040237-0040305
CPH 196	MSC 085612-0085613
CPH 200	CPH0472360-0472361
CPH 202	MSC 0003931
CPH 203	MSC 0042314-0042327
CPH 204	MSC 0042328-0042341
CPH 205	MSC 0004005-004007
CPH 207	CPH0471614-0471629
CPH 208	CPH632817-0632905
CPH 209	CPH1348404-1348475
CPH 210	CPH0632981
CPH 211	CPH0633012-0633049
CPH 212	CPH1257349
CPH 213	MSC 0029159-0029162
CPH 214	CPH127359
CPH 215	N/A
CPH 217	MSC 0045665-0045758

DEP EXHIBIT #	BATES RANGE
CPH 217A	MSC 0080431-0080434
CPH 218	MSC 0004724-0004728
CPH 218A	MSC 0045760-0045761
CPH 219	MSC 0036347-0036349
CPH 220	CPH0467090-0467126
CPH 221	MSC 0045474-0045475
CPH 222	MSC 0003431-0003464
CPH 223	MSC 0042482-0042483
CPH 224	N/A
CPH 225	CPH 0147626-0147627
CPH 226	CPH 0147607-0147616
CPH 227	CPH 0639174-0639182
CPH 228	MSC 0085750-0085751
CPH 229	MSC 0085763-0085765
CPH 230	CPH 0635890-0635891
CPH 232	MSC 0085589-0085609
CPH 233	MSC 0085274-0085283
CPH 234	MSC 0084771-0084778
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CPH 238	CPH 1412552-1412570
CPH 242	MSC 0045156
CPH 243	MSC 0026587-0026588

DEP EXHIBIT #	BATES RANGE
CPH 244	MSC 0031982-0031984
CPH 245	MSC 0043210
CPH 246	CPH 0473192-0473193
CPH 247	MSC 0004132-0004143
CPH 248	MSC 0085175-0085181
CPH 249	MSC 0036633-0036634
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CPH 251	MSC 0005547-0005599
CPH 252	MSC 0019638-0019725
CPH 255	MSC 0045317-0045318
CPH 256	MSC 0019097-0019116
CPH 257	FUNB 021139
CPH 258	FUNB 021243
CPH 260	CPH 0485371-0485376
CPH 261	MSC 0024383-0024451
CPH 262	MSC 0018660-0018725 *(18687-88)**
CPH 263	MSC 0018730-0018731
CPH 264	MSC 0024863
CPH 265	MSC 0024864-0024866
CPH 266	CPH 1349253-1349282
CPH 272	CPH0473148-0473165
CPH 273	MSC 0023225-0023229

DEP EXHIBIT #	BATES RANGE
CPH 274	MSC 0054921-0054925
CPH 275	MSC 0001575-0001579
CPH 277	MSC0004673-0004702
CPH 278	MSC 0036700-0036720
CPH 279	MSC 006375-006432
CPH 280	MSC 0018885-0018942
CPH 281	MSC 0059244-0059266
CPH 284	MSC 0025887
MS 013	MSC 0027828-0027829
MS 040	MSC 0000001-0000175
MS 048	CPH 0041655-0041661
MS 057	FUNB 016564-016567
MS 079	CPH 0467007
MS 080	CPH 1426289-1426296
MS 081	CPH 1421814-1421817
MS 082	CPH 1406962-1406964
MS 083	CPH 1427250-1427253
MS 085	CPH 1411216-1411300
MS 115	MSC 0063805-0063811
MS 166	CPH 1326487-1326662
MS 175	CPH 0482090-0482098
MS 182	CPH 1412533-1412551

DEP EXHIBIT #	BATES RANGE
MS 183	CPH 1109095-1109115
MS 189	CPH 1399821-1399822
MS 194	CPH 1185762-1185784
MS 238	CPH 1418423-1418499

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

NOTICE OF TAKING VIDEOTAPED DEPOSITION

To:

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
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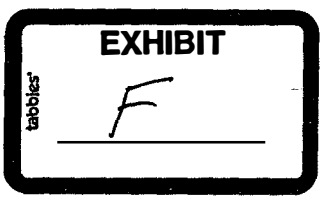
Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following party pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co., Inc. on topics identified on Exhibit A.	November 24 2004 at 9:30 a.m.

The deposition will be conducted at Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017. The deposition will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The deposition will be taken before a person authorized to administer oaths and will continue day to day until completed.

With respect to the deposition identified above, please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.



I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List this 22nd day of November 2004.

Dated: November 22, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: Dudley Connell
One of Its Attorneys

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JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART
& SHIPLEY P.A.
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SERVICE LIST

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Exhibit A

CORPORATE DEPOSITION TOPICS

1. The authenticity, source, use, creation, maintenance and business purpose of documents produced by Morgan Stanley & Co. in response to Coleman (Parent) Holdings Inc.'s Seventh Request for Production of Documents.

2. Morgan Stanley & Co.'s net worth, income, revenue, profits, losses, and global holdings for each fiscal year between and including 1998-2004.

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MOTION FOR PROTECTIVE ORDER

Defendant Morgan Stanley & Co. Inc. ("Morgan Stanley") requests that this Court enter a Protective Order pursuant to Fla. R. Civ. P. 1.280(c) concerning several Notices of Taking Videotaped Depositions served by Plaintiff as set forth below. In support of this Motion, Morgan Stanley states as follows:

I. Plaintiff's deposition notice for a corporate representative concerning debentures

1. On November 17, 2004, this Court entered an Order overruling Morgan Stanley's Motion for a Protective Order to produce documents and to produce a corporate representative to testify concerning trading activity by Morgan Stanley related to Sunbeam debentures.

2. On November 19, 2004 at 6:17 p.m., Morgan Stanley received a Notice of Taking Deposition purporting to schedule a deposition for November 24, 2004 at 9:30 in New York City. A copy of the deposition notice is attached hereto as Exhibit "A." Morgan Stanley objected to the deposition because insufficient notice was given. A copy of this correspondence is attached hereto as Exhibit "B."

3. However, based upon Plaintiff's argument to this Court and reasons for this discovery, Morgan Stanley suggested that a written response could be provided to Plaintiff that

WHEREFORE, Morgan Stanley respectfully requests that this Court enter an Order requiring the deposition to be rescheduled to a date and time mutually convenient for counsel and the witness and award such other and further relief as is just and proper.

III. Plaintiff's deposition notice for a corporate representative concerning authenticity of hundreds of deposition exhibits

7. On November 19, 2004, counsel received this Court's order overruling Morgan Stanley's motion for protective order concerning CPH's Sixth Request for Admissions.

8. On November 22, 2004, Morgan Stanley timely served its Responses to CPH's Sixth Request for Admissions pursuant to the Court's Order.

9. However, on November 22, 2004 at 1:04 p.m., prior to receiving Morgan Stanley's Response to the Sixth Request for Admissions, CPH served a deposition notice for a corporate representative to testify as to the authenticity of these documents. A copy of the deposition notice is attached hereto as Exhibit "E."

10. Serving the deposition notice prior to receiving the discovery responses clearly demonstrates the harassing nature of this request. Had CPH waited to receive the discovery responses, CPH would have learned that Morgan Stanley did not object to authenticity of a number of documents, thus, the deposition notice could have been narrowly tailored.

11. Moreover, CPH has provided insufficient notice for this deposition.

WHEREFORE, Morgan Stanley respectfully requests that this Court enter an Order requiring the deposition to be rescheduled to a date and time mutually convenient for counsel and the witness and award such other and further relief as is just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 23rd day of November, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
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Zhonette M. Brown
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Facsimile: (202) 879-5200

Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
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Facsimile: (202) 326-7999

Counsel for Morgan Stanley & Co. Incorporated

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Facsimile: (561) 659-7368
E-mail: jianno@carltonfields.com

BY: Joseph Ianno Jr.
Joseph Ianno, Jr.
Florida Bar No. 655351

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

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITION DUCES TECUM

TO: ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that pursuant to Fla.R.Civ.P. Rules 1.310 and 1.410, the undersigned counsel will take the deposition of the following:

NAME:	DATE/TIME:	LOCATION:
Ernst & Young L.L.P.	November 24, 2004 at 9:30 a.m.	Carlton Fields, P.A. 222 Lakeview Ave., Suite 1400 West Palm Beach, FL 33401

Upon oral examination before a notary public or other officer authorized by law to take depositions in the State of Florida. The videographer is Visual Evidence, 601 N. Dixie Highway, West Palm Beach, Florida. This examination may continue from day to day until completed. The deposition is being taken for the purpose of discovery, for use at trial, or for such other purposes, as is permitted under the applicable and governing rules.

PLEASE TAKE FURTHER NOTICE that, in connection with the taking of the deposition, Ernst & Young L.L.P. shall, pursuant to the subpoena duces tecum, appear and produce at the commencement of its deposition any and all documents in its possession or subject to its control concerning Ernst & Young L.L.P. valuation of warrants provided to MacAndrews and Forbes Holdings, Inc. ("MAFCO") in 1998 to purchase shares of Sunbeam stock, including but not limited to all communications with MAFCO concerning the process and methodology by which the value of the warrants was determined.

Individuals who have a disability that may need accommodation should contact the undersigned seven (7) days prior to the deposition.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile, e-mail and Federal Express on this 23 day of November, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999

CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368
E-mail: jianno@carltonfields.com

BY: _____
Joseph Ianno, Jr.
Florida Bar No. 655351

Counsel for Morgan Stanley & Co. Incorporated

SERVICE LIST

Jack Scarola
SEARCY, DENNEY, SCAROLA,
BARNHARDT & SHIPLEY, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy
Michael Brody
JENNER & BLOCK, LLC
One IBM Plaza, Suite 400
Chicago, IL 60611

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

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.
_____/

SUBPOENA DUCES TECUM FOR DEPOSITION

THE STATE OF FLORIDA

TO: Ernst & Young L.L.P.
5 Times Square
New York, NY 10036

YOU ARE COMMANDED to appear before a person authorized by law to take depositions in the State of Florida at Carlton Fields, P.A., 222 Lakeview Ave., Suite 1400, West Palm Beach, FL 33401 on November 24, 2004 at 9:30 a.m., for the taking of your deposition.

YOU ARE COMMANDED to produce and permit inspection and copying of any and all documents in the possession of Ernst & Young L.L.P. or subject to its control concerning Ernst & Young L.L.P. valuation of warrants provided to MacAndrews and Forbes Holdings, Inc. ("MAFCO") in 1998 to purchase shares of Sunbeam stock, including but not limited to all communications with MAFCO concerning the process and methodology by which the value of the warrants was determined.

If you fail to appear you may be in contempt of court.

You are subpoenaed to appear by the following attorneys and unless excused from this Subpoena duces tecum by these attorneys or the Court, you shall respond to this Subpoena duces tecum as directed.

Dated: November 23 2004

Joseph Ianno, Jr. (FL Bar # 655351)
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368

Counsel for Defendant
Morgan Stanley & Co. Incorporated

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

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITION DUCES TECUM

TO: ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that pursuant to Fla.R.Civ.P. Rules 1.310 and 1.410, the undersigned counsel will take the deposition of the following:

NAME:	**DATE/TIME:**	**LOCATION:**
Ernst & Young L.L.P.	November 24, 2004 at 9:30 a.m.	Esquire Deposition Services 216 East 45th Street, 8th Floor New York, NY 10017-3304

Upon oral examination before a notary public or other officer authorized by law to take depositions in the State of New York. The videographer is Esquire Deposition Services, 216 East 45th Street, 8th Floor, New York, New York. This examination may continue from day to day until completed. The deposition is being taken for the purpose of discovery, for use at trial, or for such other purposes, as is permitted under the applicable and governing rules.

PLEASE TAKE FURTHER NOTICE that, in connection with the taking of the deposition, Ernst & Young L.L.P. shall, pursuant to the subpoena duces tecum, appear and produce at the commencement of its deposition any and all documents in its possession or subject to its control concerning Ernst & Young L.L.P. valuation of warrants provided to MacAndrews and Forbes Holdings, Inc. ("MAFCO") in 1998 to purchase shares of Sunbeam stock, including but not limited to all communications with MAFCO concerning the process and methodology by which the value of the warrants was determined.

Individuals who have a disability that may need accommodation should contact the undersigned seven (7) days prior to the deposition.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile, e-mail and Federal Express on this 23rd day of November, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
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Washington, D.C. 20036
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CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368
E-mail: jianno@carltonfields.com

BY: Joseph Ianno, Jr.
Joseph Ianno, Jr.
Florida Bar No. 655351

Counsel for Morgan Stanley & Co. Incorporated

SERVICE LIST

Jack Scarola
SEARCY, DENNEY, SCAROLA,
BARNHARDT & SHIPLEY, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy
Michael Brody
JENNER & BLOCK, LLC
One IBM Plaza, Suite 400
Chicago, IL 60611

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

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.
_____/

SUBPOENA DUCES TECUM FOR DEPOSITION

THE STATE OF NEW YORK

TO: Ernst & Young L.L.P.
5 Times Square
New York, NY 10036

YOU ARE COMMANDED to appear before a person authorized by law to take depositions in the State of New York at Esquire Deposition Services, 216 East 45th Street, 8th Floor, New York, NY 10017-3304 on November 24, 2004 at 9:30 a.m., for the taking of your deposition.

YOU ARE COMMANDED to produce and permit inspection and copying of any and all documents in the possession of Ernst & Young L.L.P. or subject to its control concerning Ernst & Young L.L.P. valuation of warrants provided to MacAndrews and Forbes Holdings, Inc. ("MAFCO") in 1998 to purchase shares of Sunbeam stock, including but not limited to all communications with MAFCO concerning the process and methodology by which the value of the warrants was determined.

If you fail to appear you may be in contempt of court.

You are subpoenaed to appear by the following attorneys and unless excused from this Subpoena duces tecum by these attorneys or the Court, you shall respond to this Subpoena duces tecum as directed.

Dated: November 23, 2004

Joseph Ianno, Jr. (FL Bar # 655351)
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368

Counsel for Defendant
Morgan Stanley & Co. Incorporated

CARLTON FIELDS, P.A.

ATTORNEYS AT LAW

ESPERANTÉ
222 LAKEVIEW AVENUE, SUITE 1400
WEST PALM BEACH, FLORIDA 33401-6149

MAILING ADDRESS
P.O. BOX 150, WEST PALM BEACH, FL 33402-0150
TEL (561) 659-7070 FAX (561) 659-7368

FAX COVER SHEET

		Phone Number	Fax Number
Date:	November 23, 2004		
To:	Jack Scarola	(561) 686-6300	(561) 684-5816
	Jerold Solovy/Michael Brody	(312) 222-9350	(312) 840-7711
	Thomas Clare	(202) 879-5993	(202) 879-5200
	Rebecca Beynon/Mark Hansen	(202) 326-7900	(202) 326-7999
From:	Joyce Dillard, CLA	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 30

Message:

Coleman v. Morgan Stanley & Co., Inc.

To follow please find a copy of Morgan Stanley's Response to CPH' 8th Request for Production and Morgan Stanley's Answers and Objections to CPH's 7th Set of Interrogatories.

☐ ***Original to follow Via Regular Mail*** ☐ ***Original will Not be Sent*** ☐ ***Original will follow via Overnight Courier***

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (if long distance, please call collect) and return the original message to us at the above address via the U.S. Postal Service. Thank you.

IF THERE ARE ANY PROBLEMS OR COMPLICATIONS, PLEASE NOTIFY US IMMEDIATELY AT:
(561) 659-7070

TELECOPIER OPERATOR: _____

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INC.,

Defendant.
_____/

MORGAN STANLEY & CO. INC.'S ANSWERS AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS, INC.'S SEVENTH SET OF INTERROGATORIES

Defendant, Morgan Stanley & Co. Incorporated ("Morgan Stanley"), by and through its undersigned attorneys, pursuant to Florida Rule of Civil Procedure 1.340 and the Court's Order on Coleman (Parent) Holdings Inc.'s Motion to Compel Morgan Stanley's Compliance with Discovery Requests Concerning Coleman Escrow Corporation Notes, provides the following answers to Coleman (Parent) Holdings Inc.'s ("CPH") Seventh Set of Interrogatories to Morgan Stanley & Co. Inc. dated October 21, 2004 ("Interrogatories"):

GENERAL OBJECTIONS

1. Morgan Stanley objects to the Interrogatories to the extent that they seek information protected from disclosure by the attorney-client privilege, the attorney-work-product doctrine, the common-interest privilege, or any other applicable constitutional, statutory, or common-law privilege, doctrine, immunity, or rule.

2. Morgan Stanley objects to the Interrogatories to the extent that they seek information that is neither relevant nor likely to lead to the discovery of evidence related to a matter at issue among the parties.

3. Morgan Stanley's answers and objections are based on a good-faith investigation. Morgan Stanley reserves the right to amend and/or modify its answers and objections.

4. Morgan Stanley incorporates each of these General Objections into each of the Answers set forth below, as though each General Objection is fully set forth therein.

ANSWERS

INTERROGATORY NO. 1: For the time period January 1, 1996 to the present, identify each purchase or sale by MS&Co.'s of Coleman Escrow Notes and any other Security, or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings, Inc., and for each purchase or sale identify the MS&Co. entity, fund, or affiliate that made the purchase or sale.

RESPONSE: Pursuant to Fla. R. Civ. P. 1.340(c), please see Bates numbered documents 0111944 to 0111962 produced in Morgan Stanley & Co. Inc.'s Response to Coleman (Parent) Holdings, Inc.'s Eighth Request for Production of Documents.

INTERROGATORY NO. 2: For each purchase or sale identified in response to Interrogatory No. 1, state the purchase price, other costs in connection with the purchase, sales price, other revenue in connection with the sale, gains, losses, and the amount or rate of return on each such purchase or sale.

RESPONSE: Pursuant to Fla. R. Civ. P. 1.340(c), please see Bates numbered documents 0111944 to 0111962 produced in Morgan Stanley & Co. Inc.'s Response to Coleman (Parent) Holdings, Inc.'s Eighth Request for Production of Documents.

INTERROGATORY NO. 3: For each purchase or sale identified in response to Interrogatory No. 1, identify all reasons why MS&Co. purchased or sold the Security and the person(s) and/or committee(s) that made the decision to purchase or sell the Security.

RESPONSE: No response is necessary to this Request pursuant to the Court's November 17, 2004 Order on CPH's Motion to Compel Morgan Stanley's Compliance with Discovery Requests Concerning Coleman Escrow Corporation Notes.

I, James F. Doyle, being duly sworn, depose and say that I am authorized on behalf of Morgan Stanley & Co. Incorporated and, on its behalf, I have read the foregoing *Morgan Stanley's Answers and Objections to Coleman (Parent) Holding Inc.'s Seventh Set of Interrogatories*, and, to the best of my knowledge and belief, the response is true and correct.

James F. Doyle

Subscribed and sworn to before me
this 23 day of November, 2004.

THERESA A. PILOSI
Notary Public, State of New York
No. 41-4995128
Qualified in Queens County
Term Expires August 8, 2006

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 23rd day of November, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
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Mark C. Hansen
James M. Webster, III
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Sumner Square
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900
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Counsel for
Morgan Stanley & Co. Incorporated

CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368
E-mail: jianno@carltonfields.com

BY: Joseph Ianno, Jr.
Florida Bar No. 655351

SERVICE LIST

Jack Scarola
SEARCY, DENNEY, SCAROLA, BARNHARDT & SHIPLEY, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy
Michael Brody
JENNER & BLOCK, LLC
One IBM Plaza, Suite 400
Chicago, IL 60611

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE TO MORGAN STANLEY'S MOTION TO REMOVE CONFIDENTIALITY DESIGNATIONS

On July 30, 2004, Morgan Stanley filed a motion to lift confidentiality designations, identifying 15 of CPH's filings that Morgan Stanley believes should not be filed under seal (interestingly, although Morgan Stanley filed numerous pleadings under seal in the same period for basically the same reasons, Morgan Stanley does not make a similar request with regard to its own filings). CPH has reviewed the filings in question and has determined that each was filed under seal solely because the filings refer to the terms of the Andersen settlement agreement, and because CPH has a contractual obligation to attempt to protect the confidentiality of those settlement terms. Due to those contractual obligations, CPH cannot consent to the relief requested by Morgan Stanley.

Dated: November 23, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By:_____
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350
#1182945

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 23rd day of Nov., 2004.

JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 684-5816
Attorneys for Coleman(Parent)Holdings Inc.
and MacAndrews & Forbes Holdings, Inc.

COUNSEL LIST

Joseph Ianno, Jr., Esquire
Carlton Fields, et al.
222 Lakeview Avenue
Suite1400
West Palm Beach, FL 33401

Thomas D. Yannucci, P.C.
Thomas A. Clare
Brett McGurk
Kirkland and Ellis
655 15th Street, N.W., Suite 1200
Washington, DC 20005

Jerold S. Solovy, Esq.
Jenner & Block LLP
One IBM Plaza
Suite 4400
Chicago, IL 60611

Mark C. Hansen, Esq.
Kellogg, Huber, Hansen,
Todd & Evans, P.L.L.C.
Sumner Square
1615 M Street, N.W., Suite 400
Washington, DC 20036-3206

FAX TRANSMITTAL

JENNER&BLOCK

Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611
Tel 312 222-9350
www.jenner.com

Chicago
Dallas
Washington, DC

Date: November 24, 2004

To:		
Thomas A. Clare, Esq.	Fax:	(202) 879-5200
	Voice:	(202) 879-5993
Joseph Ianno, Jr., Esq.	Fax:	(561) 659-7368
	Voice:	(561) 659-7070
John Scarola, Esq.	Fax:	(561) 684-5816 (before 5 PM)
	Voice:	(561) 686-6350, Ext. 140
Mark C. Hansen, Esq.	Fax:	(202) 326-7999
	Voice:	(202) 326-7900

From: Michael T. Brody
312 923-2711

Employee Number: Client Number: 41198-10003

Important: This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is attorney work product, privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via postal service. Thank you.

Message:

Total number of pages including this cover sheet: 10 Time Sent:

If you do not receive all pages, please call: 312 222-9350 Sent By:

Secretary: Caryn Jo Geisler Extension: 6490

JENNER&BLOCK

November 24, 2004

Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611
Tel 312-222-9350
www.jenner.com

Chicago
Dallas
Washington, DC

Michael T. Brody
Tel 312 923-2711
Fax 312 840-7711
mbrody@jenner.com

By Telecopy

Thomas A. Clare, Esq.
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Tom:

I write in response to your letter of 10:30 p.m. last night concerning the Rule 1.310 depositions concerning Morgan Stanley's trading in Sunbeam debentures and CLN Holdings notes.

While saying a witness could provide testimony today, your letter did not offer the witness today. It indicated that the witness needed additional preparation and that there were limited Morgan Stanley resources to do so.

Accordingly, we will proceed with these depositions on November 30, 2004, beginning at 11:00 a.m. I enclose amended notices of deposition. Please advise us of the identity of the corporate representative by Monday morning.

Very truly yours,

Michael T. Brody

MTB:cjg
cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

AMENDED NOTICE OF TAKING VIDEOTAPED DEPOSITION

To:

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings, Inc. will take the deposition upon oral examination of the following parties and witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co., Inc. on topics identified on Exhibit A.	November 30, 2004 at 11:00 a.m.

The deposition will be conducted at Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017. The deposition will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until completed.

Please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to all counsel on the attached Service List this 24th day of November 2004.

Dated: November 24, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART
& SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409
(561) 686-6300

SERVICE LIST

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W.
Suite 400
Washington, D.C. 20036-3209

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Exhibit A

CORPORATE DEPOSITION TOPICS

1. For the time period January 1, 1996 to the present, any purchase or sale by MS&Co. (or any of its affiliates, subsidiaries, divisions, predecessors, and successors) of Coleman Escrow Corp. Senior Secured First and Second Priority Discount Notes due 2001, which are described in CPH 0473148-CPH 0473165 and Morgan Stanley Confidential 0001575-0001579, and any other Security (as defined in 15 U.S.C. 77b(a)(1)), or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc.

2. For the time period January 1, 1996 to the present, all reasons why MS&Co. (or any of its affiliates, subsidiaries, divisions, predecessors, and successors) purchased or sold the Coleman Escrow Notes described in Topic No. 1, and any other Security (as defined in 15 U.S.C. 77b(a)(1)), or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc., and the identity of the person(s) and/or committee(s) that made the decision to purchase or sell the Coleman Escrow Notes and the Securities.

3. For the time period January 1, 1996 to the present, MS&Co.'s (or any of its affiliates', subsidiaries', divisions', predecessors', and successors') purchase price, other costs in connection with the purchase, sales price, other costs in connection with the sale, gains, losses, and amount or rate of return on any purchase or sale of Coleman Escrow Corp. Notes described in Topic No. 1, and any other Security (as defined in 15 U.S.C. 77b(a)(1)), or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc.

4. The documents produced by Morgan Stanley at Morgan Stanley Confidential 0096879 to 0096972 and Morgan Stanley Confidential 0111944 to 0111962, including but not limited to: (1) the authenticity, source, creation, use, maintenance and business purpose of the documents; and (2) the explanation of the documents and the information contained therein.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.
MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

AMENDED NOTICE OF TAKING VIDEOTAPED DEPOSITION

To:

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings, Inc. ("CPH") will take the deposition upon oral examination of the following party pursuant to Florida Rule of Civil Procedure 1.310 on the date set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co., Inc. on the topic identified on Exhibit A.	November 30, 2004 at 2:00 p.m.

The deposition will be conducted at Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017. The deposition will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until completed.

Please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to all counsel on the attached Service List this 24th day of November 2004.

Dated: November 24, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
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Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
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West Palm Beach, FL 33401

Exhibit A

CORPORATE DEPOSITION TOPIC

1. All transactions involving Subordinated Debentures (as defined in the Definitions and Instructions set forth in CPH's First Request for Production of Documents served on May 9, 2003), including but not limited to: (i) all transactions in which Morgan Stanley bought or sold any Subordinated Debentures or any interest therein; ~~(ii) all communications with any Morgan Stanley customer or counter party to any trade involving Morgan Stanley as a broker or principal relating to the Subordinated Debentures;~~ (iii) any market for the Subordinated Debentures; and (iv) the purchase price, other costs in connection with the purchase, sales price, other costs in connection with the sale, gains, losses, and amount or rate of return on any purchase or sale of Subordinated Debentures or any interest therein.

2. Morgan Stanley's gains, losses, and amount or rate of return in connection with the purchase or sale of Subordinated Debentures or any interest therein.

3. The documents produced by Morgan Stanley at Morgan Stanley Confidential 0096879 to 0096972 and Morgan Stanley Confidential 0102880 to 0103433, including but not limited to: (1) the authenticity, source, creation, use, maintenance and business purpose of the documents; and (2) the explanation of the documents and the information contained therein.

#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

Case No. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

_____/

Case No. CA 03-5165 AI

AMENDED NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: December 3, 2004

TIME: 8:00 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

(1) Non-Party Sunbeam's Motion for Protective Order on Records Custodian Deposition filed 11/16/04.

(2) Coleman (Parent) Holdings Inc.'s Motion to Compel Production of Documents Responsive to Seventh Request for Production filed 11/22/04.

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

(3) Coleman (Parent) Holdings Inc.'s Motion for a Finding of Contempt and for Other Relief due to Morgan Stanley's Refusal to Comply with Court Order filed 11/22/04.

(4) Coleman (Parent) Holdings Inc.'s Motion to Enforce Stipulation Concerning Purported Misrepresentations and Omissions.

(5) Coleman (Parent) Holdings Inc.'s Response in Opposition to Non-Party Sunbeam's Motion for Protective Order on Records Custodian Deposition.

(6) Coleman (Parent) Holdings Inc's Motion for a Finding of Contempt and for Other Relief Due to Morgan Stanley's Disregard of Court Order.

(7) Coleman (Parent) Holdings Inc.'s Response to Morgan Stanley's Motion to Remove Confidentiality Designations.

(8) Morgan Stanley's Motion for Protective Order filed 11/23/04.

(9) Coleman (Parent) Holdings Inc.'s Motion to Compel Non-Party Arthur Andersen LLP to Comply with Subpoena for Custodian of Records Deposition.

Moving counsel certifies that he or she contacted opposing counsel and attempted to resolve the discovery dispute without hearing.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and US Mail to all Counsel on the attached list, this 24th day of Nov, 2004.

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Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
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West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 478-0754
Attorney for CPH and MAFCO

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

COUNSEL LIST

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West Palm Beach, FL 33401

#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

Case No. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

_____/

Case No. CA 03-5165 AI

AMENDED NOTICE OF HEARING
(Correcting Certificate of Service)

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: December 3, 2004

TIME: 8:00 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

(1) Non-Party Sunbeam's Motion for Protective Order on Records Custodian Deposition filed 11/16/04.

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Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

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(5) Coleman (Parent) Holdings Inc.'s Response in Opposition to Non-Party Sunbeam's Motion for Protective Order on Records Custodian Deposition.

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(8) Morgan Stanley's Motion for Protective Order filed 11/23/04.

(9) Coleman (Parent) Holdings Inc.'s Motion to Compel Non-Party Arthur Andersen LLP to Comply with Subpoena for Custodian of Records Deposition.

Moving counsel certifies that he or she contacted opposing counsel and attempted to resolve the discovery dispute without hearing.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and US Mail to all Counsel on the attached list, this 24th day of NOV., 2004.

JACK SCAROLA
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Attorney for CPH and MAFCO

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

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Eliot Lauer, Esq.
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New York, NY 10178

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL NON-PARTY ARTHUR ANDERSEN LLP TO COMPLY WITH SUBPOENA FOR CUSTODIAN OF RECORDS DEPOSITION

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, respectfully requests that this Court enter an Order directing Arthur Andersen LLP to present its custodian of records for a deposition in accordance with the notice of deposition and subpoena that CPH served on Andersen on October 22, 2004. In support of this motion, CPH states as follows:

1. This motion arises because Andersen refuses to present a custodian of records to provide basic authenticity and related information about less than 50 Andersen documents in accordance with the deposition notice and subpoena that CPH served on October 22. *See* Ex. A. CPH has attempted to address this matter by stipulation with Morgan Stanley and Andersen, but Morgan Stanley refuses to do so. CPH therefore has no choice but to proceed with the custodian of records deposition of Andersen.

2. The burden associated with the deposition CPH is requesting is not great — less than 50 documents are involved — and CPH expects that the deposition could be completed in a few hours. Consequently, CPH respectfully requests that this Court direct an Andersen records custodian to appear for a deposition, to answer questions about the Andersen documents set forth in the deposition notice and subpoena attached hereto as Exhibit A.

Dated: November 24, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

#1183459

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 24 day of Nov, 2004.

JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
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West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 684-5816
Attorneys for Coleman(Parent)Holdings Inc.
and MacAndrews & Forbes Holdings, Inc.

COUNSEL LIST

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Mark C. Hansen, Esq.
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Todd & Evans, P.L.L.C.
Sumner Square
1615 M Street, N.W., Suite 400
Washington, DC 20036-3206

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC., CASE NO. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS INC.,
et al.,
Defendants.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITION

To: Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
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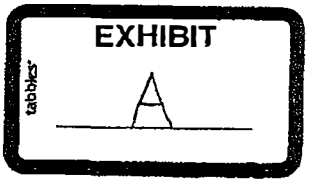
& EVANS, P.L.L.C.
Sumner Square, 1615 M Street
N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings, Inc., hereby notices the deposition upon oral examination of the Custodian of Records, Arthur Andersen LLP pursuant to Florida Rule of Civil Procedure 1.410 on the date and at the time set forth below:

Custodian of Records Arthur Andersen LLP	November 5, 2004 at 9:30 a.m.

The deposition will be conducted on the topics set forth in the attached Subpoena. The deposition will be recorded by stenographic means at the offices of Jenner & Block LLP, One IBM Plaza, Chicago, Illinois 60611. The deposition will be taken before a person authorized to



administer oaths and will continue until completed.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and by Federal Express to all counsel on the attached Service List, this 22 day of Oct, 2004.

COLEMAN (PARENT) HOLDINGS, INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
Robert T. Markowski
Deirdre E. Connell
JENNER & BLOCK, LLC
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SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409
(561) 686-6300

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2181 - Served
2281 - Not Served
2381 - Served By Mail
Subpoena - for Deposition

(Rev.12/11/01) CCG 0014

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COLEMAN (PARENT) HOLDINGS INC. - Petitioner
v.
ARTHUR ANDERSEN LLP

No. _____

SUBPOENA FOR DEPOSITION

04L 011933
CALENDAR C
SUBPOENA

To: Custodian of Records, ARTHUR ANDERSON LLP
33 W. Monroe Ave.
Chicago, IL 60603

YOU ARE COMMANDED to appear to give your deposition before a Notary Public at:

Jenner & Block LLP, One IBM Plaza (address), Room 4000, Chicago (city), Illinois 60611 (zip)

on November 5, 2004, at 9:30 a.m. p.m.

YOU ARE COMMANDED ALSO to bring the following:

See Exhibit A attached.

in your possession or control.

YOUR FAILURE TO APPEAR IN RESPONSE TO THIS SUBPOENA WILL SUBJECT YOU TO PUNISHMENT FOR CONTEMPT OF THIS COURT.

WITNESS _____ OCT 22 2004

_____
Clerk of Court

Atty. No. 05003
Name: Jerold S. Solovy
Attorney for: Coleman (Parent) Holdings
Address: Jenner & Block LLP, One IBM Plaza #4000
City/State/Zip: Chicago, Illinois 60611
Telephone: (312) 222-9350

DOROTHY BROWN
CLERK OF CIRCUIT COURT
SEAL

I served this subpoena by handing a copy to _____

_____ on _____, _____.

I paid the witness $ _____ for witness and mileage fees.

_____

Signed and sworn to before me on this See Exhibit day of _____, _____

_____ Notary Public

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

EXHIBIT A

TO SUBPOENA TO
CUSTODIAN OF RECORDS OF NON-PARTY
ARTHUR ANDERSEN LLP

You are hereby requested to respond to the following topics pursuant to the definitions contained herein:

DEPOSITION TOPICS

1. The authenticity, source, creation, use, maintenance, and business purpose of documents produced by Andersen to Coleman (Parent) Holdings, Inc. in the course of litigation, bearing the Bates numbers identified in Exhibit B, and information contained therein.

2. The authenticity, source, creation, use, maintenance, and business purpose of the documents identified in Exhibit C, and information contained therein. (Copies of the documents identified in Exhibit C are being provided under separate cover).

DEFINITIONS

1. "Andersen" means Arthur Andersen LLP and any of its predecessors, successors, subsidiaries, and present and former officers, directors, employees, representatives, and agents.

2. "Documents" shall be given the broad meaning provided in Rule 1.350 in the Florida Rules of Civil Procedure and refers to any form or means, whether physical, visual, or electronic, in or by which words, numbers, or ideas are recorded or preserved, whether fixed in tangible medium or electronically stored, including any and all drafts of any final document. The word "documents" shall include, by way of example and not by way of limitation, all of the following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, notes, messages, reports, studies, press releases, comparisons, books, accounts, checks, audio

and video recordings and transcriptions thereof, pleadings, testimony, articles, bulletins, pamphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk calendars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, minutes for meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements, memoranda of understanding, letters of intent, computer tapes, computer drives or memories, computer diskettes or disks, e-mail, CD-ROMs, or any other tangible thing on which any handwriting, typing, printing, photostatic, electronic, or other form of communication or information is recorded or reproduced, together with all notations on any of the foregoing, all originals, file copies, or other unique copies of the foregoing, and all versions or drafts thereof, whether used or not.

EXHIBIT B
SUBPOENA DUCES TECUM TO
CUSTODIAN OF RECORDS OF NON-PARTY
ARTHUR ANDERSEN LLP

The following documents were produced by Andersen to Coleman (Parent) Holdings, Inc. in the course of litigation, bearing the Bates Numbers identified below.

EXHIBIT #	OLD BATES RANGE	NEW BATES RANGE
CPH 012	AA 031057-031058	CPH 0012526-0012527
CPH 018	AA 036293-036295	CPH0015111-0015113
CPH 019	AAR 010766-010771	CPH0125693-0125698
CPH 020	AAR 014169-014173	CPH0129292-0129296
CPH 021	AA 166173-166417	CPH0062489-0062733
CPH 022	AA 188506-188576	CPH0084462-0084532
CPH 023	AA 026498-026518	CPH1184885-1184905
CPH 057	AAR 016023-016028	CPH0131143-0131148
CPH 065	AA 193873	CPH0088703
CPH 066	AA 105258	CPH0038717
CPH 101	AA 166377-166381	CPH0062693 – 0062697
CPH 102	AA 166372-166375	CPH0062688 – 0062691
CPH 103	AA 166356-166361	CPH0062672 – 0062677
CPH 104	AA 166369-166370	CPH0062685 - 0062686
CPH 105	AA 166290-166294	CPH0062606 – 0062610
CPH 106	AAR 013074-013075	CPH1192163 – 1192164
CPH 107	AA 031553-031557	CPH0013023 – 0013027
CPH 108	AA 031494-031498	CPH1056006 – 1056010

EXHIBIT #	OLD BATES RANGE	NEW BATES RANGE
CPH 109	AAR 014803-014813	CPH0129926 – 0129936
CPH 110	AA 105211-105217	CPH0038670 – 0038676
CPH 111	AA 105241-105247	CPH0038700 – 0038706
CPH 112	AAR 014490-014493	CPH0129613 – 0129616
CPH 113	AAR 014148-014152	CPH0129271 – 129275
CPH 114	AAR 015038-015040	MSC 0027048 - 0027050
CPH 115	AA 105241-105247	CPH0038700 – 0038706
CPH 117	AA 105064-105065	CPH0038523 – 0038524
CPH 118	AA 120304	CPH0041649
CPH 119	AA 005758, AA 036291-036295	CPH0021362, CPH 0015109 – 0015113
CPH 120	AA 031053-031055	CPH0012522 – 0012524
CPH 122	AA 105868, AA 105248	CPH0039327, CPH0038707
CPH 123	AA 055761-055764	CPH0021365 – 0021368
CPH 124	AA 030995-030997	CPH0012464 – 0012466
CPH 127, MS 13	AA 055761-055762	CPH0021365 – 0021366
CPH 185	AA 090040	CPH0035322
MS 013	AA 055761-055762	MSC 0027828-0027829
MS 031	AA 120296-120303	CPH0041641-0041648
MS 032	AA 120305-120316	CPH0041650-0041661
MS 043	AAR014804-014813	CPH0129927-0129936
MS 048	AA 120310-120316	CPH0041655-0041661
MS 060	AAR 016015-016029	CPH1071418-1071432

EXHIBIT C
SUBPOENA DUCES TECUM TO
CUSTODIAN OF RECORDS OF NON-PARTY
ARTHUR ANDERSEN LLP

Copies of the following documents are being provided to you under separate cover:

DEPOSITION EXHIBIT #	OLD BATES RANGE	NEW BATES RANGE
CPH 017	MS 00375-00381	MS 00375-00381
CPH 024	DPW000001 - 000002	DPW000001 - 000002
CPH 121	LAB 000043	CPH1145796
CPH 132	SASMF 10951-10952	CPH0636135 – 0636136
CPH 152	LAB 000043	LAB 000043
CPH 208	SASMF 07633-07721	CPH632817-0632905
CPH 213	MSC 0029159-0029162	MSC 0029159-0029162

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COUNSEL LIST

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TODD & EVANS, P.L.L.C.
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Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
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Civil Action Cover Sheet (Rev. 6/19/03) CCL 0520

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

COLEMAN (PAREN) HOLDINGS INC

v.

ARTHUR ANDERSEN LLP

No. 04L 011933
CALENDAR C
SUBPOENA

CIVIL ACTION COVER SHEET

A Civil Action Cover Sheet shall be filed with the complaint in all civil actions. The information contained herein is for administrative purposes only and cannot be introduced into evidence. Please check the box in front of the appropriate general category and then check the subcategory thereunder, if applicable, which best characterizes your action.

(FILE STAMP)

Jury Demand ☐ Yes ☑ No

☐ PERSONAL INJURY/WRONGFUL DEATH

- ☐ 027 Motor Vehicle
- ☐ 040 Medical Malpractice
- ☐ 047 Asbestos
- ☐ 048 Dram Shop
- ☐ 049 Product Liability
- ☐ 051 Construction Injuries (including Structural Work Act, Road Construction Injuries Act and negligence)
- ☐ 052 Railroad/FELA
- ☐ 053 Pediatric Lead Exposure
- ☐ 061 Other Personal Injury/Wrongful Death
- ☐ 063 Intentional Tort
- ☐ 064 Miscellaneous Statutory Action *(Please Specify Below**)*
- ☐ 065 Premises Liability
- ☐ 078 Fen-phen/Redux Litigation
- ☐ 199 Silicone Implant

☐ 062 PROPERTY DAMAGE

☐ 066 LEGAL MALPRACTICE

☐ TAX & MISCELLANEOUS REMEDIES

- ☐ 007 Confession of Judgment
- ☐ 008 Replevin
- ☐ 009 Tax
- ☐ 015 Condemnation
- ☐ 017 Detinue
- ☐ 029 Unemployment Compensation
- ☐ 036 Administrative Review Action
- ☐ 085 Petition to Register Foreign Judgment
- ☐ 099 All Other Extraordinary Remedies

☐ COMMERCIAL LITIGATION

- ☐ 002 Breach of Contract
- ☐ 070 Professional Malpractice (other than legal or medical)
- ☐ 071 Fraud
- ☐ 072 Consumer Fraud
- ☐ 073 Breach of Warranty
- ☐ 074 Statutory Action *(Please Specify Below**)*
- ☐ 075 Other Commercial Litigation *(Please Specify Below**)*
- ☐ 076 Retaliatory Discharge

☐ 077 LIBEL/SLANDER

☐ OTHER ACTIONS

- ☐ 079 Petition for Qualified Orders
- ☑ 084 Petition to Issue Subpoena
- ☐ 100 Petition for Discovery

** _____

_____

By: Jerold S. Solovy/Jenner & Block LLP 05003
(Attorney) (Pro Se)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

COLEMAN (PARENT) HOLDINGS INC.,	Index No._____
Petitioner,	
for an order for the taking of the deposition of ARTHUR ANDERSEN LLP,	
Respondent,	
pursuant to a commission issued in an action pending in the Circuit Court of the Fifteenth Judicial District of the State of Florida, Palm Beach County, entitled Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co. Inc., Case No. 2003 CA 005045 AI.	04L 011933 CALENDAR C SUBPOENA

ORDER

This matter coming to be heard on a petition pursuant to Illinois Supreme Court Rule 204(b) in which Petitioner seeks the entry of an order directing that subpoena for deposition be issued to Arthur Andersen LLP, the Court having reviewed the petition and its attached exhibits, and having been duly informed thereon, hereby orders:

1. That the petition pursuant to Illinois Supreme Court Rule 204(b) to issue Illinois subpoena for deposition for use in an action pending in the Circuit Court of Palm Beach County, Florida is hereby GRANTED;

2. That the subpoena for deposition in the form attached to the petition as Exhibit 1 shall issue;

3. That pursuant to this subpoena, the Custodian of Records of Arthur Andersen LLP, shall appear at the offices of Jenner & Block LLP, One IBM Plaza, 330 North Wabash Avenue, Suite 4000, Chicago, Illinois 60611 on November 5, 2004, at 9:30 a.m., and shall be available to answer questions propounded by counsel responsive to the topics

propounded in Exhibit A to the Subpoena, and such deposition shall continue from day to day until completed.

4. Copies of this Order and the subpoenas for deposition shall be served by Petitioner on all the parties.

ENTERED this _____ day of October, 2004.

_____
Circuit Judge

JUDGE ARTHUR L. JANURA, JR.

OCT 22 2004

Circuit Court-0291

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

COLEMAN (PARENT) HOLDINGS INC.,	Index No.
Petitioner,	
for an order for the taking of the deposition of ARTHUR ANDERSEN LLP,	
Respondent,	
pursuant to a commission issued in an action pending in the Circuit Court of the Fifteenth Judicial District of the State of Florida, Palm Beach County, entitled Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co. Inc., Case No. 2003 CA 005045 AI.	04L 011933 CALENDAR C SUBPOENA

PETITION PURSUANT TO ILLINOIS SUPREME COURT RULE 204(b) TO ISSUE AN ILLINOIS SUBPOENA FOR USE IN ACTION PENDING IN PALM BEACH COUNTY, FLORIDA

Pursuant to Rule 204(b) of the Supreme Court of Illinois, petitioner Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, hereby petitions this Court for the entry of an order directing that a Subpoena for deposition be issued to the following deponent in the form attached hereto as Exhibit 1:

Arthur Andersen LLP
Custodian of Records
33 W. Monroe
Chicago, IL 60603

In support of this petition, petitioner states as follows:

1. Petitioner is plaintiff in Case No. 2003 CA 005045 AI, *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.*, a lawsuit now proceeding in the Fifteenth Judicial Circuit of the State of Florida, in and for Palm Beach County. Discovery is proceeding in that action and the close of fact discovery shall occur on November 24, 2004. The Commission issued by the Florida Court for the purpose of obtaining deposition testimony is attached hereto as Exhibit 2.

2. To aid the action, petitioner desires to take the deposition of the above designated deponent. The deponent is found for a subpoena in Cook County, Illinois.

3. Petitioner has requested that the deponent appear for deposition on November 5, 2004, 9:30 a.m., at the offices of Jenner & Block LLP, One IBM Plaza, 330 N. Wabash Ave., Suite 4000, Chicago, Illinois 60611.

WHEREFORE, petitioner prays for the entry of an order, in the form attached hereto as Exhibit 3, directing a Subpoena for Deposition to issue to the above named deponent.

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

One of Its Attorneys

Jerold S. Solovy
Michael T. Brody
Deirdre Connell
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, IL 60611
(312) 222-9350

Dated: October 22, 2004

2181 - Served
2281 - Not Served
2381 - Served By Mail
Subpoena - for Deposition (Rev.12/11/01) CCG 0014

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COLEMAN (PARENT) HOLDINGS INC. - Petitioner
v.
ARTHUR ANDERSEN LLP

No. _____

SUBPOENA FOR DEPOSITION

To: Custodian of Records, ARTHUR ANDERSON LLP
33 W. Monroe Ave.
Chicago, IL 60603

YOU ARE COMMANDED to appear to give your deposition before a Notary Public at:

Jenner & Block LLP, One IBM Plaza (address), Room 4000, Chicago (city), Illinois 60611 (zip)

on November 5, 2004, at 9:30 a.m. p.m.

YOU ARE COMMANDED ALSO to bring the following:

See Exhibit A attached.

in your possession or control.

YOUR FAILURE TO APPEAR IN RESPONSE TO THIS SUBPOENA WILL SUBJECT YOU TO PUNISHMENT FOR CONTEMPT OF THIS COURT.

WITNESS _____, _____

_____
Clerk of Court

Atty. No. 05003
Name: Jerold S. Solovy
Attorney for: Coleman (Parent) Holdings
Address: Jenner & Block LLP, One IBM Plaza #4000
City/State/Zip: Chicago, Illinois 60611
Telephone: (312) 222-9350

EXHIBIT
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I served this subpoena by handing a copy to _____

_____ on _____, _____.

I paid the witness $ _____ for witness and mileage fees.

_____

Signed and sworn to before me on this See Exhibit day of _____, _____

_____ Notary Public

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

EXHIBIT A

TO SUBPOENA TO
CUSTODIAN OF RECORDS OF NON-PARTY
ARTHUR ANDERSEN LLP

You are hereby requested to respond to the following topics pursuant to the definitions contained herein:

DEPOSITION TOPICS

1. The authenticity, source, creation, use, maintenance, and business purpose of documents produced by Andersen to Coleman (Parent) Holdings, Inc. in the course of litigation, bearing the Bates numbers identified in Exhibit B, and information contained therein.

2. The authenticity, source, creation, use, maintenance, and business purpose of the documents identified in Exhibit C, and information contained therein. (Copies of the documents identified in Exhibit C are being provided under separate cover).

DEFINITIONS

1. "Andersen" means Arthur Andersen LLP and any of its predecessors, successors, subsidiaries, and present and former officers, directors, employees, representatives, and agents.

2. "Documents" shall be given the broad meaning provided in Rule 1.350 in the Florida Rules of Civil Procedure and refers to any form or means, whether physical, visual, or electronic, in or by which words, numbers, or ideas are recorded or preserved, whether fixed in tangible medium or electronically stored, including any and all drafts of any final document. The word "documents" shall include, by way of example and not by way of limitation, all of the following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, notes, messages, reports, studies, press releases, comparisons, books, accounts, checks, audio

and video recordings and transcriptions thereof, pleadings, testimony, articles, bulletins, pamphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk calendars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, minutes for meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements, memoranda of understanding, letters of intent, computer tapes, computer drives or memories, computer diskettes or disks, e-mail, CD-ROMs, or any other tangible thing on which any handwriting, typing, printing, photostatic, electronic, or other form of communication or information is recorded or reproduced, together with all notations on any of the foregoing, all originals, file copies, or other unique copies of the foregoing, and all versions or drafts thereof, whether used or not.

EXHIBIT B
SUBPOENA DUCES TECUM TO
CUSTODIAN OF RECORDS OF NON-PARTY
ARTHUR ANDERSEN LLP

The following documents were produced by Andersen to Coleman (Parent) Holdings, Inc. in the course of litigation, bearing the Bates Numbers identified below.

EXHIBIT #	OLD BATES RANGE	NEW BATES RANGE
CPH 012	AA 031057-031058	CPH 0012526-0012527
CPH 018	AA 036293-036295	CPH0015111-0015113
CPH 019	AAR 010766-010771	CPH0125693-0125698
CPH 020	AAR 014169-014173	CPH0129292-0129296
CPH 021	AA 166173-166417	CPH0062489-0062733
CPH 022	AA 188506-188576	CPH0084462-0084532
CPH 023	AA 026498-026518	CPH1184885-1184905
CPH 057	AAR 016023-016028	CPH0131143-0131148
CPH 065	AA 193873	CPH0088703
CPH 066	AA 105258	CPH0038717
CPH 101	AA 166377-166381	CPH0062693 – 0062697
CPH 102	AA 166372-166375	CPH0062688 – 0062691
CPH 103	AA 166356-166361	CPH0062672 – 0062677
CPH 104	AA 166369-166370	CPH0062685 - 0062686
CPH 105	AA 166290-166294	CPH0062606 – 0062610
CPH 106	AAR 013074-013075	CPH1192163 – 1192164
CPH 107	AA 031553-031557	CPH0013023 – 0013027
CPH 108	AA 031494-031498	CPH1056006 – 1056010

EXHIBIT #	OLD BATES RANGE	NEW BATES RANGE
CPH 109	AAR 014803-014813	CPH0129926 – 0129936
CPH 110	AA 105211-105217	CPH0038670 – 0038676
CPH 111	AA 105241-105247	CPH0038700 – 0038706
CPH 112	AAR 014490-014493	CPH0129613 – 0129616
CPH 113	AAR 014148-014152	CPH0129271 – 129275
CPH 114	AAR 015038-015040	MSC 0027048 - 0027050
CPH 115	AA 105241-105247	CPH0038700 – 0038706
CPH 117	AA 105064-105065	CPH0038523 – 0038524
CPH 118	AA 120304	CPH0041649
CPH 119	AA 005758, AA 036291-036295	CPH0021362, CPH 0015109 – 0015113
CPH 120	AA 031053-031055	CPH0012522 – 0012524
CPH 122	AA 105868, AA 105248	CPH0039327, CPH0038707
CPH 123	AA 055761-055764	CPH0021365 – 0021368
CPH 124	AA 030995-030997	CPH0012464 – 0012466
CPH 127, MS 13	AA 055761-055762	CPH0021365 – 0021366
CPH 185	AA 090040	CPH0035322
MS 013	AA 055761-055762	MSC 0027828-0027829
MS 031	AA 120296-120303	CPH0041641-0041648
MS 032	AA 120305-120316	CPH0041650-0041661
MS 043	AAR014804-014813	CPH0129927-0129936
MS 048	AA 120310-120316	CPH0041655-0041661
MS 060	AAR 016015-016029	CPH1071418-1071432

EXHIBIT C
SUBPOENA DUCES TECUM TO
CUSTODIAN OF RECORDS OF NON-PARTY
ARTHUR ANDERSEN LLP

Copies of the following documents are being provided to you under separate cover:

DEPOSITION EXHIBIT #	OLD BATES RANGE	NEW BATES RANGE
CPH 017	MS 00375-00381	MS 00375-00381
CPH 024	DPW000001 - 000002	DPW000001 - 000002
CPH 121	LAB 000043	CPH1145796
CPH 132	SASMF 10951-10952	CPH0636135 – 0636136
CPH 152	LAB 000043	LAB 000043
CPH 208	SASMF 07633-07721	CPH632817-0632905
CPH 213	MSC 0029159-0029162	MSC 0029159-0029162

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

COLEMAN (PARENT) HOLDINGS, INC., Plaintiff, v. MORGAN STANLEY & CO., INC., Defendant.	Case No.: 2003 CA 005045 AI Judge Elizabeth T. Maass

ORDER ON APPOINTMENT OF COMMISSIONS

This cause came before the Court on Plaintiff's Motion to Appoint Commissions so that it can subpoena for depositions and documents witnesses in other jurisdictions. After reviewing the pleadings, and otherwise being advised in the premises it is ORDERED AND ADJUDGED that commissions are appointed so that plaintiff may subpoena depositions and documents from the following witnesses:

- Andrew B. Savarie
  1136 Ash St.
  Winnetka, IL 60093-2104
- R. Bram Smith
  Bear, Stearns & Co. Inc.
  245 Park Avenue
  New York, NY 10167
- Alexandre J. Fuchs
  2 Fifth Avenue, #11K
  New York, NY 10011

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EXHIBIT
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- Robert W. Kitts
  Thomas Weisel Partners
  Lever House
  390 Park Avenue, 17th Floor
  New York, NY 10022

- T. Chang
  10990 Rochester Ave., Apt. 307
  Los Angeles, CA 90024-6281

The following commissions are appointed for the purposes of obtaining depositions and documents from the above listed witnesses, and other witnesses whose discovery is sought in the commissions' jurisdictions:

Jerold S. Solovy
Jenner & Block, LLC
One IBM Plaza, Suite 4400
Chicago, Il 60611
(312) 222-9350

or any person duly authorized by him and able to administer oaths pursuant to the laws of Illinois.

Michael I. Allen
SHAPIRO MITCHELL FORMAN ALLEN & MILLER LLP
380 Madison Avenue
New York, New York 10017

or any person duly authorized by him and able to administer oaths pursuant to the laws of New York.

Marc M. Seltzer
Susman Godfrey L.L.P.
1880 Century Park East
Suite 950
Los Angeles, California 90067
(310) 789-3102

or any person duly authorized by him and able to administer oaths pursuant to the laws of California .*

Done and Ordered in Palm Beach County, Florida this 14 day of Dec., 2003.

Circuit Court Judge Elizabeth T. Maass

* This order does not purport to grant the power of the commissioners appointed to subpoena witnesses or documents, but simply the power to administer oaths and transcribe deposition testimony. JL

Coleman v. Morgan Stanley
2003 CA 005045 AI
Order on Appointment of Commissions

Copies furnished to:

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lakeview Avenue
Suite 1400
West Palm Beach, Florida 33401
(561) 659-7070
(561) 659-7368 (fax)

John Scarola, Esq.
SEARCY DENNEY SCAROLA BARNHART
& SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409
(561) 686-6300
(561) 478-0754 (fax)

Jerold S. Solovy, Esq.
JENNER & BLOCK, LLC
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350
(312) 527-0484 (fax)

Thomas D. Yannucci, P.C.
Thomas A. Clare
Brett H. McGurk
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005
(202) 879-5000
(202) 879-5200 (fax)

999134

STATE OF FLORIDA • PALM BEACH COUNTY
I hereby certify that the foregoing is a true copy of the Original on file in my office.
WITNESS my hand and Official Seal.
This 6th day of August, 2004
DOROTHY H. WILKEN
CLERK OF CIRCUIT COURT
BY _____ Deputy Clerk

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

COLEMAN (PARENT) HOLDINGS INC.,	Index No._____
Petitioner,	
for an order for the taking of the deposition of ARTHUR ANDERSEN LLP,	
Respondent,	
pursuant to a commission issued in an action pending in the Circuit Court of the Fifteenth Judicial District of the State of Florida, Palm Beach County, entitled Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co. Inc., Case No. 2003 CA 005045 AI.	

EXHIBIT
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ORDER

This matter coming to be heard on a petition pursuant to Illinois Supreme Court Rule 204(b) in which Petitioner seeks the entry of an order directing that subpoena for deposition be issued to Arthur Andersen LLP, the Court having reviewed the petition and its attached exhibits, and having been duly informed thereon, hereby orders:

1. That the petition pursuant to Illinois Supreme Court Rule 204(b) to issue Illinois subpoena for deposition for use in an action pending in the Circuit Court of Palm Beach County, Florida is hereby GRANTED;

2. That the subpoena for deposition in the form attached to the petition as Exhibit 1 shall issue;

3. That pursuant to this subpoena, the Custodian of Records of Arthur Andersen LLP, shall appear at the offices of Jenner & Block LLP, One IBM Plaza, 330 North Wabash Avenue, Suite 4000, Chicago, Illinois 60611 on November 5, 2004, at 9:30 a.m., and shall be available to answer questions propounded by counsel responsive to the topics

propounded in Exhibit A to the Subpoena, and such deposition shall continue from day to day until completed.

4. Copies of this Order and the subpoenas for deposition shall be served by Petitioner on all the parties.

ENTERED this _____ day of October, 2004.

_____
Circuit Judge

Jerold S. Solovy
Michael T. Brody
Deirdre Connell
JENNER & BLOCK LLP (#05003)
One IBM Plaza
Chicago, IL 60611
(312) 222-9350

COUNSEL LIST

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TODD & EVANS, P.L.L.C.
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Washington, D.C. 20036-3206

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S RESPONSES AND OBJECTIONS TO MORGAN STANLEY & CO. INCORPORATED'S FOURTH SET OF REQUESTS FOR ADMISSION

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, and pursuant to Rule 1.370 of the Florida Rules of Civil Procedure and the Court's October 14, 2004 Order, objects and responds to Morgan Stanley & Co. Incorporated's ("Morgan Stanley's") Fourth Set of Requests for Admission ("Requests for Admission") as follows:

INITIAL OBJECTIONS

1. CPH objects on the basis that Morgan Stanley's Requests for Admission violate Rule 1.370(a) of the Florida Rules of Civil Procedure, as amended by 2003 Florida Court Order 18 and effective January 1, 2004, which limits the number of requests for admission to 30 requests.

2. CPH objects on the basis that Morgan Stanley's Requests for Admission are untimely. The Requests for Admission were served by facsimile at 9:32 p.m. on October 25, 2004. Pursuant to Fla. R. Civ. P. 1.080(b)(5), service shall be deemed to have been made on October 26, 2004, which is less than 30 days prior to the deadline of November 24, 2004 for completing fact discovery.

3. CPH objects to the Requests for Admission on the basis that they are vague, ambiguous, overly broad, unduly burdensome, oppressive, abusive, vexatious, and excessively time consuming as written.

4. CPH objects to the Requests for Admission to the extent that they seek information not in CPH's possession, custody, or control.

5. CPH objects to the Requests for Admission to the extent that the definitions, instructions, or the requests themselves incorrectly characterize the facts and evidence to be presented in this case.

6. CPH objects to the Requests for Admission to the extent that they assume, imply, or require any legal conclusions.

7. CPH objects to the definition of "CPH" as ambiguous and overly broad. CPH will construe the term "CPH" to mean Coleman (Parent) Holdings Inc.

8. CPH objects to the definition of "Coleman Transaction" as vague, ambiguous, and overly broad to the extent that it includes "all related communications, agreements, and financing transactions." CPH will construe the term "Coleman Transaction" to mean the transaction by which CPH transferred its interest in The Coleman Company, Inc. to Sunbeam.

9. CPH objects to the definition of "February 23, 1998 Letter" as a mischaracterization of the evidence and an incorrect reflection of the record. CPH will construe the term "February 23, 1998 Letter" as the letter marked as Morgan Stanley Exhibit 307.

10. CPH objects to the definition of "February 27, 1998 Company Agreement" as vague, ambiguous, and overly broad to the extent that it includes "all . . . documents related to those Agreements." CPH will construe the term "February 27, 1998 Company Agreement" to

mean the Agreement and Plan of Merger dated February 27, 1998 among Sunbeam Corp., Camper Acquisition Corp., and The Coleman Company, Inc.

11. CPH objects to the definition of "Mafco" as ambiguous and overly broad. CPH will construe the term "Mafco" to mean MacAndrews & Forbes Holdings Inc.

12. CPH responds to these Requests for Admission subject to and without waiving these Initial Objections. CPH incorporates, as though fully set forth herein, these Initial Objections into each of its responses.

FURTHER OBJECTIONS AND RESPONSES

Request No. 1. The February 23, 1998 Letter was drafted by counsel for CPH and signed by or on behalf of Coleman.

RESPONSE: Denied.

Request No. 2. The February 23, 1998 Letter is one of the Confidentiality Agreements identified in the February 27, 1998 Company Agreement at section 7.2, and one of the Confidentiality Agreements identified in the February 27, 1998 Agreement at section 6.7.

RESPONSE: Denied.

Request No. 3. CPH signed the February 27, 1998 Agreement without requesting from Sunbeam copies of its interim financial statements for the months (to date) of January or February 1998.

RESPONSE: Denied. Answering further, CPH states that Sunbeam had an affirmative obligation to notify CPH of any material adverse change but failed to do so. Morgan Stanley knew that Sunbeam was obligated to notify CPH of any material adverse change, Morgan Stanley knew that Sunbeam had failed to do so, Morgan Stanley affirmatively assisted Sunbeam in concealing from and misrepresenting to CPH the true facts concerning Sunbeam, Morgan Stanley affirmatively assisted Sunbeam in perpetrating a fraud upon CPH, Morgan Stanley

agreed with Sunbeam to conceal from and misrepresent to CPH the true facts concerning Sunbeam, and Morgan Stanley agreed with Sunbeam to assist in perpetrating a fraud upon CPH.

Request No. 4. CPH signed the February 27, 1998 Agreement without requesting from Sunbeam its actual net sales or net income (loss) to date in the first quarter of 1998.

RESPONSE: Denied. Answering further, CPH states that Sunbeam had an affirmative obligation to notify CPH of any material adverse change but failed to do so. Morgan Stanley knew that Sunbeam was obligated to notify CPH of any material adverse change, Morgan Stanley knew that Sunbeam had failed to do so, Morgan Stanley affirmatively assisted Sunbeam in concealing from and misrepresenting to CPH the true facts concerning Sunbeam, Morgan Stanley affirmatively assisted Sunbeam in perpetrating a fraud upon CPH, Morgan Stanley agreed with Sunbeam to conceal from and misrepresent to CPH the true facts concerning Sunbeam, and Morgan Stanley agreed with Sunbeam to assist in perpetrating a fraud upon CPH.

Request No. 5. Before signing the February 27, 1998 Agreement, CPH learned that 50 percent of Sunbeam's sales typically occurred in the last month of the quarter.

RESPONSE: Denied.

Request No. 6. In 1997 CPH had concerns about Sunbeam's "international sales pipeline fillings."

RESPONSE: Denied.

Request No. 7. In January 1998, CPH learned that the Sunbeam Research Analysts were decreasing their estimates of Sunbeam's earnings per share for 1998.

RESPONSE: Denied. Answering further, CPH states that Sunbeam Research Analysts took different positions.

Request No. 8: On or around February 23, 1998, CPH representatives were told by Sunbeam representatives that Sunbeam's sales for January and February [1998] were "slow."

RESPONSE: CPH admits that Sunbeam advised a Coleman representative that sales for January 1998 were slow. CPH denies that Sunbeam advised CPH representatives that sales for February 1998 were slow. Answering further, CPH states that Sunbeam and Morgan Stanley advised CPH and Coleman that Sunbeam would meet or exceed Wall Street's expectations for the first quarter of 1998 and meet or exceed Wall Street's expectations for full year 1998.

Request No. 9: CPH received Sunbeam's 1997 Annual Report on form 10-K before March 30, 1998.

RESPONSE: Admitted. Answering further, CPH states that Sunbeam's 1997 Annual Report on Form 10-K did not truthfully and adequately disclose Sunbeam's true condition and business practices.

Request No. 10: Between March 19, 1998 and March 30, 1998, CPH did not request from either Sunbeam or Morgan Stanley the net sales (to date) that Sunbeam had recorded on its books and records for the first quarter of 1998.

RESPONSE: Denied. Answering further, CPH states that Sunbeam had an affirmative obligation to notify CPH of any material adverse change but failed to do so. Morgan Stanley knew that Sunbeam was obligated to notify CPH of any material adverse change, Morgan Stanley knew that Sunbeam had failed to do so, Morgan Stanley affirmatively assisted Sunbeam in concealing from and misrepresenting to CPH the true facts concerning Sunbeam, Morgan Stanley affirmatively assisted Sunbeam in perpetrating a fraud upon CPH, Morgan Stanley agreed with Sunbeam to conceal from and misrepresent to CPH the true facts concerning Sunbeam, and Morgan Stanley agreed with Sunbeam to assist in perpetrating a fraud upon CPH.

Request No. 11: Between March 19, 1998 and March 30, 1998, CPH did not request from either Sunbeam or Morgan Stanley a projection of Sunbeam's net sales for Sunbeam's first quarter of 1998.

RESPONSE: Denied. Answering further, CPH states that Sunbeam had an affirmative obligation to notify CPH of any material adverse change but failed to do so. Morgan Stanley knew that Sunbeam was obligated to notify CPH of any material adverse change, Morgan Stanley knew that Sunbeam had failed to do so, Morgan Stanley affirmatively assisted Sunbeam in concealing from and misrepresenting to CPH the true facts concerning Sunbeam, Morgan Stanley affirmatively assisted Sunbeam in perpetrating a fraud upon CPH, Morgan Stanley agreed with Sunbeam to conceal from and misrepresent to CPH the true facts concerning Sunbeam, and Morgan Stanley agreed with Sunbeam to assist in perpetrating a fraud upon CPH.

Request No. 12: Between March 19, 1998 and March 30, 1998, CPH did not request from either Sunbeam or Morgan Stanley a projection of Sunbeam's net earnings (loss) for Sunbeam's first quarter of 1998.

RESPONSE: Denied. Answering further, CPH states that Sunbeam had an affirmative obligation to notify CPH of any material adverse change but failed to do so. Morgan Stanley knew that Sunbeam was obligated to notify CPH of any material adverse change, Morgan Stanley knew that Sunbeam had failed to do so, Morgan Stanley affirmatively assisted Sunbeam in concealing from and misrepresenting to CPH the true facts concerning Sunbeam, Morgan Stanley affirmatively assisted Sunbeam in perpetrating a fraud upon CPH, Morgan Stanley agreed with Sunbeam to conceal from and misrepresent to CPH the true facts concerning Sunbeam, and Morgan Stanley agreed with Sunbeam to assist in perpetrating a fraud upon CPH.

Request No. 13: CPH made no inquiries of Sunbeam at the March 30, 1998 closing of the Coleman Transaction about Sunbeam's actual (to date) net sales or net earnings (loss) for the first quarter of 1998.

RESPONSE: Denied. Answering further, CPH states that Sunbeam had an affirmative obligation to notify CPH of any material adverse change but failed to do so. Morgan Stanley knew that Sunbeam was obligated to notify CPH of any material adverse change, Morgan

Stanley knew that Sunbeam had failed to do so, Morgan Stanley affirmatively assisted Sunbeam in concealing from and misrepresenting to CPH the true facts concerning Sunbeam, Morgan Stanley affirmatively assisted Sunbeam in perpetrating a fraud upon CPH, Morgan Stanley agreed with Sunbeam to conceal from and misrepresent to CPH the true facts concerning Sunbeam, and Morgan Stanley agreed with Sunbeam to assist in perpetrating a fraud upon CPH.

Request No. 14: CPH did not request from Sunbeam, Arthur Andersen, or Morgan Stanley a copy of any comfort letter issued by Arthur Andersen to any person in connection with the Coleman Transaction before the closing of the Coleman Transaction.

RESPONSE: Denied. Answering further, CPH states that Sunbeam had an affirmative obligation to notify CPH of any material adverse change but failed to do so. Morgan Stanley knew that Sunbeam was obligated to notify CPH of any material adverse change, Morgan Stanley knew that Sunbeam had failed to do so, Morgan Stanley affirmatively assisted Sunbeam in concealing from and misrepresenting to CPH the true facts concerning Sunbeam, Morgan Stanley affirmatively assisted Sunbeam in perpetrating a fraud upon CPH, Morgan Stanley agreed with Sunbeam to conceal from and misrepresent to CPH the true facts concerning Sunbeam, and Morgan Stanley agreed with Sunbeam to assist in perpetrating a fraud upon CPH.

Request No. 15: The Coleman Transaction involved a transaction negotiated at arm's length by two large, sophisticated, and publicly traded corporations that were represented by prominent, highly paid advisors: Morgan Stanley, Skadden Arps, and Arthur Andersen for Sunbeam, and Credit Suisse First Boston and Wachtell, Lipton, Rosen & Katz for The Coleman Company.

RESPONSE: CPH denies that the transaction was negotiated at arm's length and admits the remainder of this Request. Answering further, CPH states that Sunbeam and Morgan Stanley misrepresented and concealed the true facts concerning Sunbeam during the negotiations with CPH and Coleman.

Request No. 16: Between December 1, 1997 and March 31, 1998, Sunbeam made the only proposal to CPH or Coleman's shareholders to acquire Coleman in whole or in part, whether by purchase of stock or assets.

RESPONSE: Admitted. Answering further, CPH states that it had not solicited any proposal to acquire Coleman; it was content to retain, as of March 1998, its interest in Coleman; and it had no reason to expect that anyone would make a proposal to acquire Coleman, where the 82% owner had not expressed a desire to sell.

Request No. 17: A Sunbeam representative orally presented Sunbeam's Long Range Strategic Plan on February 23, 1998.

RESPONSE: CPH admits that the Long Range Strategic Plan was presented on February 23, 1998 by Sunbeam representatives, as well as Morgan Stanley representatives, in both oral and written form, and otherwise denies this Request.

Request No. 18: Each of the following statements in CPH Exhibit 9 is a statement of subjective opinion:

(a) "Sunbeam represents an attractive growth story and investment opportunity."

(b) "Sunbeam has undergone a profound transformation since the arrival of new management in July 1996."

(c) Sunbeam has "renewed focus on profitability and growth."

(d) There is "tremendous intrinsic value in Sunbeam."

(e) Sunbeam had a "strong management team that is opportunistic but disciplined."

(f) Sunbeam had a "valuable opportunity to penetrate and become a global market leader of branded consumer devices."

RESPONSE: Denied. Answering further, CPH states that the facts known to Sunbeam and Morgan Stanley rendered those statements false.

Request No. 19: The 1998 and 1999 estimates on pages CP026296 and CP026297 of CPH Exhibit 9 were from an Oppenheimer research report dated December 11, 1997.

RESPONSE: CPH has made a reasonable inquiry into the documents in its possession and conducted searches of an electronic database, but has not been able to locate a copy of the Oppenheimer research report dated December 11, 1997. Accordingly, CPH lacks knowledge or information sufficient to answer this request and therefore denies this request. Answering further, CPH states that Morgan Stanley adopted and vouched for the statements contained on pages of CP 026296 and CP 026297 of CPH Exhibit 9.

Request No. 20: Each of the following statements, which CPH alleges were made on February 23, 1998, is a projection of future performance:

(a) that in 1998 Sunbeam expected significant growth in sales and earnings over and above 1997 levels;

(b) that Sunbeam's 1998 revenues were expected to increase by 34 percent over 1997 levels;

(c) that Sunbeam's 1999 revenues were expected to increase 25 percent over 1998 levels;

(d) that Sunbeam's gross was expected to increase by 31 percent in both 1998 and 1999;

(e) that Sunbeam would "meet or exceed Wall Street's expectations for Sunbeam's earnings estimates" for 1998;

(f) that "analysts' favorable 1998 earnings estimates of $1.90 to $2.12 per share were low"; or

(g) that "Sunbeam's plan to earn $2.20 per share in 1998 were easily achievable and probably low."

RESPONSE: Denied. Answering further, CPH states that the facts known to Sunbeam and Morgan Stanley rendered those statements false.

Request No. 21: A statement made on March 19, 1998 that Sunbeam's net sales for the first quarter of 1998 may be lower than the range of Wall Street analysts" estimates is a projection of future performance.

RESPONSE: Denied. Answering further, CPH states that the facts known to Sunbeam and Morgan Stanley rendered this statement false.

Request No. 22: A statement made on March 19, 1998 that Sunbeam's net sales for the first quarter of 1998 are expected to exceed 1997 first quarter net sales is a projection of future performance.

RESPONSE: Denied. Answering further, CPH states that the facts known to Sunbeam and Morgan Stanley rendered this statement false.

Request No. 23: CPH or Mafco requested Sunbeam stock as part of the consideration for CPH's interest in Coleman.

RESPONSE: Denied. Answering further, CPH states that it wanted and accepted Sunbeam stock based on Sunbeam's and Morgan Stanley's representations concerning the condition and performance of Sunbeam.

Request No. 24. CPH or Mafco requested expedited Hart-Scott-Rodino approval for the Transaction to allow the Transaction to close before or at the end of the first quarter of 1998.

RESPONSE: CPH admits that MacAndrews & Forbes Holdings Inc. requested expedited Hart-Scott-Rodino approval of Sunbeam's acquisition of CPH's interest in The Coleman Company, Inc., but states that it did so at Sunbeam's request.

Request No. 25. Between February 27, 1998 and March 30, 1998 CPH did not exercise its rights, pursuant to section 6.7 of the February 27, 1998 Agreement, to access Sunbeam's books, records, properties, plants, and personnel.

RESPONSE: Denied.

Request No. 26. The documents listed in the attached Exhibits A and B are what they purport to be or are otherwise true and authentic copies of original documents within the meaning of Florida Evidence Code § 90.901.

RESPONSE: CPH objects to this request on the basis that it is overly broad, unduly burdensome, oppressive, abusive, vexatious, and excessively time consuming as written.

Exhibits A and B contain thousands of pages of documents, including documents plainly authored by Morgan Stanley and third parties. However, CPH does not dispute the authenticity within the meaning of Florida Evidence Code ¶ 90.901 of the documents listed in Exhibits A and B. However, unless specifically stated, CPH denies the authenticity of all handwritten marginalia.

Request No. 27. The documents listed in the attached Exhibits A and B are business records within the meaning of Florida Evidence Code § 90.803(6).

RESPONSE: CPH objects to this request on the basis that it is overly broad, unduly burdensome, oppressive, abusive, vexatious, and excessively time consuming as written. Exhibits A and B contain thousands of pages of documents, including documents plainly authored by Morgan Stanley and third parties. CPH does not dispute that the documents listed in Exhibit 1 attached to this response meet the requirements of Florida Evidence Code ¶ 90.803(6)(a); however, unless specifically stated, CPH denies that all handwritten marginalia meets the requirements of Florida Evidence Code ¶ 90.803(6)(a). CPH denies that the documents listed in Exhibit 1 attached to this response meet the requirements of Florida Evidence Code ¶ 90.803(6)(b). As to the remaining documents listed in Exhibits A and B attached to Morgan Stanley's Requests for Admission, CPH denies that or lacks knowledge or information sufficient to determine whether those documents meet the requirements of Florida Evidence Code ¶ 90.803(6).

Request No. 28: CPH authored the documents listed in the attached Exhibit B.

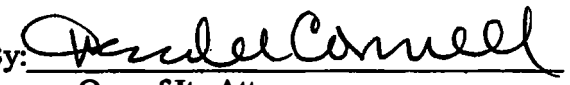
RESPONSE: CPH objects to this request on the basis that it is overly broad, unduly burdensome, oppressive, abusive, vexatious, and excessively time consuming as written. Exhibit B includes thousands of pages of documents, including documents plainly authored by Morgan

Stanley and third parties. CPH admits that MacAndrews & Forbes Holdings Inc., CPH, CLN Holdings, or Coleman Worldwide authored the documents listed in Exhibit 2 attached to this response; however, unless specifically stated, CPH denies that that it authored all handwritten marginalia. CPH denies that it authored the remaining documents listed in Exhibit B to Morgan Stanley's Requests for Admission.

Dated: November 24, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: 
One of Its Attorneys

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SEARCY DENNEY SCAROLA
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(561) 686-6300

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and federal express to counsel listed below on this 24th day of November, 2004:

Thomas A. Clare
KIRKLAND & ELLIS
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr.
CARLTON FIELDS
222 Lakeview Avenue
Suite 1400
West Palm Beach, Florida 33401

Mark C. Hansen
KELLOGG, HUBER, HANSEN, TODD
& EVANS, P .L.L.C.
Sumner Square, 1615 M Street N.W.
Suite 400
Washington, D.C. 20036-3209

By: Deirdre Connell
Deirdre E. Connell

Exhibit 1

MS	Ex. No.	Bates
MS	5	CPH 2000039-20000040
MS	6	CPH 2000044
MS	11	MSC 0016944-0016945
MS	31	CPH 0041641-0041648
MS	39	CPH 1075408
MS	40	MSC 0000001-0000175
MS	41	MSC 0028858
MS	42	CPH 0129975-0129977
MS	62	CPH 1433326-1433329
MS	69	CPH 1341551-1341574
MS	70	CPH 1399303-1399316
MS	79	CPH 0467007
MS	81	CPH 1421814-1421817
MS	82	CPH 1406962-1406964
MS	83	CPH 1427250-1427253
MS	84	CPH 1324756-1324774
MS	86	CPH 2000687-2000707
MS	88	CPH 0634056-0634064
MS	90-A	
MS	90-B	
MS	90-C	
MS	90-D	
MS	90-E	
MS	90-F	
MS	90-G	
MS	90-H	
MS	90-I	
MS	90-J	
MS	90-K	
MS	90-L	
MS	92	CPH 1429803-1429805
MS	93	MSC 0007947-0008010
MS	94	CPH 1428774-1428775
MS	95	CPH 1429806-1429807
MS	104	CPH 2000144-2000149
MS	105	CPH 1426299-1426303
MS	106	CPH 1425922-1425931
MS	107	CPH 2000086-2000095
MS	113	CPH 0634065-0634075
MS	114	CPH 1344526-1344542
MS	115	MSC 0063805-0063811
MS	117	CPH 0008011-0008066

MS	118	CPH 0634065-0634085
MS	121	CPH 2005974-2005978
MS	122	CPH 1433326-1433329
MS	123	CPH 2000848
MS	124	CPH 2000037
MS	125	CPH 2000041
MS	126	CPH 2000044
MS	127	DPW 0014210-0014229
MS	128	DPW 0014376-0014398
MS	129	DPW 0014143-0014144
MS	130	CPH 1406746-1406765
MS	132	CPH 1414669-1414713
MS	133	CPH 0642925-0642932
MS	135	CPH 1325201-1325202
MS	137	CPH 1393114; 1327092
MS	138	CPH 1327714-1327721
MS	165	CPH 1426297-1426303
MS	167*	CPH 1011319-1011351
MS	168	CPH 1433889-1433890
MS	170	CPH 1429981-1429983
MS	171	CPH 2000708-2000715
MS	172	CPH 1429974-1429977
MS	173	MSC 0033256-0033263
MS	176	MSC 0043213-0043216
MS	186	CPH 1324775-1324850
MS	190	CPH 1406986
MS	191	CPH 1418025
MS	192	CPH 1408944
MS	195	CPH 2000635-2000686
MS	196	CPH 1393830-1393831
MS	205	CPH 1327077-1327081
MS	224	CPH 1427923-1427924
MS	232	CPH 2000771
MS	233	CPH 1328300-1328301
MS	236	CPH 0627084-0627210
MS	238	CPH 1418423-1418499
MS	239	
MS	246	DPW 0011015-0011020
MS	250	CPH 0508863-0508898
MS	257	CPH 0505156
MS	273	WLRK 0009189-0009195

* CPH admits that bates range CPH 1011319-1011320 was authored by CPH and constitutes a business record. With respect to the remainder of MS Ex. 167 (CPH 1011321-1011351), CPH denies that it authored those pages, but will not contest that the entirety of MS Ex. 167 constitutes a business record.

MS	274	WLRK 0009197-0009199
MS	276	DPW 0014400-0014403
MS	278	CPH 1094218-1094235
MS	287	CPH 1408297
MS	295**	CPH 2010664-2010666
MS	299	CPH 2007230-2007296
MS	300	CPH 2006250-2006413
MS	301	CPH 2006677-2006826
MS	302	CPH 2006618-2006669
MS	303	CPH 2007528-2007534
MS	304	DPW 0000719-0000720
MS	305	DPW 0014400-0014403
MS	306	DPW 0011015-0011020
MS	308	CPH 2006236-2006249
MS	310	CPH 2011528-2011531
MS	311	CPH 2006641-2006669
MS	314	WLRK 0014181-0014295
MS	318	CPH 1408945-1408947
MS	319	CPH 1407858-1407866
MS	323	CPH 1408270
MS	325	CPH 1395054-1395058
MS	327	DPW 0013825-0013827
MS	328	CPH 1408269
MS	349***	CPH 1167561-1167563
MS	350	WLRK 0012067
MS	352	CPH 1411183-1411209
MS	353	CPH 2005703
MS	354	CPH 2005706
MS	355****	CPH 1278481-1278484
MS	360	CPH 1411943
MS	362	WLRK 0012066-0012067
MS	363	CPH 1426259
MS	365	CPH 1433895

** CPH admits that it authored the handwriting on MS Ex. 295, but denies that it authored any other portion of MS Ex. 295. CPH further admits that CPH 2010665 constitutes a business record, but denies that the remainder of MS Ex. 295 constitutes a business record.

*** CPH admits that bates range CPH 1167562-1167563 was authored by CPH and constitutes a business record. With respect to the remainder of MS Ex. 349 (CPH 1167561), CPH denies that it authored that page and denies that it constitutes a business record.

**** CPH admits that bates range CPH 1278481-1278482 was authored by CPH and constitutes a business record. With respect to the remainder of MS Ex. 355 (CPH 1278483-1278484), CPH denies that it authored those pages, *but* will not contest that the entirety of MS Ex. 355 constitutes a business record.

MS	366	CPH 1428745-1428746
MS	367	DPW 0014300-0014301
MS	368	CPH 1272487-1272536
MS	369	DPW 0014073-0014074
MS	370	DPW 0014028-0014029
MS	371	WLRK 0013747-0013790
MS	372	DPW 0013720-0013723
MS	373	DPW 0013793-0013794
MS	375	DPW 0014137-0014110
MS	376	DPW 0014141-0014142
MS	377	DPW 0013935-0013936
MS	378	DPW 0013821-0013822
MS	379	
MS	380	DPW 0013662
MS	402	DPW 0013767-0013768
MS	403	CPH 0637558-0637570

Exhibit 2

MS	5	CPH 2000039-20000040
MS	6	CPH 2000044
MS	62	CPH 1433326-1433329
MS	67	
MS	68	
MS	86	CPH 2000687-2000707
MS	90-A	
MS	90-B	
MS	90-C	
MS	90-D	
MS	90-E	
MS	90-F	
MS	90-G	
MS	90-H	
MS	90-I	
MS	90-J	
MS	90-K	
MS	90-L	
MS	92	CPH 1429803-1429805
MS	94	CPH 1428774-1428775
MS	95	CPH 1429806-1429807
MS	105	CPH 1426299-1426303
MS	106	CPH 1425922-1425931
MS	107	CPH 2000086-2000095
MS	119	CPH 1315399-1315409
MS	121	CPH 2005974-2005978
MS	122	CPH 1433326-1433329
MS	123	CPH 2000848
MS	124	CPH 2000037
MS	125	CPH 2000041
MS	126	CPH 2000044
MS	132	CPH 1414669-1414713
MS	137	CPH 1393114; 1327092
MS	165	CPH 1426297-1426303
MS	167*	CPH 1011319-1011351
MS	170	CPH 1429981-1429983
MS	171	CPH 2000708-2000715

* CPH admits that bates range CPH 1011319-1011320 was authored by CPH and constitutes a business record. With respect to the remainder of MS Ex. 167 (CPH 1011321-1011351), CPH denies that it authored those pages, but will not contest that the entirety of MS Ex. 167 constitutes a business record.

MS	172	CPH 1429974-1429977
MS	187	
MS	195	CPH 2000635-2000686
MS	224	CPH 1427923-1427924
MS	232	CPH 2000771
MS	233	CPH 1328300-1328301
MS	246	DPW 0011015-0011020
MS	250	CPH 0508863-0508898
MS	273	WLRK 0009189-0009195
MS	274	WLRK 0009197-0009199
MS	276	DPW 0014400-0014403
MS	295**	CPH 2010664-2010666
MS	305	DPW 0014400-0014403
MS	306	DPW 0011015-0011020
MS	310	CPH 2011528-2011531
MS	349***	CPH 1167561-1167563
MS	350	WLRK 0012067
MS	353	CPH 2005703
M5	354	CPH 2005706
MS	355****	CPH 1278481-1278484
MS	360	CPH 1411943
MS	362	WLRK 0012066-0012067
MS	363	CPH 1426259
MS	365	CPH 1433895
MS	366	CPH 1428745-1428746

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FAX TRANSMITTAL

JENNER&BLOCK

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Date: November 24, 2004

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	Joseph Ianno, Jr., Esq.	Fax:	(561) 659-7368
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	John Scarola, Esq.	Fax:	(561) 684-5816 (before 5 PM)
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	Mark C. Hansen, Esq.	Fax:	(202) 326-7999
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From: Michael T. Brody
312 923-2711

Employee Number: Client Number: 41198-10003

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Extension: 6490

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S RESPONSES AND OBJECTIONS TO MORGAN STANLEY & CO. INC.'S FIFTH SET OF INTERROGATORIES

Plaintiff Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys and pursuant to Rules 1.280 and 1.340 of the Florida Rules of Civil Procedure and the Court's October 14, 2004 Order, responds and objects to Morgan Stanley & Co., Inc.'s ("Morgan Stanley's") Fifth Set of Interrogatories ("Interrogatories") as follows:

INITIAL OBJECTIONS

1. CPH objects to the Interrogatories, including all Definitions and Instructions, to the extent they purport to impose upon CPH any requirements that exceed or are inconsistent with the Florida Rules of Civil Procedure or any other applicable rule or court order.

2. CPH objects to the Interrogatories to the extent that they seek information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other privilege, doctrine, immunity, or rule. CPH reserves the right to assert any and all privileges to which CPH is entitled under the law.

3. CPH objects to the definitions of "CPH" and "MAFCO" to the extent they include CPH's counsel in this litigation. CPH interprets these definitions to exclude Jenner & Block, LLP and Searcy Denney Scarola Barnhart & Shipley P.A., and their respective attorneys.

4. CPH's response to any interrogatory is not intended and should not be construed as an acknowledgment that the requested information is relevant or that any persons identified actually possess knowledge or information relevant to the subject matter of this action.

5. CPH's objections and responses are based on a good-faith investigation. CPH expressly reserves the right to amend and/or modify its objections and responses.

6. CPH responds to Morgan Stanley's Interrogatories without waiving the Initial Objections. CPH incorporates, as though fully set forth therein, these Initial Objections into each of its responses.

FURTHER OBJECTIONS

INTERROGATORY 1: Identify every instance in which Mafco or CPH engaged or retained Morgan Stanley between January 1, 1993 and March 30, 1998. Your response should identify the nature, subject, and purpose of each such engagement, the transaction or proposed transaction contemplated by each such engagement, and the name(s) of any Morgan Stanley employee or agents retained or consulted by Mafco or CPH.

FURTHER OBJECTION AND RESPONSE: CPH objects to this interrogatory as unduly burdensome because it seeks information already in the possession of Morgan Stanley and details concerning "every instance" in which Morgan Stanley was engaged or retained. MacAndrews & Forbes Holdings Inc. ("Mafco"), CPH, and their affiliates worked with Morgan Stanley on numerous occasions and in numerous capacities during this multi-year period, which ended more than six years ago. None of these companies keeps records of the sort that would allow for an easy or comprehensive determination of all of the engagements in which Morgan Stanley may have played some role. Thus, the information set forth below is necessarily incomplete and tentative, but CPH has made a reasonable effort to compile this response. CPH's investigation continues. CPH also notes that Interrogatory No. 1 constitutes multiple separate interrogatories. Subject to and notwithstanding its Initial and Further Objections, CPH states that

Morgan Stanley was involved in the following transactions with Mafco, CPH, or affiliated companies:

- In 1985, Morgan Stanley served as advisor to Pantry Pride, Inc. ("Pantry Pride"), a Mafco affiliate, in its acquisition of Revlon, Inc. ("Old Revlon").
- In 1986, Morgan Stanley served as an advisor to Pantry Pride in the sale of Old Revlon's pharmaceutical business to Rorer Group Inc.
- In 1989, Morgan Stanley served as an advisor to The Coleman Company, Inc. ("Old Coleman") during the acquisition by a Mafco affiliate of Old Coleman.
- In 1989, Morgan Stanley served as Old Coleman's financial advisor when Old Coleman reviewed the $460.5 million buyout proposal by former Old Coleman chairman Sheldon Coleman and other members of the Coleman family.
- In 1991, National Health Laboratories Incorporated ("NHL"), an affiliate of Mafco, completed a secondary public offering of its common stock, for which Morgan Stanley served as a co-manager.
- In 1992, National Health Care Group Inc. (an indirect Mafco subsidiary) sold 14 million shares of NHL in a registered offering through Morgan Stanley and other underwriters.
- In 1992, Morgan Stanley served as an underwriter for Old Coleman's February 1992 offering of $100 million in Guaranteed Pass Through Certificates due 2022.
- In 1992, Morgan Stanley served as a joint underwriting manager for the $83 million initial public offering by The Coleman Company, Inc. ("Coleman") of its common stock.
- In 1992, Revlon, Inc. ("Revlon") planned but did not complete a $120 million initial public offering of its common stock, which was to be co-managed by Morgan Stanley.
- In 1992, MacAndrews & Forbes Company ("Flavors"), a Mafco affiliate, retained Morgan Stanley and other underwriters in connection with a contemplated, but later withdrawn, initial public offering of its common stock.
- In 1992, Morgan Stanley co-managed an $85 million 12% senior debt offering for Flavors.
- In 1993, Morgan Stanley served as the financial advisor for NHL in connection with its proposed acquisition of Damon Corp.

- In 1993-94, Morgan Stanley served as one of the underwriters for a $125 million senior subordinated notes offering by Marvel III Holdings Inc., a Mafco affiliate.

- In 1994, Morgan Stanley served as the financial advisor and dealer manager for NHL's tender offer for the outstanding shares of Allied Clinical Laboratories Inc.

- In 1994, Morgan Stanley served as the financing agent for $200 million of senior notes issued by NHL Intermediate Holdings Corp. II, a unit of National Health Laboratories Holdings Inc., a Mafco affiliate.

- In 1994, New World Communications Group Incorporated, a Mafco affiliate, arranged for $200 million in financing using Morgan Stanley, as agent.

- In 1995, Toy Biz, Inc. ("Toy Biz"), a Mafco affiliate, and one of its shareholders sold Toy Biz common stock in a $62 million initial public offering co-managed by Morgan Stanley.

- In 1995, a Mafco affiliate and Abex Inc. agreed to merge. Morgan Stanley served as a financial advisor to Mafco in this transaction.

- In 1996, Revlon completed a $180 million initial public offering of its common stock, which was co-managed by Morgan Stanley.

- In 1996, Morgan Stanley led an underwriting group in conjunction with the $48 million sale by Toy Biz and one of its shareholders of shares of Toy Biz common stock.

- In 1996, Consolidated Cigar Holdings Inc. ("Cigar"), a Mafco affiliate, completed a $124 million initial public offering of its common stock, which was co-managed by Morgan Stanley.

- In 1997, Cigar completed a $118 million additional offering of its common stock, which was co-managed by Morgan Stanley.

- In 1997, Mafco Holdings Inc., a Mafco affiliate, completed a "going private" transaction with its affiliate, Mafco Consolidated Group Inc. ("Mafco Consolidated"). Mafco Consolidated retained Morgan Stanley as a financial advisor to represent the minority interest in evaluating and negotiating the Mafco Holdings proposal.

In addition to the transactions listed above, in late 1997 and early 1998, Morgan Stanley (including at least William Reid, Robert Kitts, and Matt Grogan) sought to interest Mafco in a

transaction involving Gucci. In early 1998, Morgan Stanley (including at least Mark Perret and Edwin Datson) also sought to interest Mafco in possible European acquisition opportunities.

INTERROGATORY 2: Identify all communications between Coleman, CPH, or Mafco (or any of their attorneys or financial advisors) and Sunbeam, Arthur Andersen, Morgan Stanley, or Skadden Arps between March 19, 1998 and March 30, 1998 concerning Sunbeam's sales during the first quarter of 1998, Sunbeam's March 19, 1998 Press Release, or any of the information contained in Sunbeam's March 19, 1998 Press Release.

FURTHER OBJECTION AND RESPONSE: Subject to and without waiving its Initial Objections, CPH states that a CPH representative attended Sunbeam's and Morgan Stanley's "roadshow" presentation for the Senior Subordinated Convertible Debenture offering on March 18, 1998, at which Sunbeam and Morgan Stanley misrepresented and concealed Sunbeam's true condition. Further, after the March 19, 1998 press release was issued, one or more CPH and/or Coleman representatives reached out to and spoke with one or more Sunbeam and/or Morgan Stanley employees concerning the subject matter of the interrogatory. Sunbeam and/or Morgan Stanley assured CPH and/or Coleman that Sunbeam would make the sales numbers it previously had projected for the first quarter of 1998 and the full year. Sunbeam and/or Morgan Stanley also represented that the March 19, 1998 press release had been issued out of an abundance of caution, solely at the behest of legal counsel, due to the debenture offering and not because there was any problem at Sunbeam that imperiled its previous projections. In addition, CPH had a request outstanding throughout this period pursuant to Section 6.8 of the Agreement and Plan of Merger among Sunbeam Corporation, Laser Acquisition Corp., CLN Holdings Inc. and CPH dated as of February 27, 1998 (the "Holdings Merger Agreement") for, among other things, advice of any change or event that would be materially adverse. CPH further states that there were numerous communications between CPH

and/or Coleman and Sunbeam and/or Morgan Stanley during this time period and Sunbeam and/or Morgan Stanley failed to inform CPH and/or Coleman of Sunbeam's true condition.

INTERROGATORY 3: Identify all inquiries or requests for information that Coleman, CPH, or Mafco (or any of their attorneys or financial advisors) made to Sunbeam, Arthur Andersen, Morgan Stanley, or Skadden Arps regarding Sunbeam's history, operations, financial performance, or projection that Sunbeam, Arthur Andersen, Morgan Stanley, or Skadden Arps failed or refused to answer.

FURTHER OBJECTION AND RESPONSE: Morgan Stanley has exceeded any conceivable calculation of its 30 permissible interrogatories under Rule 1.340 of the Florida Rules of Civil Procedure without securing the agreement of plaintiff or a court order. Subject to and without waiving its Initial or Further Objections, CPH states that prior to the March 30, 1998 closing, CPH made the following requests for information from Sunbeam and Morgan Stanley: (i) on or before February 23, 1998, CPH and Coleman representatives requested that Morgan Stanley and Sunbeam provide information about Sunbeam, including Sunbeam's history, operations, financial performance, and projections, but Morgan Stanley and Sunbeam did not provide truthful information to CPH and Coleman in response; (ii) on February 27, 1998, CPH and Coleman requested that Morgan Stanley and Sunbeam advise CPH and Coleman if Sunbeam's operations and/or financial performance changed in a material adverse manner (*see* § 6.8 of the Holdings Merger Agreement), but Morgan Stanley and Sunbeam did not provide truthful information to CPH and Coleman in response; (iii) a CPH representative attended Sunbeam's and Morgan Stanley's "roadshow" presentation for the Senior Subordinated Convertible Debenture offering on March 18, 1998, at which Sunbeam and Morgan Stanley misrepresented and concealed Sunbeam's true condition, and (iv) after the March 19, 1998 press release was issued, CPH and Coleman requested that Morgan Stanley and Sunbeam provide information concerning Sunbeam, including Sunbeam's operations, financial information, and

projections, but Morgan Stanley and Sunbeam failed to provide truthful information to CPH and Coleman in response.

INTERROGATORY 4: For each of Morgan Stanley's Second, Third, and Fourth Set of Requests for Admission that CPH has denied, in whole or in part, state each fact that supports the denial. If CPH's denial is related to its objection to Morgan Stanley's definition of the term "CPH" in the Requests for Admission, state how CPH's response to the Request for Admission would change if CPH applied Morgan Stanley's definition.

FURTHER OBJECTION AND RESPONSE: Morgan Stanley has exceeded any conceivable calculation of its 30 permissible interrogatories under Rule 1.340 of the Florida Rules of Civil Procedure without securing the agreement of plaintiff or a court order. CPH further objects to Interrogatory No. 4 as overbroad insofar as it seeks identification of "all facts" that support CPH's denial of the requests for admission. CPH also notes that Interrogatory No. 4 constitutes multiple separate interrogatories. Subject to and without waiving its Initial or Further Objections, CPH states the following:

Morgan Stanley's Second Set of Requests for Admission:

No. 1: CPH did not retain CSFB. Rather, Coleman retained CSFB.

No. 3: Mafco did not retain CSFB. Rather, Coleman retained CSFB.

Nos. 4, 5, 11, 12, 17, 21: CSFB did not have the same responsibilities and relationship with Sunbeam as Morgan Stanley did with Sunbeam.

Nos. 9, 10, 13, 14: Wachtell Lipton, Rosen & Katz did not have the same responsibilities and relationship with Sunbeam as Morgan Stanley did with Sunbeam.

Nos. 16, 18, 20, 22: Wachtell, Lipton, Rosen & Katz performed customary legal services in connection with the Coleman Transaction.

No. 23: One or more of the pre-March 19, 1998 drafts of the Arthur Andersen comfort letters were communicated to Morgan Stanley on or about March 18, 1998 and pre-March 19, 1998 drafts of the comfort letter have been produced in this litigation.

Morgan Stanley's Third Set of Requests for Admission:

Nos. 9, 13, 17: Coleman did not close the March 30, 1998 Coleman Transaction. Coleman could not have obtained the "comfort letters" described by Section 7.3(b) of the Public Merger Agreement prior to the March 30, 1998 closing of the CPH transaction.

Nos. 10, 14, 18: CLN could not have obtained the "comfort letters" described by Section 7.3(b) of the Public Merger Agreement prior to the March 30, 1998 closing of the CPH transaction.

Nos. 11, 15, 19: CPH could not have obtained the "comfort letters" described by Section 7.3(b) of the Public Merger Agreement prior to the March 30, 1998 closing of the CPH transaction.

No. 12, 16, 20: Mafco did not close the March 30, 1998 Coleman Transaction. Mafco could not have obtained the "comfort letters" described by Section 7.3(b) of the Public Merger Agreement prior to the March 30, 1998 closing of the CPH transaction.

Morgan Stanley's Fourth Set of Requests for Admission:

No. 1: The February 23, 1998 Letter was not drafted by counsel for CPH and was not signed.

No. 2: There is no evidence that the February 23, 1998 Letter is the agreement referred to in those merger agreement provisions.

Nos. 3, 4, 10, 11, 12, 13, 14: In negotiating the merger agreement, CPH requested and Sunbeam agreed to provide information reflecting any material adverse development in Sunbeam's performance or operations. The information referred to in these Requests plainly would have been within the scope of that provision. Morgan Stanley knew that Sunbeam had an

affirmative obligation to notify CPH of any material adverse change and yet Morgan Stanley affirmatively assisted Sunbeam in concealing from and misrepresenting to CPH this information.

No. 5: CPH did not learn that 50% of Sunbeam's sales typically occurred in the last month of the quarter. Rather, CPH reviewed analyst commentary that suggested that in the third quarter of 1997, 50% of Sunbeam's sales occurred in the last month of the quarter.

No. 6: An analyst mentioned possible international sales pipeline filling.

No. 7: Not all Sunbeam Research Analysts decreased their estimates of Sunbeam's 1998 Earnings Per Share.

No. 8: No one told CPH representatives that Sunbeam's February 1998 sales were slow.

No. 15: Sunbeam and Morgan Stanley misrepresented and concealed the true facts concerning Sunbeam during the negotiations with CPH and Coleman.

No. 17: Morgan Stanley participated in the oral presentation of the Long Range Strategic Plan, which also was presented by both Morgan Stanley and Sunbeam in written form.

Nos. 18, 20, 21, 22: The facts known to Sunbeam and Morgan Stanley rendered those statements false.

No. 19: CPH lacks information sufficient to answer this request. CPH further states that Morgan Stanley adopted and vouched for the statements by incorporating them into Morgan Stanley's presentation.

No. 23: CPH wanted and accepted Sunbeam's stock on the basis of Sunbeam's and Morgan Stanley's representations concerning the condition and performance of Sunbeam, but CPH did not affirmatively request it.

No. 25: CPH exercised its rights by obtaining the right in § 6.8 of the Holdings Merger Agreement to receive notice of material adverse changes. Further, among other things, (a) CPH

received and reviewed Sunbeam's Annual Report on Form 10-K for the year ended December 29, 1997; (b) a CPH representative attended one of the "roadshow" presentations made by Sunbeam and Morgan Stanley in connection with its offering of Senior Subordinated Convertible Debentures that were used to finance the acquisition; (c) a CPH representative obtained and reviewed the offering memorandum prepared and distributed by Sunbeam and Morgan Stanley in connection with the offering of the debentures; (d) CPH received and reviewed the March 19, 1998 press release drafted by Sunbeam and Morgan Stanley; (e) following its receipt of the March 19, 1998 press release, one or more CPH and/or Coleman representatives contacted and spoke with one or more Sunbeam and/or Morgan Stanley representatives concerning the release and Sunbeam's expectations for first quarter 1998.

No. 26: CPH does not have information sufficient to determine whether the handwriting on the identified documents is authentic.

No. 27: CPH does not believe that the documents on Exhibit 2 of the response meet the requirements of Florida Evidence Code ¶ 90.803(b). As to the remaining documents and all handwriting, CPH denies that or does not have information sufficient to determine whether those documents meet the requirements of Florida Evidence Code ¶ 90.803(a).

No. 28: CPH did not author the documents or handwriting in question.

INTERROGATORY 5: State the value that CPH and/or Mafco ascribed to the warrants that they received from Sunbeam pursuant to the August 12, 1998 settlement between CPH and Sunbeam, including but not limited to the value that CPH and Mafco placed upon the warrants for tax or accounting purposes and an identification of all persons from CPH, Mafco, or their outside advisors involved in the valuation.

FURTHER OBJECTION AND RESPONSE: Morgan Stanley has exceeded any conceivable calculation of its 30 permissible interrogatories under Rule 1.340 of the Florida Rules of Civil Procedure without securing the agreement of plaintiff or a court order. CPH further objects that the interrogatory is overbroad and not reasonably calculated to lead to the

discovery of admissible evidence to extent that the interrogatory is not limited as to time. CPH further objects that neither the tax treatment nor the accounting treatment of the warrants is a relevant issue in this case. CPH further objects that it has not placed the treatment of the warrants for taxation purposes at issue in this action, and Morgan Stanley has failed to show that it is unable to obtain discovery concerning the value of the warrants from other sources. CPH further objects to this interrogatory to the extent that it calls for information protected by the attorney-client privilege, work product doctrine or the accountant privilege. Moreover, CPH further objects to this interrogatory as vague and ambiguous in its use of the term "value," which is susceptible to different meanings.

Subject to and without waiving its Initial or Further Objections, CPH states that the warrants had no value to CPH when they were received, or at any time thereafter. CPH refers to the November 18, 2004 corporate representative deposition of CPH (Mr. Laurence Winoker), the November 17 and November 18, 2004 deposition of Ronald O. Perelman, and the November 19, 2004 deposition of Howard Gittis for information concerning the economic value ascribed to the warrants by CPH and its management, as well as CPH's treatment of the warrants in CPH's books and records.

INTERROGATORY 6: Identify every potential bidder and/or acquirer for Coleman that discussed a proposed acquisition of Coleman with Mafco, CPH or Coleman between January 1, 1997 and March 30, 1998, including without limitation "the most likely potential bidder" referenced at CPH 0634057 of the 2/25/98 Coleman Board Meeting Minutes. Your response should include the dates, terms and outcome of any such discussions.

FURTHER OBJECTION AND RESPONSE: Morgan Stanley has exceeded any conceivable calculation of its 30 permissible interrogatories under Rule 1.340 of the Florida Rules of Civil Procedure without securing the agreement of plaintiff or a court order. CPH further objects that the interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its Initial and Further Objections, CPH

states that the "most likely potential bidder" referenced in the February 25, 1998 Coleman Board meeting minutes was Brunswick Corporation. In further response, CPH incorporates by reference the November 19, 2004 deposition testimony of Howard Gittis concerning the contact with Brunswick.

Dated: November 24, 2004

As to objections:

By:

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

Attorneys for Coleman (Parent) Holdings Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and federal express to counsel listed below on this 24th day of November, 2004:

Thomas A. Clare
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr.
CARLTON FIELDS, P.A.
222 Lake View Avenue, Suite 1400
West Palm Beach, FL 33401

Mark C. Hansen
Kellogg, Huber, Hansen, Todd
& EVANS, P .L.L.C.
Sumner Square, 1615 M Street N.W.
Suite 400
Washington, D.C. 20036-3209

Deirdre E. Connell

I, Steven L. Fasman, being duly sworn, depose and say that I am authorized on behalf of Coleman (Parent) Holdings Inc. and, on its behalf, I have read the foregoing COLEMAN (PARENT) HOLDINGS INC.'S RESPONSES AND OBJECTIONS TO MORGAN STANLEY & CO., INC.'S FIFTH SET OF INTERROGATORIES, and to the best of my knowledge and belief the response contained therein is true and correct.

STEVEN L. FASMAN

Subscribed and sworn to before me
this 23rd day of November, 2004.

KAREN A. DeMECO
Notary Public, State of New York
No. 01DE4668602
Qualified in Queens County
Commission Expires March 30, 200[illegible]

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.'S RESPONSES AND OBJECTIONS TO MORGAN STANLEY & CO. INCORPORATED'S EIGHTH [SIC] REQUEST FOR PRODUCTION OF DOCUMENTS

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, and pursuant to Rules 1.280 and 1.350 of the Florida Rules of Civil Procedure and the Court's October 14, 2004 Order, objects and responds to Morgan Stanley & Co. Inc.'s ("Morgan Stanley's") Eighth [sic] Request for Production of Documents ("Requests for Production") as follows:

INITIAL OBJECTIONS

1. CPH objects to the Requests for Production, including all Definitions and Instructions, to the extent that they purport to impose upon CPH any requirements that exceed or are inconsistent with the requirements of the Florida Rules of Civil Procedure or any other applicable rule or court order.

2. CPH objects to the Requests for Production to the extent that they seek the production of any documents or information protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable privilege, doctrine, immunity, or rule. CPH reserves the right to assert any and all privileges to which CPH is entitled under the law. CPH will provide a log of documents withheld from production on the basis of the attorney-client privilege, the work product doctrine, or any other applicable privilege, doctrine, immunity, or rule.

3. CPH objects to Instruction 3 to the extent it purports to require CPH's counsel, consultants, and/or experts in this litigation to produce documents. CPH interprets Instruction No. 3 to exclude CPH's counsel, consultants, and experts in this litigation.

4. CPH objects to Definition No. 7 as vague, ambiguous, and overbroad insofar as it purports to include "where applicable" a party's "officers, directors, employees, partners, corporate parent, subsidiaries or affiliates." CPH will interpret the term "plaintiff" to mean CPH and "defendant" to mean Morgan Stanley.

5. CPH objects to the extent that any Request for Production seeks documents that are in the public domain and accessible to all parties. In responding to the Requests for Production, CPH will produce publicly-available documents to the extent that copies exist in CPH's files of otherwise non-public information responsive to these requests.

6. CPH objects to the definitions of "CPH" and "MAFCO" to the extent they include CPH's counsel in this litigation. CPH interprets these definitions to exclude Jenner & Block LLP and Searcy Denney Scarola Barnhart & Shipley P.A., and their respective attorneys.

7. By stating that CPH will produce documents responsive to a particular document request, CPH does not represent that any such documents exist. Rather, CPH is responding that to the extent such documents are located, they will be produced.

8. By stating that CPH will produce responsive documents, CPH does not concede the relevance of any of the produced documents to the subject matter of this litigation or to the admissibility of those documents at trial.

9. CPH's objections and responses are based on a good-faith search for documents within CPH's possession, custody, and control. CPH expressly reserves the right to amend and/or modify its objections and responses.

10. CPH responds to Morgan Stanley's document requests without waiving the Initial Objections. CPH incorporates, as though fully set forth therein, these Initial Objections into each of its responses.

FURTHER OBJECTIONS AND RESPONSES

Request No. 1. All documents not previously produced or provided by CPH that are responsive to any Request for the Production of Documents that Morgan Stanley has served upon CPH in the above captioned cases.

RESPONSE: CPH has not located any documents in its possession responsive to this request.

Request No. 2. All documents concerning any proposed sale of CPH's interest in Coleman, including without limitation all documents concerning communications with potential buyers and investment bankers, between January 1, 1997 and March 31, 1998.

RESPONSE: CPH objects to this request as overbroad and not reasonably calculated to lead to the discovery of admissible evidence. CPH previously has produced all non-privileged documents in its possession responsive to this request.

Request No. 3. All documents from January 1, 1996 to March 31, 1998 concerning the valuation of Coleman, including without limitation all documents concerning any valuation of Coleman performed by Chase Securities and all studies done to support all valuations.

RESPONSE: CPH objects to this request as not reasonably calculated to lead to the discovery of admissible evidence. CPH further objects to this request as overbroad as to the time period requested. CPH further objects to this request as containing an implicit untrue assumption in that CPH is not aware of any valuation of Coleman performed by Chase Securities on behalf of CPH. CPH previously has produced all non-privileged documents in its possession concerning valuations of Coleman prepared in connection with Sunbeam's acquisition of CPH's interest in The Coleman Company, Inc.

Request No. 4. All documents concerning the value of the warrants and other consideration that CPH received from Sunbeam pursuant to the August 12, 1998 Settlement Agreement between CPH and Sunbeam.

RESPONSE CPH objects to this request to the extent that it calls for the production of documents protected by the attorney-client privilege, work product doctrine, and the accountant privilege. CPH further objects to this request to the extent that it calls for the production of "all documents" concerning the value of the warrants. CPH further objects to this request as overbroad and as not reasonably calculated to lead to the discovery of admissible evidence to the extent that the request is not limited as to time. CPH further objects to this request as vague and ambiguous in its use of the term "value," which is susceptible to different meanings. CPH further objects to this request as vague and ambiguous to the extent that it refers to "other consideration" received by CPH pursuant to the August 12, 1998 Settlement Agreement. Subject to and without waiving its Initial or Further Objections, CPH will produce documents reflecting the journal entries that show how CPH recorded the warrants on CPH's books and records.

Dated: November 24, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and federal express to counsel listed below on this 24th day of November, 2004:

Thomas A. Clare
KIRKLAND & ELLIS
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr.
CARLTON FIELDS
222 Lakeview Avenue
Suite 1400
West Palm Beach, Florida 33401

Mark C. Hansen
Kellogg, Huber, Hansen, Todd
& EVANS, P .L.L.C.
Sumner Square, 1615 M Street N.W.
Suite 400
Washington, D.C. 20036-3209

By: Deirdre E. Connell
Deirdre E. Connell

Acct	Sub	Per Post	Jrnl Type	Trn Type	Bat Nbr	Per Ent	Ref Nbr	Tran Date	Description	Beginning Balance	Debit Amount	Credit Amount	Ending Balance
Ledger ID:	ACTUALS												
260155	0608-608-0000-000								INVEST -SUNBEAM WARRANTS				
		13-98 *	GJ	GL	049323	03-99	TOPSID	12/31/1998	RECORD INVEST - SUNB		41,738,000.00	0.00	
									Total 13-98	0.00	41,738,000.00	0.00	41,738,000.00
									Total 01-99	41,738,000.00			41,738,000.00
									Total 02-99	41,738,000.00			41,738,000.00
									Total 03-99	41,738,000.00			41,738,000.00
									Total 04-99	41,738,000.00			41,738,000.00
									Total 05-99	41,738,000.00			41,738,000.00
									Total 06-99	41,738,000.00			41,738,000.00
									Total 07-99	41,738,000.00			41,738,000.00
									Total 08-99	41,738,000.00			41,738,000.00
									Total 09-99	41,738,000.00			41,738,000.00
									Total 10-99	41,738,000.00			41,738,000.00
									Total 11-99	41,738,000.00			41,738,000.00
									Total 12-99	41,738,000.00			41,738,000.00
									Total 13-99	41,738,000.00			41,738,000.00
									Total 01-00	41,738,000.00			41,738,000.00
									Total 02-00	41,738,000.00			41,738,000.00
									Total 03-00	41,738,000.00			41,738,000.00
									Total 04-00	41,738,000.00			41,738,000.00
									Total 05-00	41,738,000.00			41,738,000.00

* Indicates that the period entered is different from the period post.
** Indicates an account that is out of balance.

CONFIDENTIAL
SUBJECT TO
PROTECTIVE ORDER

NOV-24-2004 16:02 JENNER AND BLOCK LLP 312 527 0484 P.21/41

Acct	Sub	Per Post	Jrnl Type	Trn Type	Bat Nbr	Per Ent	Ref Nbr	Tran Date	Description	Beginning Balance	Debit Amount	Credit Amount	Ending Balance
								Total 06-00		41,738,000.00			41,738,000.00
								Total 07-00		41,738,000.00			41,738,000.00
								Total 08-00		41,738,000.00			41,738,000.00
								Total 09-00		41,738,000.00			41,738,000.00
								Total 10-00		41,738,000.00			41,738,000.00
								Total 11-00		41,738,000.00			41,738,000.00
								Total 12-00		41,738,000.00			41,738,000.00
		13-00 *	GJ	GL	058671	03-01	TOPSIDES	12/31/2000	REC SUNBEAM LOSSES/W		0.00	41,738,000.00	
								Total 13-00		41,738,000.00	0.00	41,738,000.00	0.00
								Account total		0.00	41,738,000.00	41,738,000.00	0.00

* Indicates that the period entered is different from the period post.
** Indicates an account that is out of balance.

CONFIDENTIAL
SUBJECT TO
PROTECTIVE ORDER

NOV-24-2004 16:03 JENNER AND BLOCK LLP 312 527 0484 P.22/41

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INC.,

Defendant.
_____/

AGREED ORDER DENYING AS MOOT COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL DATED JULY 15, 2004 AND MORGAN STANLEY & CO. INC.'S MOTION FOR EXTENSION OF STAY DATED SEPTEMBER 3, 2004

THIS CAUSE having come before the Court upon Coleman (Parent) Holdings, Inc. ("CPH") and MacAndrews & Forbes Holdings, Inc.'s ("MAFCO") Motion to Compel Answers to Interrogatories and Requests for Production dated July 15, 2004, and Morgan Stanley & Co. Inc.'s ("Morgan Stanley") Motion For Extension of Stay of Contempt Discovery dated September 3, 2004, and the Court noting the agreement of the parties, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

1. CPH's and MAFCO's Motion to Compel Answers to Interrogatories and Requests for Production dated July 15, 2004 is DENIED as moot; and

2. Morgan Stanley's Motion For Extension of Stay of Contempt Discovery dated September 3, 2004 is DENIED as moot.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this ____ day of November, 2004.

SIGNED & DATED
NOV 29 2004
JUDGE ELIZABETH T. MAASS

ELIZABETH T. MAASS
Circuit Court Judge

Copies furnished to:

Joseph Ianno, Jr., Esq.
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Michael Brody
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CHICAGO, IL 60611

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INC.,

Defendant.
_____/

AGREED ORDER DENYING AS MOOT COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL DATED JULY 15, 2004 AND MORGAN STANLEY & CO. INC.'S MOTION FOR EXTENSION OF STAY DATED SEPTEMBER 3, 2004

THIS CAUSE having come before the Court upon Coleman (Parent) Holdings, Inc. ("CPH") and MacAndrews & Forbes Holdings, Inc.'s ("MAFCO") Motion to Compel Answers to Interrogatories and Requests for Production dated July 15, 2004, and Morgan Stanley & Co. Inc.'s ("Morgan Stanley") Motion For Extension of Stay of Contempt Discovery dated September 3, 2004, and the Court noting the agreement of the parties, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

1. CPH's and MAFCO's Motion to Compel Answers to Interrogatories and Requests for Production dated July 15, 2004 is DENIED as moot; and

2. Morgan Stanley's Motion For Extension of Stay of Contempt Discovery dated September 3, 2004 is DENIED as moot.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this ____ day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

Copies furnished to:

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CARLTON FIELDS, P.A.
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West Palm Beach, FL 33401

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One IBM Plaza, Suite 400
CHICAGO, IL 60611

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.
MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

NOTICE OF DEPOSITION SUBPOENA DUCES TECUM OF DONALD R. UZZI

TO: Donald R. Uzzi, 4201 Lomo Alto Drive, Apt. 307, Dallas, TX 75219.

Please take notice that the Morgan Stanley entities in the above-styled cause of action intend to take the oral deposition of Donald R. Uzzi pursuant to Texas Rule of Civil Procedure 201.2 and the Order of the Circuit Court of the Fifteenth Judicial Circuit In and For Palm Beach County, Florida entered on January 21, 2004 and attached hereto. The deposition will take place at 9:30 a.m. on December 14, 2004, at the offices of HAYNES AND BOONE, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202. The deposition will be videotaped by Esquire Deposition Services, 1700 Pacific Avenue, Suite 4750, Dallas, Texas 75201, and will continue from day to day until completed.

Donald R. Uzzi will also produce documents responsive to the Deposition Subpoena Duces Tecum attached hereto. These documents and materials shall be brought with the witness and produced on December 14, 2004, at HAYNES AND BOONE, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202.

Respectfully submitted,

Michael C. Occhuizzo
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OF COUNSEL:

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Facsimile: (561) 659-7368

Dated: December 29, 2004

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following counsel of record by facsimile and Federal Express on this 29th day of November, 2004:

John Scarola, Esq.
SEARCY, DENNEY, SCAROLA, BARNHARDT & SHIPLEY, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409

Jerold S. Solovy, Esq.
JENNER & BLOCK, LLC
One IBM Plaza
Suite 4400
Chicago, Illinois 60611

Michael C. Occhuizzo

THE STATE OF TEXAS

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.
MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

DEPOSITION SUBPOENA DUCES TECUM

TO: Any sheriff or constable of the State of Texas or other person authorized to serve and execute subpoenas as provided in Texas Rule of Civil Procedure 176.5.

You are commanded to summon **Donald R. Uzzi**, 4201 Lomo Alto Drive, Apt. 307, Dallas, TX 75219, to appear at the principal offices of HAYNES AND BOONE, LLP, 901 Main Street Suite 3100, Dallas, Texas 75202, on **Tuesday, December 14, 2004 at 9:30 a.m.** to give testimony at a videotaped oral deposition and to permit inspection and copying of documents or tangible things to be used as evidence in this case.

Donald R. Uzzi is commanded to attend the oral deposition and to produce and permit inspection and copying of the following documents or tangible things described in the attached Exhibit 1. These documents and materials shall be brought with the witness and produced prior to the deposition on December 14, 2004, at HAYNES AND BOONE, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202.

Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both. TEX. R. CIV. P. 176.8(a).

DO NOT FAIL to return this writ to the Circuit Court of the Fifteenth Judicial Circuit In and For Palm Beach County, Florida with either the attached officer's return showing the manner of execution or the witness's signed memorandum showing that the witness accepted the subpoena.

ISSUED on November 29, 2004.

By: _____

Sean Trende
Texas State Bar No. 24034176
KIRKLAND & ELLIS LLP,
655 15th Street, N.W., Suite 1200,
Washington, D.C. 20005

This subpoena was issued pursuant to Texas Rule of Civil Procedure 201.2, the Order of the Circuit Court of the Fifteenth Judicial Circuit In and For Palm Beach County, Florida entered on January 21, 2004 and attached hereto as Exhibit 2, and at the request of Defendants' attorneys of record Thomas D. Yannucci, P.C., Lawrence P. Bemis (FL Bar No. 618349), and Thomas A. Clare of KIRKLAND & ELLIS LLP, 655 15th Street, N.W., Suite 1200, Washington, D.C. 20005; Mark C. Hansen, James M. Webster, III, Rebecca A. Beynon of KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C., Sumner Square, 1615 M Street, N.W., Suite 400, Washington, D.C. 20036; Joseph Ianno, Jr. (FL Bar No. 655351), CARLTON FIELDS, P.A., 222 Lakeview Ave., Suite 1400, West Palm Beach, FL 33401.

EXHIBIT 1

DEPOSITION SUBPOENA DUCES TECUM

You are hereby requested to produced the following documents pursuant to the definitions and instructions contained herein:

DOCUMENTS REQUESTED

1. All documents concerning the Coleman Transaction.

2. All documents concerning the Subordinated Debenture Offering.

3. All documents concerning the Bank Facility, or the Credit Agreement.

4. All documents reflecting or concerning any communications between or among any of Sunbeam, CPH, MAFCO, CSFB, Arthur Andersen, MS & Co., MSSF, Davis Polk, Wachtell, or Skadden in 1997 or 1998.

5. All documents provided by you in any Litigation or SEC Administrative Proceeding.

6. All calendars, diaries, timekeeping sheets or records maintained by you concerning any activities related to Coleman Transaction, the Subordinated Debenture Offering, the Bank Facility, the Credit Agreement.

7. All documents related to Sunbeam's Financial Information for all or any portion of 1996, 1997, and 1998, including but not limited to Financial Statements and documents concerning Sunbeam's forecasts and plans for revenue or earnings.

8. All documents related or referring to any cost-reduction or sales program or policy in place at Sunbeam during 1997 and 1998, including but not limited to documents concerning the "early buy" program, "Initiatives for Success", and "bill and hold" sales and the "no returns" policy.

9. All documents concerning returns of Sunbeam goods or product in 1997 and 1998, including but not limited to documents regarding the "no returns" policy and conversations or communications regarding the deletion of return authorizations from the J.D. Edwards system.

10. All documents pertaining to negotiations concerning the acquisition of Coleman, Signature Brands, and First Alert, including but not limited to documents concerning conversations or communications of any kind between or among any of MS & Co., MSSF, CPH or MAFCO personnel or representatives.

11. All documents concerning Synergies that might be achieved from a business combination of Sunbeam, Coleman, Signature Brands, and First Alert, or any combination thereof.

12. All documents related to or supporting the March 16, 1998 Representation Letter provided to Arthur Anderson, including but not limited to any drafts of such letter and any Financial Information used or referenced in writing the letter or drafts.

13. All documents concerning any "comfort letter" pertaining to the Subordinated Debenture offering or the Credit Agreement, including but not limited to Arthur Andersen's letters dated March 19, 1998 and March 25, 1998 and any drafts of such letters.

14. All documents concerning any investigation, analysis, or due diligence conducted by Sunbeam or its Advisors pertaining to the Coleman Transaction, including but not limited to documents and Financial Information pertaining to March 18, 1998 and March 24, 1998 conference calls.

15. All documents related to Sunbeam's March 19, 1998 press release, including but not limited to documents pertaining to the contents or drafting of the press release, the decision to issue the press release, and the decision to include the press release in the Offering memorandum.

16. All documents concerning the March 19, 1998 drafting session and/or meeting that took place at Global Financial Press concerning the Offering Memorandum, including but not limited to documents concerning any conversations or communications of any kind involving MS & Co. or Arthur Andersen personnel.

17. All documents related to the sale of the Subordinated Debenture, including but not limited to documents pertaining to roadshows or other communications with investors or analysts.

DEFINITIONS

1. "Advisors" shall mean financial advisors, legal advisors, accountants, consultants and any other third-party advising or assisting Sunbeam in any way with the Coleman Transaction, including but not limited to Arthur Anderson, Coopers & Lybrand, Llama Company, MS& Co., MSSF, and Skadden.

2. "Arbitrations" shall mean *Albert J. Dunlap and Sunbeam Corporation*, No. 32 160 00088 99 (AAA); and *Russell A. Kersh and Sunbeam Corporation*, No. 32 160 00091 99 (AAA).

3. "Arthur Andersen" shall mean Arthur Andersen LLP and any of its former or present partners, officers, directors, employees, representatives and agents.

4. "Bank Facility" shall mean the Credit Agreement, including amendments, and all funds extended by Lenders to Sunbeam pursuant to the Credit Agreement, including but not limited to Tranche A, Tranche B, and the Revolving Credit Facility.

5. "Communication" shall mean any exchange or transmittal of information by any means of transmission, including, without limitation, face-to-face conversation, mail, overnight delivery, Internet, telephone, electronic mail, or facsimile.

6. The term "concerning" shall mean relating to, referring to, describing, evidencing, or constituting.

7. "Coleman" shall mean Coleman Company, Inc. and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

8. "Coleman Transaction" shall mean Sunbeam's acquisition of Coleman Company, Inc. from CPH and all related communications, agreements, and transactions, including the February 27, 1998 Agreements and the March 30, 1998 closing.

9. "Cooper & Lybrand" shall mean the former Coopers & Lybrand LLP, and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents.

10. "CPH" shall mean Coleman (Parent) Holdings Inc. and any of its former or present officers, directors, employees, representatives and agents.

11. "Credit Agreement" shall mean the agreement entered into by Sunbeam, as borrower with Lenders, dated March 30, 1998 and all amendments thereto.

12. "CSFB" shall mean Credit Suisse First Boston LLC and any of its former or present officers, directors, employees, representatives and agents.

13. "Davis Polk" shall mean Davis Polk & Wardwell and any of its former or present partners, officers, directors, employees, representatives and agents.

14. "Document" shall mean any recording in any tangible form of any information, whether handwritten, typed, printed, stored on computer disks, tapes, or databases, or otherwise reproduced. "Document" or "documents" also includes electronic documents whether stored on

servers or hard drives, e-mail, backup tapes, voicemail and video and audio recordings. A draft or non-identical copy is a separate document within the meaning of this term.

15. "Financial Information" shall mean information concerning the past or present financial condition of Sunbeam or Sunbeam securities.

16. "Financial Statements" shall mean documents reflecting Financial Information, including without limitation quarterly reports, yearly reports, balance sheets, statements of income, earnings, cash flow projections, and sources and applications of funds.

17. "First Alert" shall mean First Alert, Inc., and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

18. The term "identify" (with respect to documents) shall mean to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).

19. "Lenders" shall mean the entities listed on Schedule 2.01 of the Credit Agreement under the heading "Lenders" and any other person that shall have become a party to the Credit Agreement as a Lender pursuant to an assignment and acceptance.

20. "Litigations" shall mean *In re Sunbeam Securities Litigation*, 98-8258-Civ.-Middlebrooks (S.D. Fla); *Camden Asset Management L.P. v. Sunbeam Corporation*, 98-8773-Civ.-Middlebroks and 98-8275-Civ.-Middlebrooks (S.D. Fla); *Krim v. Dunlap*, No. CL 983168AD (15th Jud. Cir., Fla.); *Stapleton v. Sunbeam Corp.*, No. 98-1676-Civ.-King (S.D. Fla); *Sunbeam Corp. v. PricewaterhouseCoopers LLP*, No. CL 005444AN (15th Jud. Cir., Fla.); *In re Sunbeam Corp., Inc.*, No. 01-40291 (AJG) (Bankr. S.D.N.Y.) and any adversary proceedings therein; *SEC v. Dunlap*, No. 01-8437-Civ.-Middlebrooks (S.D. Fla.); *Oaktree Capital Management LLC v. Arthur Andersen LLP*,

No. BC257177 (L.A. Cty., CA); and *Coleman (Parent) Holdings Inc. v. Arthur Andersen LLP*, No. CA 01-06062AN (15th Jud. Cir., Fla.), or other litigation concerning the Coleman Transaction.

21. "Llama Company" shall mean Llama Company and any of its former or present partners, officers, directors, employees, representatives and agents.

22. "MAFCO" shall mean MacAndrews & Forbes Holdings, Inc. and any of its officers, directors, former or present employees, representatives and agents.

23. The "March 19, 1998 Press Release" shall mean the press release issued by Sunbeam on March 19, 1998 concerning the shortfall of first quarter 1998 sales numbers and the reasons for such shortfall.

24. "MS & Co." shall mean Morgan Stanley & Co. Inc. and any of its former or present officers, directors, employees, representatives and agents.

25. "MSSF" shall mean Morgan Stanley Senior Funding, Inc. and any of its former or present officers, directors, employees, representatives and agents.

26. The term "person" shall mean any natural person or any business, legal or governmental entity or association.

27. The term "relating to" shall mean concerning, evidencing, referring to, or constituting.

28. The "Relevant Period," unless otherwise indicated, shall be from January 1, 1996 through the date of service of this subpoena.

29. "SEC" shall mean the Securities and Exchange Commission.

30. "SEC Administrative Proceedings" shall mean *In the Matter of Sunbeam Corp.*, SEC Administrative Proceeding File No. 3-10481, and *In the Matter of David C. Fannin*, SEC Administrative Proceeding File No. 3-10482.

31. "Signature brands" shall mean Signature Brands USA, Inc. and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

32. "Skadden" shall mean Skadden, Arps, Slate, Meagher & Flom, LLP and any of its former or present partners, officers, directors, employees, representatives and agents.

33. "Subordinated Debentures" shall mean the Sunbeam's Zero Coupon Convertible Senior Subordinated Debentures Due 2018.

34. "Subordinated Debenture Offering" shall mean the offering of Sunbeam's Subordinated Debentures.

35. "Sunbeam" shall mean Sunbeam Corporation and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents.

36. "Synergies" shall mean post-acquisition gains through increased revenue and/or decreased cost.

37. "Wachtell" shall mean Wachtell Lipton Rosen & Katz and any of its former or present partners, officers, directors, employees, representatives and agents.

38. The terms "you" or "your" shall mean Donald R. Uzzi and any of Donald R. Uzzi's present and former representatives and agents.

INSTRUCTIONS

1. Documents shall be produced as they are kept in the usual course of business, or organized and labeled to correspond to the categories in this Request. Documents attached to each other should not be separated. Documents consisting of items previously produced in the Litigations, Arbitrations, and/or SEC Administrative Proceedings with Bates numbering shall be produced in Bates number order.

2. All documents shall be produced in the file folder, envelope or other container in which the documents are kept or maintained by you. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks.

3. The relevant period, unless otherwise indicated, shall be from January 1, 1996 through the date of service of this subpoena, and shall include all documents and information which relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received prior or subsequent to that period. Please supplement or correct your responses to these requests if, at any time, you become aware that your responses are incomplete or incorrect in any request.

4. If you claim the attorney-client privilege, or any other privilege or work-product protection for all or any portion of a document, you shall provide a privilege log that describes the withheld material sufficiently to allow Morgan Stanley to test the privilege or protection asserted.

5. The following rules of construction apply:

1. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be outside their scope;

2. The term "including" shall be construed to mean "without limitation"; and

3. The use of the singular form of any word include the plural and vice versa.

Exhibit 2

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

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

AGREED ORDER APPOINTING COMMISSIONERS AND COMMISSIONS

THIS CAUSE, having come before the Circuit Court in and for Palm Beach County, State of Florida, on the agreement of the parties, and

WHEREAS, it appears to the Court that:

1. Defendant Morgan Stanley & Co. Incorporated ("MS & Co.") desires to take the videotaped depositions of and obtain documents from the following witnesses who reside in California, Connecticut, Kansas, Minnesota, New York, Texas, and the District of Columbia and who have knowledge of facts relevant to this case:

Karen Kay Clark
1674 Amarelle Street
Newbury Park, CA 91320

Frank N. Gifford
126 Taconic Road
Greenwich, CT 06831-3139

Robert J. Duffy
16 Saint Nicholas Road
Darien, CT 06820-2823

16div-008906

Joseph P. Page
921 Sheridan Street, Apt. 119
Wichita, KS 67213-1363

William H. Spoor
622 West Ferndale Road
Wayzata, MN 55391

Adam Emmerich
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Steven Cohen
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Steven K. Geller
301 East 79th Street, Apt. 4H
New York, NY 10021-0932

Donald Uzzi
4209 Beverly Dr.
Dallas, TX 75205-3020

Ann Dibble Jordan
2940 Benton Place NW
Washington, DC 20008

2. You are hereby appointed as commissioners to take the videotaped testimony (and obtain the requested documentation) of the above witnesses and other witnesses whose discovery is sought in the commissions' jurisdiction under oath and on oral examination in accordance with the applicable Florida Statutes and Rules of Civil Procedure:

Esquire Santa Ana
2100 North Broadway, Second Floor
Santa Ana, CA 97206

Del Vecchio Reporting
117 Randi Drive
Madison, CT 06443

Harper Court Reporting
P.O. Box 3008
Wichita, KS 67201

Kirby Kennedy & Associates
5200 Wilson Road #219
Minneapolis, MN 55424

Esquire Deposition Services
216 E. 45th Street, 8th FL
New York, New York 10017-3304

Esquire Deposition Services
703 McKinney Avenue #320
Dallas, Texas 75202

Esquire Deposition Services
1020 19th Street NW, #621
Washington, DC 20036

or any person able to administer oaths pursuant to the laws of California, Connecticut, Kansas, Minnesota, New York, Texas, and the District of Columbia and duly authorized by him.

3. This order does not purport to grant the power of the commissioners appointed to subpoena witnesses or documents, but simply the power to administer oaths and transcribe deposition testimony.

DONE AND ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida this ____ day of January, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

Coleman (Parent) Holdings v. Morgan Stanley & Co. Inc.
2003 CA 005045AI
Agreed Order on Appointment of Commission

Copies furnished to:

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368

John Scarola, Esq.
SEARCY, DENNEY, SCAROLA, BARNHARDT
& SHIPLEY, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409
Telephone: (561) 686-3000
Facsimile: (561) 478-0754

Thomas D. Yannucci, P.C.
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th Street, N.W. – Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

Jerold S. Solovy
JENNER & BLOCK, LLC
One IBM Plaza
Suite 4400
Chicago, Illinois 60611
Telephone: (312) 222-9350
Facsimile: (312) 527-0484

16div-008909

FAX TRANSMITTAL

JENNER&BLOCK

Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611
Tel 312 222-9350
www.jenner.com

Chicago
Dallas
Washington, DC

Date: November 29, 2004

To:			
	Thomas A. Clare, Esq.	Fax:	(202) 879-5200
		Voice:	(202) 879-5993
	Joseph Ianno, Jr., Esq.	Fax:	(561) 659-7368
		Voice:	(561) 659-7070
	John Scarola, Esq.	Fax:	(561) 684-5816 (before 5 PM)
		Voice:	(561) 686-6350, Ext. 140
	Mark C. Hansen, Esq.	Fax:	(202) 326-7999
		Voice:	(202) 326-7900

From: Michael T. Brody
312 923-2711

Employee Number: Client Number: 41198-10003

Important: This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is attorney work product, privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via postal service. Thank you.

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Sent By:

Secretary: Caryn Jo Geisler

Extension: 6490

JENNER&BLOCK

November 29, 2004

Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611
Tel 312-222-9350
www.jenner.com

Chicago
Dallas
Washington, DC

By Telecopy

Thomas A. Clare, Esq.
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Michael T. Brody
Tel 312 923-2711
Fax 312 840-7711
mbrody@jenner.com

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Tom:

I write in response to your letter of November 28, 2004 concerning the Rule 1.310 depositions regarding Morgan Stanley's trading in Sunbeam debentures and Coleman notes.

Thank you for designating Mr. Ferraro on these topics. We are unaware of a November 24, 2004 letter offering the depositions for 2:00 p.m. Your November 23 letter offered the depositions for 11:00 a.m. Nonetheless, we are able to begin the depositions at 2:00 p.m., as you request. While we do not expect the depositions to go long, we will start the deposition at 2:00 p.m. on the condition that Mr. Ferraro agrees to work past 5:00 p.m., if necessary. We are not willing to conduct the depositions at Morgan Stanley's offices. The depositions will go forward at Esquire.

Please contact me immediately if the arrangements in this letter are not acceptable to you. I enclose an amended notice of deposition to reflect these arrangements.

Very truly yours,

Michael T. Brody

MTB:cjg
cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

AMENDED NOTICE OF TAKING VIDEOTAPED DEPOSITION

To:

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings, Inc. will take the deposition upon oral examination of the following parties and witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co., Inc. on topics identified on Exhibit A.	November 30, 2004 at 2:00 p.m.

The deposition will be conducted at Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017. The deposition will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until completed.

Please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to all counsel on the attached Service List this 29th day of November 2004.

Dated: November 29, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART
& SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409
(561) 686-6300

SERVICE LIST

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W.
Suite 400
Washington, D.C. 20036-3209

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Exhibit A

CORPORATE DEPOSITION TOPICS

1. For the time period January 1, 1996 to the present, any purchase or sale by MS&Co. (or any of its affiliates, subsidiaries, divisions, predecessors, and successors) of Coleman Escrow Corp. Senior Secured First and Second Priority Discount Notes due 2001, which are described in CPH 0473148-CPH 0473165 and Morgan Stanley Confidential 0001575-0001579, and any other Security (as defined in 15 U.S.C. 77b(a)(1)), or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc.

2. For the time period January 1, 1996 to the present, all reasons why MS&Co. (or any of its affiliates, subsidiaries, divisions, predecessors, and successors) purchased or sold the Coleman Escrow Notes described in Topic No. 1, and any other Security (as defined in 15 U.S.C. 77b(a)(1)), or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc., and the identity of the person(s) and/or committee(s) that made the decision to purchase or sell the Coleman Escrow Notes and the Securities.

3. For the time period January 1, 1996 to the present, MS&Co.'s (or any of its affiliates', subsidiaries', divisions', predecessors', and successors') purchase price, other costs in connection with the purchase, sales price, other costs in connection with the sale, gains, losses, and amount or rate of return on any purchase or sale of Coleman Escrow Corp. Notes described in Topic No. 1, and any other Security (as defined in 15 U.S.C. 77b(a)(1)), or any interests therein, issued by or relating to The Coleman Company, Inc., Coleman Escrow Corp., Coleman Worldwide Corporation, and/or CLN Holdings Inc.

4. The documents produced by Morgan Stanley at Morgan Stanley Confidential 0096879 to 0096972 and Morgan Stanley Confidential 0111944 to 0111962, including but not limited to: (1) the authenticity, source, creation, use, maintenance and business purpose of the documents; and (2) the explanation of the documents and the information contained therein.

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

AMENDED MOTION TO DETERMINE
SUFFICIENCY OF SERVICE OF PROCESS ON JERRY LEVIN

Defendant, Morgan Stanley & Co. Incorporated ("Morgan Stanley"), requests that this Court determine sufficiency of service of process on Jerry Levin. In support of this Motion, Morgan Stanley states as follows:

1. Pursuant to a Motion for Protective Order filed by non-party Jerry Levin, this Court entered an Order requiring Mr. Levin to appear for deposition on December 1 and 2, 2004 in New York City and, if necessary, on December 3, 2004 in Florida. Mr. Levin's deposition was taken in New York as an accommodation to his schedule. Since Mr. Levin has an office and a home in Florida, Morgan Stanley was entitled to have Mr. Levin appear for his deposition in Florida.

2. Because Plaintiff did not ask any questions of Mr. Levin, the deposition was concluded on December 2, 2004. Consequently, Mr. Levin's deposition did not continue in Florida.

3. During the course of Mr. Levin's deposition, counsel for Morgan Stanley provided Mr. Levin and his counsel with a subpoena for Mr. Levin to appear for trial in this action.

4. On December 8, 2004, counsel for Mr. Levin returned the trial subpoena. A copy of counsel's letter with enclosures is attached hereto as Exhibit "A".

5. Mr. Levin should not be permitted to evade service of process because counsel and this Court accommodated his scheduling commitments. Had Morgan Stanley insisted that Mr. Levin appear for his deposition in Florida, Mr. Levin could have easily been served with the trial subpoena.

WHEREFORE, Morgan Stanley requests that this Court enter an Order determining that Mr. Levin was properly served and requiring him to appear for trial in this action as necessary and award such other and further relief as is just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 9th day of December, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
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Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square
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Washington, D.C. 20036
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Facsimile: (202) 326-7999

Counsel for Morgan Stanley & Co. Incorporated

CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368
E-mail: jianno@carltonfields.com

BY: Sarah Cl—d
Joseph Ianno, Jr. 718947
Florida Bar No. 655351

SERVICE LIST

Jack Scarola
SEARCY, DENNEY, SCAROLA, BARNHARDT & SHIPLEY, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

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Michael Brody
JENNER & BLOCK, LLC
One IBM Plaza, Suite 400
Chicago, IL 60611

Mark Bideau
Lorie M. Gleim
GREENBERG TRAURIG, P.A.
777 South Flagler Drive
Suite 300 East
West Palm Beach, FL 33401

Greenberg Traurig

MARK F. BIDEAU, ESQ.
WEST PALM BEACH OFFICE
DIRECT DIAL: (561) 650-7918
Email: bideaum@gtlaw.com

December 7, 2004

VIA FEDEX

Larry Bemis, Esq.
Kirkland & Ellis, LLP
655 15th Street, N.W.
Washington, DC 20005

Re: Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Company, Inc.

Dear Larry:

I am enclosing herewith a copy of the Subpoena addressed to Jerry Levin and the Witness Fee check that your associate gave to me at Mr. Levin's deposition. As I discussed with her at that time, I did not have authority to accept the Subpoena on behalf of Mr. Levin. Unfortunately, I still have not obtained the authority to accept a trial subpoena on Mr. Levin's behalf and I did not frankly want to lose these documents by holding them any longer. I am therefore returning them to you as requested.

Very truly yours,

Mark F. Bideau

MFB/dt
Enclosure

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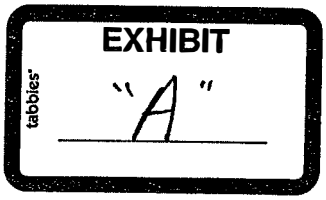

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WILMINGTON
ZURICH

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

CASE NO: CA 03-5045 AI

SUBPOENA FOR TRIAL

THE STATE OF FLORIDA

TO: JERRY W. LEVIN, Chief Executive Offier
American Household, Inc. f/k/a Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, Florida 33431

YOU ARE COMMANDED to appear before The Honorable Elizabeth Maass, Judge of the Circuit Court, at the Palm Beach County Courthouse, Courtroom 11A, 205 North Dixie Highway, West Palm Beach, Florida on February 22, 2005* at 9:30 a.m., to testify in this action. If you fail to appear, you may be in contempt of court.

Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.
Case No: CA 03-5045 AI
Subpoena for Trial

You are subpoenaed to appear by the following attorneys, and unless excused form this subpoena by these attorneys or the Court, you shall respond to this Subpoena as directed.

Dated: November 30th, 2004

BY: _____
Joseph Ianno, Jr.
For the Court

Joseph Ianno, Jr.,
Florida Bar No: 655351
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368

Lawrence P. Bemis
Florida Bar No: 618349
Thomas A. Clare
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
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Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
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Sumner Square
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7999

Counsel for Defendant
Morgan Stanley & Co. Incorporated

***BEFORE YOU APPEAR**

PLEASE CALL JOYCE DILLARD, CLA AT (561) 659-7070 TO CONFIRM THE EXACT TIME AND DATE YOU WILL BE CALLED TO TESTIFY

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

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Counsel for Defendant
Morgan Stanley & Co. Incorporated

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COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

CASE NO: CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

SUBPOENA FOR TRIAL

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Telephone: (202) 326-7999

Counsel for Defendant
Morgan Stanley & Co. Incorporated

***BEFORE YOU APPEAR**

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CARLTON FIELDS
ATTORNEYS AT LAW

P.O. Box 150
West Palm Beach, Florida 33402-0150
Ph. 561.659.7070

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NUMBER
11275

PAY: TEN AND 00/100 U.S. DOLLARS

DATE: 11/30/04

AMOUNT: $10.00

CARLTON FIELDS, P.A.
General Account

BY _____

NOT VALID AFTER 180 DAYS

AUTHORIZED REPRESENTATIVE(S)

TO THE ORDER OF
JERRY W. LEVIN
AMERICAN HOUSEHOLD, INS. F/K/A SUNBEAM CORP.
2381 EXECUTIVE CENTER DR.
BOCA RATON, FL 33431

⑈011275⑈ ⑆067006432⑆ 216222859816 2⑈

16div-008927

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

AMENDED MOTION TO DETERMINE SUFFICIENCY OF SERVICE OF PROCESS ON JERRY LEVIN

Defendant, Morgan Stanley & Co. Incorporated ("Morgan Stanley"), requests that this Court determine sufficiency of service of process on Jerry Levin. In support of this Motion, Morgan Stanley states as follows:

1. Pursuant to a Motion for Protective Order filed by non-party Jerry Levin, this Court entered an Order requiring Mr. Levin to appear for deposition on December 1 and 2, 2004 in New York City and, if necessary, on December 3, 2004 in Florida. Mr. Levin's deposition was taken in New York as an accommodation to his schedule. Since Mr. Levin has an office and a home in Florida, Morgan Stanley was entitled to have Mr. Levin appear for his deposition in Florida.

2. Because Plaintiff did not ask any questions of Mr. Levin, the deposition was concluded on December 2, 2004. Consequently, Mr. Levin's deposition did not continue in Florida.

3. During the course of Mr. Levin's deposition, counsel for Morgan Stanley provided Mr. Levin and his counsel with a subpoena for Mr. Levin to appear for trial in this action.

4. On December 8, 2004, counsel for Mr. Levin returned the trial subpoena. A copy of counsel's letter with enclosures is attached hereto as Exhibit "A".

5. Mr. Levin should not be permitted to evade service of process because counsel and this Court accommodated his scheduling commitments. Had Morgan Stanley insisted that Mr. Levin appear for his deposition in Florida, Mr. Levin could have easily been served with the trial subpoena.

WHEREFORE, Morgan Stanley requests that this Court enter an Order determining that Mr. Levin was properly served and requiring him to appear for trial in this action as necessary and award such other and further relief as is just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 9th day of December, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999

Counsel for Morgan Stanley & Co. Incorporated

CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368
E-mail: jianno@carltonfields.com

BY: _____
Joseph Ianno, Jr. 718947
Florida Bar No. 655351

WPB#587298.3

SERVICE LIST

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West Palm Beach, FL 33409

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West Palm Beach, FL 33401

Greenberg Traurig

MARK F. BIDEAU, ESQ.
WEST PALM BEACH OFFICE
DIRECT DIAL: (561) 650-7918
Email: bideaum@gtlaw.com

December 7, 2004

VIA FEDEX

Larry Bemis, Esq.
Kirkland & Ellis, LLP
655 15th Street, N.W.
Washington, DC 20005

Re: Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Company, Inc.

Dear Larry:

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Very truly yours,

Mark F. Bideau

MFB/dt
Enclosure

WPB-FS1\BIDEAUM\513882v01\10/4/04\16560.071300

EXHIBIT "A"

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

CASE NO: CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

SUBPOENA FOR TRIAL

THE STATE OF FLORIDA

TO: JERRY W. LEVIN, Chief Executive Offier
American Household, Inc. f/k/a Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, Florida 33431

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Case No: CA 03-5045 AI
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Dated: November 30th 2004

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For the Court

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Florida Bar No: 655351
CARLTON FIELDS, P.A.
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West Palm Beach, FL 33401
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Telephone: (202) 326-7999

Counsel for Defendant
Morgan Stanley & Co. Incorporated

***BEFORE YOU APPEAR**

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For the Court

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Counsel for Defendant
Morgan Stanley & Co. Incorporated

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Morgan Stanley & Co. Incorporated

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ATTORNEYS AT LAW

P.O. Box 150
West Palm Beach, Florida 33402-0150
Ph. 561.659.7070

11275
NUMBER
11275

PAY: TEN AND 00/100 U.S. DOLLARS

DATE: 11/30/04

AMOUNT: $10.00

CARLTON FIELDS, P.A.
General Account

BY

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AUTHORIZED REPRESENTATIVE(S)

TO THE ORDER OF
JERRY W. LEVIN
AMERICAN HOUSEHOLD, INS. F/K/A SUNBEAM CORP.
2381 EXECUTIVE CENTER DR.
BOCA RATON, FL 33431

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From: Origin ID: (561)659-7070
Joyce Dillard
Carlton Fields Law Firm
222 LAKEVIEW AVE STE 1400

WEST PALM BEACH, FL 33401

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CARLTON FIELDS, P.A.

ATTORNEYS AT LAW

ESPERANTÉ
222 LAKEVIEW AVENUE, SUITE 1400
WEST PALM BEACH, FLORIDA 33401-6149

MAILING ADDRESS
P.O. BOX 150, WEST PALM BEACH, FL 33402-0150
TEL (561) 659-7070 FAX (561) 659-7368

FAX COVER SHEET

		Phone Number	Fax Number
Date:	November 30, 2004		
To:	Jack Scarola	(561) 686-6300	(561) 684-5816
	Jerold Solovy/Michael Brody	(312) 222-9350	(312) 840-7711
	Thomas Clare	(202) 879-5993	(202) 879-5200
	Rebecca Beynon/Mark Hansen	(202) 326-7900	(202) 326-7999
From:	Joyce Dillard, CLA	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 17

Message:

Coleman v. Morgan Stanley & Co., Inc.

To follow please find a copy of Morgan Stanley's Motion for Reconsideration of the Court's Order Granting CPH's Motion to Amend its Complaint to See Punitive Damages. Copies of the case authority will be provided by overnight delivery.

☐ ***Original to follow Via Regular Mail*** ☐ ***Original will Not be Sent*** ☑ ***Original will follow via Overnight Courier***

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (if long distance, please call collect) and return the original message to us at the above address via the U.S. Postal Service. Thank you.

IF THERE ARE ANY PROBLEMS OR COMPLICATIONS, PLEASE NOTIFY US IMMEDIATELY AT:
(561) 659-7070

TELECOPIER OPERATOR: _____

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

MORGAN STANLEY & CO. INCORPORATED'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES

On November 19, 2004, the Court entered an Order ("Order") granting Coleman (Parent) Holdings Inc.'s ("CPH") Motion To Amend Its Complaint To Seek Punitive Damages. The Court based its Order on two holdings: (1) "[U]nder New York law, the 'public injury' element is required to be met only where the tort has its genesis in a breach of contract claim;" and (2) "[b]ecause Morgan Stanley argued no other potentially outcome determinative difference between New York and Florida punitive damages law, Florida law controls." (Order at 2-3.) CPH did not make either argument,[1] and the only New York state case relied upon by the Court, *Prohealth Care Associates, LLP v. April*, No. 15830-03, 2004 WL 1872915 (N.Y. Sup. Ct. Aug. 18, 2004), is an unpublished trial court opinion that is entitled to no precedential value under New York law. *See Yellow Book of NY L.P. v. Dimilia*, 729 N.Y.S.2d 286, 287 (N.Y. Dist. Ct.

---

[1] At the hearing on the Motion to Amend, CPH argued that it met the "public wrong" requirement of New York law and the general punitive damage standard under either the Florida rule (punitive damages are available in a fraud action) or the New York rule (requiring "gross or morally reprehensible" conduct). (Nov. 5, 2004 Hrg. at 40-43; *see also* Nov. 1, 2004 CPH's Reply in Supp. of Mot. Am. Its Compl. to Seek Punitive Damages at 15-17.)

2001). Respectfully, the Court erred in its statements of New York law and should reconsider the Order.

In an action for fraud and deceit, New York law — unlike Florida law — is that punitive or exemplary damages generally are ***not*** recoverable.[2] Punitive damages ***are recoverable***, however, in "fraud and deceit actions where the fraud, ***aimed at the public generally***, is gross and involves high moral culpability." *Walker v. Sheldon*, 179 N.E.2d 497, 499 (N.Y. 1961) (emphasis added).

In an action for breach of contract, New York law is that punitive or exemplary damages are ***not*** recoverable unless "the breach of contract also involves a fraud evincing a 'high degree of moral turpitude' and demonstrating 'such wanton dishonesty as to imply a criminal indifference to civil obligations.'" *Rocanova v. Equitable Life Assurance Society of the United States*, 634 N.E.2d 940, 943 (N.Y. 1994) (quoting *Walker*, 179 N.E.2d at 499). Moreover, the conduct must be "'aimed at the public generally.'" *Id.*

In short, in ***both*** fraud and breach of contract actions, New York does ***not*** permit the recovery of punitive damages except in very limited circumstances. First, the conduct at issue must amount to a "public wrong." And second, the conduct at issue must be beyond gross and involve a high degree of moral culpability. Florida does not apply either requirement.

I. New York's "Public Wrong" Requirement Applies To Fraud Claims Regardless Of Whether The Claims Have Their Genesis In Contract.

The Court held in its Order that "under New York law, the 'public injury' element is required to be met only where the tort has its genesis in a breach of contract claim." (Order at 2.) The historical debate in the New York cases after *Walker v. Sheldon*, 179 N.E.2d 497 (N.Y.

[2] New York does not permit punitive damages in the "ordinary" case of fraud. *See* discussion *infra* at Part IV.

1961) was whether there could ever be a claim for punitive damages in a breach of contract action. While the answer is now "yes," that is not the issue before the Court. Since *Walker*, New York law has been clear that the "public wrong" requirement applies to fraud claims independent of a contract.

In 1961 the Court of Appeals decided *Walker v. Sheldon*, 179 N.E.2d 497 (N.Y. 1961) — New York's seminal case addressing the recoverability of punitive damages in fraud and deceit actions.[3] The issue in *Walker* was whether the court should allow the plaintiff to recover punitive damages, notwithstanding the rule in New York that punitive damages were ***not*** recoverable in the "ordinary" fraud and deceit case. After a lengthy analysis and citations to cases from other states, the court concluded that "[a]lthough [punitive damages] have been refused in the 'ordinary' fraud and deceit case, we are persuaded that, on the basis of analogy, reason and principle, there may be a recovery of exemplary damages in fraud and deceit actions where the fraud, ***aimed at the public generally***, is gross and involves high moral culpability." *Walker*, 179 N.E.2d at 498-99 (emphasis added). Indeed, Judge Fuld observed that "[i]t is not the form of the action that gives the right to the jury to give punitory damages, but the moral culpability of the defendant." *Id.* at 498 (internal quotations & citation omitted). The court went on to find:

[3] At common law, deceit was a type of fraud sounding in misrepresentations. *See Prosser and Keeton on the Law of Torts*, 727-28 (W. Page Keeton et al. eds., 5th ed. 1984). In modern jurisprudence, fraud and deceit have merged into "fraud." In *Walker* the plaintiff's claim was for fraudulent inducement, which is essentially the claim in this action. *See Walker*, 178 N.E.2d at 498, and discussion *infra* at Part II.

> The pleading charges that defrauding the general public into entering publishing contracts, such as the one involved in the present case, was the very basis of the defendants' business. What is asserted is not an isolated transaction incident to an otherwise legitimate business, but a gross and wanton fraud upon the public.

Id. at 500.

A. *Borkowski v. Borkowski*

Walker's "public wrong" requirement was called into question in 1976 in *Borkowski v. Borkowski*, 355 N.E.2d 287 (N.Y. 1976). There, in a one-paragraph opinion, the Court of Appeals made the blanket statement that "[i]t is not essential . . . that punitive damages be allowed in a fraud case only where the acts had been aimed at the public generally." 355 N.E.2d at 287.

After *Borkowski* there was confusion in New York law on whether a claim for punitive damages required a showing of harm to the public. Some courts required a showing of ***both*** a fraud aimed at the public ***and*** egregious conduct. Other courts required ***either*** a fraud aimed at the public ***or*** egregious conduct. *Compare, e.g., Barclays Bank of N.Y., N.A. v. Heady Elec. Co*, 571 N.Y.S.2d 650, 654 (N.Y. App. Div. 1991) (holding that even if defendant's conduct were deliberately misleading wanton, willful, and malicious, such acts would only constitute private wrongs for which punitive damages could not be recovered), *with Greenspan v. Commercial Ins. Co. of Newark, N.J.*, 395 N.Y.S.2d 519, 521 (N.Y. App. Div. 1977) (citing *Borkowski* and holding that punitive damages may be allowed in the absence of public fraud when the allegations set forth gross, wanton, or willful fraud or other morally culpable conduct).

B. *Rocanova v. Equitable Life Assurance Society of the United States*

Two decades of uncertainty ensued before the Court of Appeals reaffirmed *Walker* in *Rocanova v. Equitable Life Assurance Society of the United States*, 634 N.E.2d 940 (N.Y. 1994). The issue in *Rocanova* was whether the plaintiffs had pled "actionable claims for punitive

damages." 634 N.E.2d at 942. The appeal involved consolidated actions against insurance companies for fraud, fraudulent inducement, economic duress, violation of insurance laws, breach of fiduciary duty, and intentional infliction of emotional distress against two insurance companies for unfair settlement practices. *Id.*

The defendant insurance companies moved to dismiss the complaints and strike the requests for punitive damages. In addressing the issue of whether the plaintiffs' requests for punitive damages should have been dismissed in the lower courts, the Court of Appeals first recognized that "[p]unitive damages are not recoverable for an ordinary breach of contract as their purpose is not to remedy private wrongs but to vindicate public rights." *Id.* at 943. At the same time, however, the court affirmed that "where the breach of contract also involves a fraud evincing a 'high degree of moral turpitude' and demonstrating 'such wanton dishonesty as to imply a criminal indifference to civil obligations', punitive damages are recoverable if the conduct was 'aimed at the public generally.'" *Id.* (quoting & citing as supporting authority *Walker*, 179 N.E.2d at 499).

Indeed, the court went on to state specifically that in fraud actions, there must be a public wrong:

> In *Walker*, this Court imposed the "public wrong" requirement as a limitation on the availability of punitive damages where a cause of action in fraud was stated.

Id. at 945. The court could not have been much clearer. *Walker* is the root case that sets forth the requirement that in fraud actions punitive damages are recoverable only if the plaintiff meets the "public wrong" requirement. *Raconova* ***extends*** *Walker* to contract actions in which the plaintiff alleges an independent fraud that rises to the level required in *Walker*. Thus, in both fraud and contract actions, New York law is that punitive damages are recoverable only if the

plaintiff meets the "public wrong" requirement because the purpose of punitive damages "is not to remedy private wrongs but to vindicate public rights." *Id.* at 943.

The Court of Appeals made that very point in *Garrity v. Lyle Stuart, Inc.*, in which it reversed an award of punitive damages in an arbitration proceeding, holding:

> At law, on the civil side, in the absence of statute, punitive damages are available only in a limited number of instances (*see Walker v. Sheldon*, 10 N.Y.2d 401, 404, 223 N.Y.S.2d 488, 490, 179 N.E.2d 497, 498). As was stated in *Walker v. Sheldon* (*supra*): '(p)unitive or exemplary damages have been allowed in cases where the wrong complained of is morally culpable, or is actuated by evil and reprehensible motives, not only to punish the defendant but to deter him, as well as others who might otherwise be so prompted, from indulging in similar conduct in the future.' It is a social exemplary 'remedy', not a private compensatory remedy.

Garrity v. Lyle Stuart, Inc., 353 N.E.2d 793, 795 (N.Y. 1976), *recognized as superceded by statute on other grounds*, *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52 (1995).

C. New York Courts Apply the "Public Wrong" Requirement to Fraud Claims Absent A Breach Of Contract.

Despite *Borkowski*, New York courts both before *and* after *Rocanova* have applied the "public wrong" requirement to fraud actions absent a breach of contract. The rule has been applied in both two-party fraud actions and in actions where a third party, alleged to have committed fraud, had no contractual relationship with the plaintiff.

In the two-party actions, the courts have routinely held that the fraud alleged did not meet the *Walker* standard and thus punitive damages were not recoverable. *See, e.g.*, *Kelly v. Defoe Corp.*, 636 N.Y.S.2d 123, 124 (N.Y. App. Div. 1996) (holding that in action sounding in fraudulent inducement, "[p]unitive damages may only be recovered in a fraud action where the fraud is aimed at the public generally, is gross, and involves high moral culpability") (citing *Walker*); *Barclays Bank*, 571 N.Y.S.2d at 654 (holding that even assuming that counterclaim-defendant did act in a deliberately misleading wanton, willful, and malicious, such acts would

only constitute private wrongs for which punitive damages could not be recovered); *Gale v. Kessler*, 461 N.Y.S.2d 295, 296 (N.Y. App. Div. 1983) (holding that "[t]o recover punitive damages in an action for fraud, it must appear that the fraud was upon the general public, that is, 'aimed at the public generally, is gross and involves a high degree of moral culpability'") (citing, *inter alia*, *Walker*).

In three-party actions, the courts have also applied the *Walker* rule to fraud claims. In *Kaufman v. Chase Manhattan Bank, N.A.*, 581 F. Supp. 350, 356 (S.D.N.Y. 1984), plaintiff Kaufman entered into a purchase agreement with non-party Aero Corporation. Kaufman alleged that a condition precedent to the agreement was that the defendant Chase Manhattan Bank and the Small Business Administration release Aero's guaranty of the loans of another corporation, ABC Corporation, as well as Chase's security interest in Aero's assets pursuant to the guaranty and a separate factoring agreement. Chase represented that it had executed the necessary releases, and — in response — Kaufman executed the purchase agreement and later guarantied Chase's loans to Aero. When Aero was not able to operate profitably, Kaufman elected to liquidate Aero and apply the proceeds of the liquidation to Aero's loans from Chase. Chase, however, applied the liquidation proceeds to an ABC loan that was in default and acknowledged that the condition precedent to Kaufman's investment — the release of Aero's guaranty of ABC's loans — had never been satisfied. Chase then demanded that Kaufman honor his personal guaranties of Aero's indebtedness, which totaled over $450,000.

Kaufman sued Chase for compensatory and punitive damages, alleging fraud and misrepresentation by Chase. Kaufman alleged that Chase was motivated by its self-interest in preserving the ability to collect on its loans to ABC. *Kaufman*, 581 F. Supp. at 353. Ultimately, the court dismissed the Kaufman's demands for punitive damages, holding: "Here there is no

claim that Chase's allegedly fraudulent conduct in connection with the Kaufman investment was part of a larger scheme aimed at the investing public in general. Furthermore, [Chase's conduct] does not constitute fraud evincing a 'high degree of moral turpitude' nor does it demonstrate 'such wanton dishonesty as to imply a criminal indifference to civil obligations.'" *Id.* at 356; *see also Vasilopoulos v. Romano*, 645 N.Y.S.2d 501, 503 (N.Y. App. Div. 1996) (holding punitive damages not recoverable in three-party action for fraud and intentional infliction of emotional distress by wife against lawyer for lawyers acts in arranging loan for the husband); *Franco v. English*, 620 N.Y.S.2d 156, 161 (N.Y. App. Div. 1994) (applying public wrong requirement in three-party action for fraud against law firm that failed to disclose to investors that one party did not have an adequate performance bond as required by offering memorandum).

II. *Rocanova*'s "Public Wrong" Requirement Applies To Fraud Claims Such As Those Asserted By CPH.

First, even if this Court were correct that New York law imposes the "public wrong" requirement only in cases in which the alleged fraud has its genesis in contract, the "public wrong" requirement would apply to this case; CPH's claims against Morgan Stanley have their genesis in CPH's merger contracts with Sunbeam. Essentially, CPH alleges that it was fraudulently induced[4] into entering the February 27, 1998 merger agreements because of misrepresentations made on February 23, 1998, either by Sunbeam or Morgan Stanley.[5]

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[4] *See, e.g.*, Dec. 12, 2003 Hrg. at 47-48 (by Mr. Scarola):

> Morgan Stanley arranged the initial meeting between Sunbeam and Coleman (Parent) Holding regarding the Coleman sale right here in Florida. That's where that meeting took place. The joint preparation and issuance from Florida with Sunbeam of the March 1998 fraudulent press release which was referenced repeatedly in the submissions to the Court, the joint issuance with Sunbeam of the subordinated debenture offering to finance the ***fraudulently-induced*** purchase and sale, and that was jointly drafted in Florida by Morgan Stanley and Sunbeam, and finally, the solicitation in

(Continued...)

Thereafter, CPH claims that it closed one of the merger agreements with Sunbeam because Morgan Stanley, acting to preserve its fees, *allowed* Sunbeam, who at all times was represented by counsel, to issue a misleading press release, and did not unilaterally disclose to CPH interim financial results that Morgan Stanley requested and received from Sunbeam's auditors in connection with the debenture offering. CPH contends that Sunbeam's misleading press release and the interim financial information constituted a "material adverse change" that *Sunbeam* had a duty to disclose to CPH pursuant to section 6.8 of the merger agreement.[6] CPH claims that Sunbeam's assurances — "with Morgan Stanley's assent and confirmation — had their intended purpose of inducing CPH into going forward with the transaction."[7] Or as the Court stated in its Order, "CPH alleges that by both affirmative statements and omissions, Morgan Stanley, either directly or through materials scripted for Sunbeam, made material

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> Florida of Florida investors to finance the ***fraudulently-induced*** purchase and sale by Coleman (Parent) Holding.

(emphasis added).

[5] *See, e.g.*, Sept. 21, 2004 CPH's Mot. Am. Its Compl. to Seek Punitive Damages at 8-9 ("CPH Mot. Am.").

[6] *See* Feb. 27, 1998 Agreement and Plan of Merger Among Sunbeam Corporation, Laser Acquisition Corp., CLN Holdings Inc. and Coleman (Parent) Holdings Inc. ("Merger Agreement") § 6.8, MS 93:

> Section 6.8. Advice of Changes. Upon obtaining knowledge of any such occurrence, Holdings or Laser shall promptly advise the other party orally and in writing of (i) any representation or warranty made by it contained in this Agreement that is qualified as to materiality becoming untrue or inaccurate in any respect or any such representation or warranty that is not so qualified becoming untrue or inaccurate in any material respect, (ii) the failure by it to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it under this Agreement or (iii) any change or event (x) having, or which, insofar as can reasonably be foreseen, would have, in the case of Laser, a Laser Material Adverse Effect, and in the case of Holdings, a Holdings Material Adverse Effect, (y) having, or which, insofar as can reasonably be foreseen, would have, the effect set forth in clause (i) above or (z) which has resulted, or which insofar as can reasonably be foreseen, would result, in any of the conditions set forth in Article VIII not being satisfied; provided, however, that no such notification shall affect the representations, warranties, covenants or agreements of the parties or the conditions to the obligations of the parties under this Agreement.

[7] *See, e.g.*, CPH Mot. Am. at 16.

misrepresentations to CPH to induce it to enter into and ultimately close the transaction." (Order at 1.)

CPH's claims against Morgan Stanley can, at the very least, be said to consist of conduct "associated with" or "accompanying" a breach of the merger agreements by Sunbeam. *See Rocanova*, 634 N.E.2d at 943-44 ("Punitive damages are available where the conduct constituting, ***accompanying, or associated with*** the breach of contract is first actionable as an independent tort for which compensatory damages are ordinarily available, and is sufficiently egregious under the *Walker* standard to warrant the additional imposition of exemplary damages.") (emphasis added). New York courts have repeatedly rejected claims similar to CPH's claim for punitive damages because they do not satisfy the *Walker* "public wrong" requirement. *See, e.g.*, *Vasilopoulos*, 645 N.Y.S.2d at 503 (discussed *supra*); *Franco*, 620 N.Y.S.2d at 161 (discussed *supra*); *Kaufman*, 581 F. Supp. at 356 (discussed *supra*). CPH seeks to remedy a "private wrong," thus its Motion to Amend is inappropriate.

Second, even if this case were devoid of any contract, the analysis would not change. *Rocanova* stands for the proposition that a fraud claim is both necessary *and* sufficient to sustain a demand for punitive damages if the fraud is sufficiently egregious and aimed at the public generally. In *New York University v. Continental Insurance Co.*, 662 N.E.2d 763 (N.Y. 1995), the New York Court of Appeals stated: "Where a lawsuit has its genesis in the contractual relationship between the parties, the threshold task for the court considering defendant's motion to dismiss a cause of action for punitive damages is to identify a tort independent of the contract." 662 N.E.2d at 767 (citing *Walker* and *Rocanova*). The court explained that "a tort obligation is a duty imposed by law to avoid causing injury to others . . . 'apart from and independent of promises made and therefore apart from the manifested intention of the parties' to

a contract." *Id.* (citation omitted). Thus, if the tort must be independent of the contract for a punitive damages award to lie, the tort — in this case, fraud — must be both necessary ***and*** sufficient to a demand for punitive damages.

In fact, in response to the plaintiff's argument that the "public wrong" requirement does not apply to tort cases, but only to cases involving breach of contract (citing *Borkowski*), the court in *W.S.A., Inc. v. ACA Corp.*, No. 94 Civ. 1493(CSH), 1998 WL 635536, at *2 (S.D.N.Y. Sept. 15, 1998), found that "in the wake of *Rocanova*, the lower New York appellate courts have consistently applied the 'public wrong' rule to tort and contract cases alike." *See also City of New York v. Coastal Oil N.Y., Inc.*, No. 96 Civ. 8667(RPP), 1999 WL 493355, at *14 (S.D.N.Y. July 12, 1999) ("While some courts have maintained, on the authority of [*Borkowski*] and *Action S.A. v. Marc Rich & Co.*, 951 F.2d 504 (2d Cir. 1991), that the . . . "public wrong" requirement . . . does not apply to fraud claims, *Borkowski* and *Action* are no longer good law in light of *Rocanova* and *New York University*.") (internal citations omitted).

III. The Court's Reliance On The Decision In *Merrill Lynch & Co.* And The Slip Opinion In *Prohealth Care Associates* Is Misplaced.

In the Court's Order, the Court cited *Merrill Lynch & Co. v. Allegheny Energy, Inc.*, No. 02 Civ. 7689(HB), 2003 WL 22795650, at *1 (S.D.N.Y. Nov. 25, 2003), and the slip opinion in *Prohealth Care Associates, LLP v. April*, No. 15830-03, 2004 WL 1872915 (N.Y. Sup. Ct. Aug. 18, 2004), in support of its conclusion that New York's "public wrong" requirement does not apply to fraud claims unaccompanied by a breach of contract.

In *Merrill Lynch* the court held that New York's "public wrong" requirement applied to the plaintiff's fraudulent inducement claim, but did not apply to the plaintiff's breach of fiduciary duty claim. This is a correct statement of New York law; a breach of fiduciary duty

claim justifies a corresponding claim for punitive damages without a showing of public harm.[8] But — as *Walker v. Sheldon* and its progeny demonstrate — New York law is equally clear that punitive damages are only permitted in a fraud and deceit action "where the fraud, aimed at the public generally, is gross and involves high moral culpability." *Walker*, 179 N.E.2d at 499.

The Court's reliance on *Prohealth Care Associates, LLP v. April* is also misplaced.[9] *First*, *Prohealth* is an unpublished slip opinion that has no precedential value. *See Yellow Book of NY L.P. v. Dimilia*, 729 N.Y.S.2d 286, 287 (N.Y. Dist. Ct. 2001) ("[U]npublished decisions or opinions have no precedential value other than the persuasiveness of their reasoning.") (internal quotations & citation omitted).

Second, the Supreme Court of Nassau County (a trial court) overlooked the distinction between actions sounding in fraud and those sounding in breach of fiduciary duty for the purposes of a New York punitive damages analysis. In *Prohealth*, the court held that *Rocanova* and *New York University* established the standard to be applied to sustain a claim for punitive damages in a contract action and were inapplicable to a plaintiff's claim for punitive damages based on fraud or breach of fiduciary duty. *Prohealth*, 2004 WL 1872915, at *9. The court based its holding exclusively on *Sherry Associates v. Sherry-Netherland, Inc.*, 708 N.Y.S.2d 105 (N.Y. App. Div. 2000), a case in which fraud is never mentioned; instead, the plaintiff alleged a breach of fiduciary duty. New York simply does not treat the torts of fraud and breach of fiduciary duty equally when punitive damages are concerned. The trial court's decision in *Prohealth* is not controlling or persuasive.

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[8] *See, e.g., Wolf v. Rand*, 685 N.Y.S.2d 708, 711 (N.Y. App. Div. 1999). Here there is no claim for breach of fiduciary duty and the origin of New York's rule is not an issue for Florida to resolve.

[9] *Prohealth* was not cited by either party in any of the punitive damages submissions to the Court.

IV. There Is More Than One Outcome Determinative Difference Between New York and Florida Law.

In the Order the Court stated that "[b]ecause Morgan Stanley argued no other potentially outcome determinative difference between New York and Florida punitive damages law, Florida law controls." (Order at 2-3.) Respectfully, that is incorrect.

In addition to the public wrong requirement, Morgan Stanley *also* argued that New York differs from Florida law in that punitive damages are only available for fraudulent conduct that evinces a high degree of moral turpitude and demonstrates such wanton dishonesty as to imply a ***criminal*** indifference to civil obligations. Florida law allows for punitive damages without this showing. Morgan Stanley dedicated an entire subsection of its Opposition to this point. *See* Oct. 22, 2004 Morgan Stanley's Opp. to CPH's Mot. to Amend Its Compl. To Seek Punitive Damages at 18-20 ("Morgan Stanley Did Not Engage In Conduct That Evinces A High Degree of Moral Turpitude And Demonstrates Such Wanton Dishonesty As To Imply A Criminal Indifference To Civil Obligations.").

New York law — unlike Florida law — does not permit punitive damages in the "ordinary" case of fraud. *Compare Walker*, 179 N.E.2d at 498 (recognizing that punitive damages "have been refused in the 'ordinary' fraud and deceit case") *and Kelly v. Defoe Corp.*, 636 N.Y.S.2d 123, 124 (N.Y. App. Div. 1996) ("It is well settled that punitive damages may not be awarded to redress a private wrong, and, accordingly, that such damages are not available in the 'ordinary' fraud and deceit case.") (internal quotations & citation omitted) *with First Interstate Dev. Corp. v. Ablenado*, 511 So. 2d 536, 539 (Fla. 1987) ("[P]roof of fraud sufficient to support compensatory damages necessarily is sufficient to create a jury question regarding punitive damages."). Under New York law, punitive damages are only available or the plaintiff has alleged fraudulent conduct that: (1) is "aimed at the public generally," ***and*** (2) evinces a

"high degree of moral turpitude" and demonstrates "such wanton dishonesty as to imply a criminal indifference to civil obligations." *Walker*, 179 N.E.2d at 499.

In addition to the discussion presented in Morgan Stanley's Opposition to CPH's Motion To Amend, Morgan Stanley directs the Court's attention to *Schlaifer Nance & Co. v. Estate of Warhol*, 927 F. Supp. 650 (S.D.N.Y. 1996), *aff'd* 119 F.3d 91 (2d Cir. 1997). In examining whether the fraud alleged by one sophisticated party against another was sufficiently egregious to justify a jury award of punitive damages, the court acknowledged that "[i]n some respect, all fraud contains an element of 'gross, wanton, or willful' conduct. Yet, of course, punitive damages should not be awarded in every case in which fraud is found." 927 F. Supp. at 664 (citing *Walker*, 179 N.E.2d at 498-99). Construing the evidence in a light most favorable to the plaintiff, the court held that punitive damages should not have been awarded as a matter of law because, *inter alia*, "[plaintiff] was not a naïve, innocent victim being preyed upon by defendants [but instead] a sophisticated, successful company represented by a large . . . law firm." *Id.* at 666. The court further held that no reasonable juror could have found the requisite moral culpability for an award of punitive damages against the attorney who represented the primary defendant in the business deal with plaintiff — he was not a party to the agreement at issue and "was under no duty to 'blow the whistle' on his clients." *Id.* Ultimately, the court in *Schlaifer* granted judgment as a matter of law for defendants on both the punitive damages claim and the underlying fraud claim. *Id.* at 664.

In sum, there is more than one material and outcome determinative difference between New York and Florida law. Florida allows claims for punitive damages based on "ordinary" fraud, while New York does not. New York imposes two additional requirements that CPH has not met in this case: (1) that there be a "public wrong," and (2) that the alleged fraud evince a

high degree of moral turpitude and demonstrate such wanton dishonesty as to imply a criminal indifference to civil obligations. CPH has alleged nothing more than "ordinary" fraud and thus fails both additional elements of New York law.

Conclusion

"A trial court has inherent authority to reconsider . . . any of its interlocutory rulings prior to the entry of a final judgment or final order in the cause." *Bettez v. City of Miami*, 510 So. 2d 1242, 1243 (Fla. 3d DCA 1987) (citations omitted). Morgan Stanley respectfully requests the Court exercise its inherent authority to reconsider its November 19, 2004 Order.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 30th day of November, 2004.

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY'S RESPONSE TO MOTION TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO SEVENTH REQUEST FOR PRODUCTION

Defendant Morgan Stanley & Co. Inc. ("Morgan Stanley"), by and through its undersigned counsel responds to the Plaintiff's Motion to Compel Production of Documents Responsive to Seventh Request for Production and states as follows:

FACTUAL BACKGROUND AND ARGUMENT

On November 22, 2004, Morgan Stanley received the Court's Order granting Plaintiff's Motion to Amend to seek the recovery of punitive damages. Within hours, Plaintiff demanded that Morgan Stanley produce all responsive documents to the Seventh Request for Production immediately.

That same day, Plaintiff filed a Motion to Compel Production. However, Plaintiff failed to attach Morgan Stanley's Objections to the Seventh Request for Production. For the reasons set forth in Morgan Stanley's Objections to the Seventh Request for Production (a copy of which is attached hereto as Exhibit A) Morgan Stanley opposes Plaintiff's Motion to Compel.

WHEREFORE, Morgan Stanley respectfully requests that this Court deny Plaintiff's Motion to Compel Production of Documents Responsive to Seventh Request for Production and award such other and further relief as is just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 30th day of November, 2004.

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EXHIBIT A

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO. INC.,
Defendant.
_____/

CASE NO: CA 03-5045 AI

DOROTHY H. WILKEN
CLERK OF CIRCUIT COURT
CIRCUIT CIVIL DIVISION

NOV 0 1 2004

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MORGAN STANLEY'S OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC.'S SEVENTH REQUEST FOR PRODUCTION OF DOCUMENTS

Defendant, Morgan Stanley & Co. Inc. ("Morgan Stanley"), pursuant to Fla. R. Civ. P. Rules 1.280 and 1.350, provides the following Responses and Objections to Plaintiff Coleman (Parent) Holdings Inc.'s Seventh Request for Production of Documents to Morgan Stanley & Co. Inc. ("Document Request") served via facsimile on Morgan Stanley on September 30, 2004. As grounds therefore, Morgan Stanley states as follows:

GENERAL OBJECTIONS

The following General Objections apply to the Document Request in its entirety and apply to each and every Document Request as if fully set forth with respect to each Request:

1. Morgan Stanley objects to the Document Request in its entirety to the extent that it seeks materials protected from disclosure by the attorney-client privilege, the attorney-work-product doctrine, the common-interest doctrine, or any other applicable constitutional, statutory, or common-law privilege, doctrine, immunity, or rule. Pursuant to the Agreed Order Regarding Enlargement of Time to Prepare Privilege Log dated September 4, 2003, Morgan Stanley will

11.1 stamp

discovery immunity within 30 days after Morgan Stanley's production of the documents from which the documents have been withheld on grounds of privilege or discovery immunity.

2. Morgan Stanley objects to the Document Request because it seeks materials that are neither relevant nor likely to lead to the discovery of evidence related to Morgan Stanley's current net worth and to the subject matter of the pending action as framed by the pleadings in the above-captioned consolidated actions.

3. Morgan Stanley objects to the Document Request in its entirety to the extent that it seeks to impose obligations, including a continuing duty of supplementation, different from, or in addition to, those provided in the Florida Rules of Civil Procedure, discovery guidelines of this Court, and applicable case law.

4. Morgan Stanley objects to the Document Request in its entirety to the extent that it seeks the production of documents in the possession of third parties and not within Morgan Stanley's possession, custody, or control.

5. Morgan Stanley objects to the Document Request in its entirety to the extent that it seeks the production of documents that are publicly available or otherwise equally accessible to both parties, including deposition transcripts and court records.

6. It should not be inferred from the form or substance of any objection or response contained herein that documents responsive to any particular Request exist.

7. Morgan Stanley's responses to CPH's Document Requests shall not be construed in any way as an admission that any definition provided by CPH is either factually correct or legally binding upon Morgan Stanley, or as a waiver of any of Morgan Stanley's objections, including, but not limited to, objections regarding discoverability and admissibility of documents.

8. Morgan Stanley's objections are based on its good-faith investigations and discovery to date. Morgan Stanley expressly reserves the right to modify and supplement these objections.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

OBJECTIONS: Morgan Stanley incorporates by reference its objections to the definitions as set forth in Morgan Stanley's Objections to CPH's First, Second, Third, Fourth, Fifth, and Sixth Request for Production of Documents. In addition, Morgan Stanley has the following specific objections:

SPECIFIC OBJECTIONS AND RESPONSES

DOCUMENT REQUEST NO. 1: All MS&Co.'s balance sheets and income statements for MS&Co.'s most recent fiscal year and for each of MS&Co.'s last six quarters.

RESPONSE: In addition to the general objections stated above, Morgan Stanley objects to the production of these documents until CPH is permitted to seek the recovery of punitive damages from Morgan Stanley pursuant to Section 768.72, Florida Statutes. Further, Morgan Stanley objects to this Request to the extent that it is overbroad and seeks documents that are not relevant to a determination of Morgan Stanley's current net worth. *Zuckerman v. Robinson*, 846 So.2d 1257, 1260 (4th DCA 2003) (holding that an award of punitive damages is "limited by the *current* financial resources" of the party being charged) (emphasis added) *rev. denied*, 868 So.2d 524 (Fla. 2004). Here, Plaintiff improperly seeks financial information from Morgan Stanley's "last six quarters." These documents are not determinative of Morgan Stanley's *current* net worth.

Morgan Stanley will not produce documents responsive to this Request.

DOCUMENT REQUEST NO. 2: Documents sufficient to show MS&Co.'s net worth, income, revenue, profits, losses, and global holdings for each fiscal year between and including 1998-2004.

RESPONSE: In addition to the general objections stated above, Morgan Stanley objects to the production of these documents until CPH is permitted to seek the recovery of punitive damages from Morgan Stanley pursuant to Section 768.72, Florida Statutes.

Further, Morgan Stanley objects to this Request on the ground that it seeks information that is neither relevant nor likely to lead to the discovery of evidence related to Morgan Stanley's current net worth. Morgan Stanley's financial information for a seven year span is completely irrelevant to its *current* net worth. *Zuckerman*, 846 So.2d at 1260. Morgan Stanley further objects to this Request to the extent that it seeks information covered by the attorney-client privilege and the attorney-work-product doctrine. Additionally, Morgan Stanley objects to this Request on the grounds that it is vague and overbroad because it does not provide Morgan Stanley with any guidance as to what documents are "sufficient" to demonstrate the items listed in the Request. Finally, Morgan Stanley objects to the production of any documents related to its "global holdings" because "global holdings" is not defined and is therefore vague and ambiguous. Under these circumstances, it is impossible for Morgan Stanley to determine which, if any, documents are responsive to Plaintiff's Request.

Assuming that Plaintiff intends "global holdings" to mean any entity owned or held by Morgan Stanley which exists outside the state of Florida, documents sufficient to demonstrate Morgan Stanley's "global holdings" are irrelevant to any award of punitive damages. Any punitive damages that might theoretically be awarded by this Court "must be limited to unlawful conduct that has a nexus to the 'specific harm suffered by the plaintiff'" *State Farm Mut. Ins.*

Co. v. Campbell, 538 U.S. 408, 422-23 (2003) (holding punitive damage award violated due process where defendant's unrelated, lawful, out-of-state conduct was used to determine amount of punitive damages); *see also Liggett Group Inc. v. Engle*, 853 So.2d 434, 456 (Fla. 3d DCA 2003) (reversing punitive damage award where award was not based on underlying claim). Lawful out-of-state conduct may not be used as evidence to punish a defendant where that conduct has no relation to the underlying claim and is lawful where it occurred. *Campbell*, 538 U.S. at 422-23. Morgan Stanley's global holdings have no relevance to the issues framed by the pleadings in the instant case, which assert unlawful actions in Florida. Plaintiff has not asserted any nexus between Morgan Stanley's global holdings and the harm allegedly suffered by Plaintiff in Florida. Even if such a nexus existed, and it does not, Plaintiff has failed to assert that any *conduct* in connection with Morgan Stanley's global holdings was either unlawful or bore any relation to the harm allegedly suffered by Plaintiff. Therefore, any information relevant to Morgan Stanley's global holdings to determine a potential award of punitive damages is irrelevant, and not likely to lead to the discovery of admissible evidence. *Id.*; *Engle*, 853 So.2d at 456.

Morgan Stanley will not produce documents responsive to this Request.

DOCUMENT REQUEST NO. 3: All MS&Co.'s balance sheets, income statements, and any other financial statements relating to MS&Co.'s net worth, revenues, profits, losses, and global holdings that are created or edited during the time period between today's date through the date of trial in this matter. Documents responsive to this request must be tendered by MS&Co. on the first day of trial.

RESPONSE: In addition to the general objections stated above, Morgan Stanley objects to the production of these until CPH is permitted to seek the recovery of punitive damages from Morgan Stanley documents pursuant to Section 768.72, Florida Statutes. Further, Morgan Stanley objects to this Request on the ground that it seeks information that is neither relevant nor likely to lead to the discovery of evidence related to Morgan Stanley's current net worth. *Zuckerman*, 846 So.2d at 1260. Morgan Stanley further objects to this Request to the extent that it seeks information covered by the attorney-client privilege and the attorney-work-product doctrine. Additionally, Morgan Stanley objects to this Request on the grounds that it is vague and overbroad because it does not provide Morgan Stanley with any guidance as to what constitutes "any other financial statements."

Finally, Morgan Stanley objects to the production of any documents related to its "global holdings" because "global holdings" is not defined and is therefore vague and ambiguous. Under these circumstances, it is impossible for Morgan Stanley to determine which, if any, documents are responsive to Plaintiff's Request.

Assuming that Plaintiff intends "global holdings" to mean any entity owned or held by Morgan Stanley which exists outside the state of Florida, documents sufficient to demonstrate Morgan Stanley's "global holdings" are irrelevant to any award of punitive damages. Any punitive damages that might theoretically be awarded by this Court "must be limited to unlawful conduct that has a nexus to the 'specific harm suffered by the plaintiff'" *State Farm Mut. Ins. Co. v. Campbell*, 538 U.S. 408, 422-23 (2003) (holding punitive damage award was excessive and violated due process where defendant's unrelated, lawful, out-of-state conduct was used to determine amount of punitive damages); *see also Liggett Group Inc. v. Engle*, 853 So.2d 434, 456 (Fla. 3d DCA 2003) (reversing punitive damage award where award was not based on

underlying claim). Lawful out-of-state conduct may not be used as evidence to punish a defendant where that conduct has no relation to the underlying claim and is lawful where it occurred. *Campbell*, 538 U.S. at 422-23. Morgan Stanley's global holdings have no relevance to the issues framed by the pleadings in the instant case, which assert unlawful actions in Florida. Plaintiff has not asserted any nexus between Morgan Stanley's global holdings and the harm allegedly suffered by Plaintiff in Florida. Even if such a nexus existed, and it does not, Plaintiff has failed to assert that any *conduct* in connection with Morgan Stanley's global holdings was either unlawful or bore any relation to the harm allegedly suffered by Plaintiff. Therefore, any information relevant to Morgan Stanley's global holdings to determine a potential award of punitive damages is irrelevant, and not likely to lead to the discovery of admissible evidence. *Id.*; *Engle*, 853 So.2d at 456.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 1st day of November, 2004.

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From:	Joyce Dillard, CLA	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 19

Message:

Coleman v. Morgan Stanley & Co., Inc.

To follow please find a copy of Morgan Stanley's Response to CPH's Motion for a Finding of Contempt regarding Sixth Request for Admissions and Morgan Stanley's Response to CPH's Motion to Compel Production of Documents Responsive to Seventh Request for Production. Please add a copy of these responses to your copy of the December 3rd CMC binder under tabs 14 and 9 respectively. Thank you.

☐ ***Original to follow Via Regular Mail*** ☐ ***Original will Not be Sent*** ☑ ***Original will follow via Overnight Courier***

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY'S RESPONSE TO PLAINTIFF'S MOTION FOR A FINDING OF CONTEMPT AND FOR OTHER RELIEF DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER (SIXTH REQUEST FOR ADMISSIONS)

Defendant Morgan Stanley & Co. Inc. ("Morgan Stanley"), by and through its undersigned counsel responds to the Plaintiff's Motion for a Finding of Contempt, etc. relating to Plaintiff's Sixth Request for Admissions and states as follows:

FACTUAL BACKGROUND

On October 22, 2004, Plaintiff served its Sixth Request for Admissions ("Sixth RFA's"). As Morgan Stanley has presented to the Court, the Sixth RFA's have eight separate requests for hundreds of deposition exhibits concerning the authenticity of various deposition exhibits and totals over 2300 requests.

On November 16, 2004, the Court heard argument on Morgan Stanley's Motion for Protective Order concerning the Sixth RFA's. Thereafter, on November 17, 2004, the Court entered an Order denying Morgan Stanley's Motion. Morgan Stanley did not receive the Court's Order until November 19, 2004.

On November 22, 2004, Morgan Stanley served its response to the Sixth RFA's, a copy of which is attached to Plaintiff's Motion. However, prior to receiving Morgan Stanley's Response to the Sixth RFA's, Plaintiff unilaterally noticed a deposition for a corporate representative pursuant to Fla.R.Civ.P., Rule 1.310(b)(6) to testify about ***each and every*** document that is the subject of the Sixth RFA's. The deposition was scheduled to occur less than 48 hours later in New York City.

On November 23, 2004, Morgan Stanley served its Motion for Protective Order concerning the deposition notice alleging that it was overbroad and harassing because Morgan Stanley had admitted a substantial number of Plaintiff's Requests in its response to the Sixth RFA's and that insufficient notice was provided to Morgan Stanley.

ARGUMENT

Plaintiff's Motion for Contempt is insufficient because no evidentiary basis is set forth to establish that Morgan Stanley or its counsel intentionally and deliberately disobeyed the Court order attached to Plaintiff's Motion. Upon receipt of the Court's order on November 19, 2004, Morgan Stanley began preparing its response to the Sixth RFA's and promptly served them upon Plaintiff's counsel in accordance with the Court's Order. Thus, there has been no violation of the order concerning the Sixth RFA's. Notwithstanding, the remaining arguments in Plaintiff's Motion for Contempt are also insufficient.

I. Plaintiff provided insufficient notice

As this Court is aware, the standards of professional courtesy require at least 10 business days notice for an out of state deposition. Morgan Stanley was provided with less than 48 hours notice to produce a witness on the day before Thanksgiving. Plaintiff's only response to the lack of notice is that the parties were faced with a November 24, 2004 discovery deadline. This

argument is unavailing for several reasons. The discovery sought by the Sixth RFA's does not relate to the merits of the factual allegations in the pleadings; rather, it addresses the admissibility of documents. There will be no prejudice to any party if this discovery is taken shortly after the discovery deadline.

To the extent Plaintiff's Motion relates to the failure to complete this discovery by the deadline, this argument is also unavailing. The parties have, in fact, completed the vast majority of the fact discovery prior to the deadline. It is not unusual for a certain amount of discovery to be taken after a discovery deadline. In fact, since the trial is still months away, Plaintiff cannot demonstrate any prejudice if this discovery was taken after the deadline.[1] The failure to complete a certain amount of discovery prior to the discovery deadline does not justify a finding of contempt as requested by Plaintiff. At most, Plaintiff would be entitled to an order compelling the deposition subject to any limitations imposed by the Court.

II. Plaintiff's deposition notice is overbroad and harassing

Plaintiff's November 22nd deposition notice requests a corporate representative to address ***each and every*** document that is the subject of the Sixth RFA's because the notice was served prior to receipt of Morgan Stanley's responses to the Sixth RFA's. Had Plaintiff waited for Morgan Stanley's response, Plaintiff would have learned that Morgan Stanley admitted request 1 (authenticity) and request 8 (authorship) of the vast majority of the documents. Consequently, there is no need for a corporate representative to address those documents. Nonetheless, Plaintiff continues to demand a corporate representative to address the authenticity and authorship of documents for which admissions have already been made. Clearly, this continuing demand is intended solely to annoy or harass Morgan Stanley in violation of Rule 1.280. Moreover, a corporate representative will not assist in the situations where authenticity or ownership was not

[1] In fact, numerous depositions have been scheduled after the discovery deadline in this action.

admitted because Morgan Stanley has no knowledge as to whether the documents are authentic or the authorship of the documents. Consequently, a corporate representative can do no more than to say: "I don't know."

III. Morgan Stanley has explained the basis for its objection and is not otherwise required to explain its denial.

Plaintiff asserts that Morgan Stanley did not explain its basis for objections in its response. A simple review of Morgan Stanley's response reveals that this statement is not accurate. In paragraph 5 of the Initial Objections in the response, Morgan Stanley states: "In instances where Morgan Stanley admits to Request One and Request Eight for a document, Morgan Stanley objects to the remaining Requests related to the same document because such Requests are redundant, unduly burdensome and harassing." Obviously, Morgan Stanley has in fact explained the basis for its objections.

Plaintiff also complains that Morgan Stanley did not explain its denial of certain requests. As the Court is aware, a party is not required to explain the reasons for its denials of an admission. Therefore, this assertion has no relevance to Plaintiff's Motion for Contempt.

CONCLUSION

The purpose of civil contempt is to obtain compliance with a Court Order not to punish. *See e.g., Rose v. Ford*, 831 So.2d 763 (Fla. 4th DCA 2002) and cases cited therein. Plaintiff's Motion for Contempt is simply another attempt in a long series to divert attention from the merits of this action. Morgan Stanley respectfully requests that this Court deny the Motion for Contempt and award such other and further relief as is just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 30th day of November, 2004.

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BY: Joseph Ianno, Jr.
Florida Bar No. 655351

Counsel for Morgan Stanley & Co. Incorporated

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From:	Joyce Dillard, CLA	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:**

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Coleman v. Morgan Stanley & Co., Inc.

To follow please find a copy of Joe Ianno's letter of today's date to Judge Maass regarding Morgan Stanley's Motion for .

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November 30, 2004

The Honorable Elizabeth Maass
Palm Beach County Courthouse
205 North Dixie Highway, Room 11.1208
West Palm Beach, Florida 33401

VIA HAND-DELIVERY

Re: *Coleman (Parent) Holdings Co. v. Morgan Stanley & Co.*, Case No: CA 03-5045 AI

Dear Judge Maass:

Enclosed please find a courtesy copy of Morgan Stanley's Motion for Reconsideration of the Court's Order Granting Coleman's Motion to Amend its Complaint to Seek Punitive Damages and supporting case authority. The undersigned requests Your Honor specially set this motion for oral argument.

Respectfully,

Joseph Ianno, Jr.

/jed

Enclosures

cc: Jack Scarola (by facsimile w/out encl.)
Jerold Solovy (by facsimile w/out encl.)

WPB#566751.45

16div-008978

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Chicago
Dallas
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Date: December 1, 2004

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		Voice:	(561) 686-6350, Ext. 140
	Mark C. Hansen, Esq.	Fax:	(202) 326-7999
		Voice:	(202) 326-7900

From: Michael T. Brody
312 923-2711

Employee Number: Client Number: 41198-10003

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JENNER&BLOCK

December 1, 2004

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By Telecopy

Thomas A. Clare, Esq.
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Tom:

I write concerning our long-standing Rule 1.310 deposition notice concerning the MSSF loan history. You proposed that Morgan Stanley provide a written submission in lieu of the deposition. You have provided neither a written submission nor a date for the deposition, although you have promised that we would receive Morgan Stanley documents on this topic this week. Accordingly, I enclose a notice of deposition setting this deposition for December 7, 2004.

Very truly yours,

Michael T. Brody

MTB:pjg
cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.

MORGAN STANLEY & CO., INC.,
Defendant.
/

CASE NO. CA 03-5045 AI

AMENDED NOTICE OF TAKING VIDEOTAPED DEPOSITION

To:

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Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following party pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co., Inc. on topics identified on Exhibit A.	December 7, 2004 at 2:00 p.m.

The deposition will be conducted at Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017. The deposition will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The deposition will be taken before a person authorized to administer oaths and will continue day to day until completed.

With respect to the deposition identified above, please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List this 1st day of December 2004.

Dated: December 1, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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Exhibit A

CORPORATE DEPOSITION TOPICS

1. All amounts lent in connection with, advanced on, charged to, assessed against, paid on, received from or on behalf of, credited to or on behalf of, or applied to any loans to, Sunbeam or AHI, or any debts payable by Sunbeam or AHI, to MSSF or any affiliate of MSSF, or in which MSSF or any affiliate of MSSF has participated or held any interest.

2. The balance(s) due after each advance, charge, payment, credit, or other transaction referred to in topic number 1, above.

FAX TRANSMITTAL

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Washington, DC

Date: December 1, 2004

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	Joseph Ianno, Jr., Esq.	Fax:	(561) 659-7368
		Voice:	(561) 659-7070
	John Scarola, Esq.	Fax:	(561) 684-5816 (before 5 PM)
		Voice:	(561) 686-6350, Ext. 140
	Mark C. Hansen, Esq.	Fax:	(202) 326-7999
		Voice:	(202) 326-7900

From: Michael T. Brody
312 923-2711

Employee Number: Client Number: 41198-10003

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Secretary: Caryn Jo Geisler

Extension: 6490

JENNER&BLOCK

December 1, 2004

Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611
Tel 312-222-9350
www.jenner.com

Chicago
Dallas
Washington, DC

By Telecopy

Thomas A. Clare, Esq.
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Michael T. Brody
Tel 312 923-2711
Fax 312 840-7711
mbrody@jenner.com

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Tom:

I write concerning the court-ordered depositions of Messrs. Perella, Scott, Fiedorek, and Abdel-Meguid. At your request, we agreed to conduct these depositions after the November 24, 2004 cut-off for fact discovery established by the Court upon your express agreement that the depositions would be completed on or before December 10, 2004.

1. I enclose a notice of deposition for Mr. Perella. As stated in my letter of November 24, 2004, we will accommodate Mr. Perella's request to begin his deposition at 3:00 p.m. on December 8, 2004 with the understanding that Mr. Perella will continue his deposition into the evening hours until his deposition is complete.

2. Mr. Scott is under subpoena. We repeatedly have requested that you provide a date for this deposition. You advised me on the telephone that you intended to offer Mr. Scott on December 9, 2004 in New York. I enclose a notice of deposition for Mr. Scott on the date you suggested. We had previously agreed to conduct this deposition at Kirkland & Ellis or Morgan Stanley, if requested by the witness. We remain willing to move the location of the deposition in accord with our prior agreement.

3. Despite our specific request that you make Mr. Abdel-Meguid and Mr. Fiedorek available for deposition between December 7 and December 10, you instead proposed dates of November 30, 2004 and December 6, 2004. Accordingly, we now notice their depositions for December 9, 2004 and December 10, 2004, respectively.

Very truly yours,

Michael T. Brody

MTB:cjg
cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

CHICAGO_1185344_1

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

CASE NO. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
et al.,
Defendants.
_____/

CASE NO. CA 03-5165 AI

AMENDED NOTICE OF TAKING VIDEOTAPED DEPOSITIONS

To: Thomas A. Clare, Esq.
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Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates and times set forth below:

DEPONENT	DATE AND TIME
Tarek Abdel-Meguid	December 7, 2004 at 9:30 a.m.
Joseph Perella	December 8, 2004 at 3:00 p.m
Robert Scott	December 9, 2004 at 10:00 a.m.
Bruce Fiedorek	December 10, 2004 at 9:30 a.m.

The depositions of Messrs. Abdel-Meguid and Perella will be conducted at Morgan Stanley, 1585 Broadway, New York NY, 10036. Mr. Fiedorek's deposition will be conducted at Kirkland & Ellis LLP, Citigroup Center, 153 East 53rd Street, New York, NY 10036. Mr.

Scott's deposition will be conducted at Esquire Deposition Services, 216 East 45th Street, New York, NY 10017. The depositions will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until completed.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and federal express to all counsel on the attached Service List this 1st day of December 2004.

Dated: December 1, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
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16div-008989

FAX TRANSMITTAL

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Chicago
Dallas
Washington, DC

Date: December 2, 2004

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	Joseph Ianno, Jr., Esq.	Fax:	(561) 659-7368
		Voice:	(561) 659-7070
	John Scarola, Esq.	Fax:	(561) 684-5816 (before 5 PM)
		Voice:	(561) 686-6350, Ext. 140
	Mark C. Hansen, Esq.	Fax:	(202) 326-7999
		Voice:	(202) 326-7900

From: Michael T. Brody
312 923-2711

Employee Number: Client Number: 41198-10003

Important: This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is attorney work product, privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via postal service. Thank you.

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Secretary: Caryn Jo Geisler

Extension: 6490

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December 2, 2004

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Michael T. Brody
Tel 312 923-2711
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mbrody@jenner.com

By Telecopy

Thomas A. Clare, Esq.
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Tom:

We accept the dates and locations you offered in your December 1, 2004 letter for Messrs. Scott, Abdel-Meguid, and Fiedorek with the understanding that those witnesses will stay into the evening, if needed, until their depositions are completed. We have advised you before that we will not prolong these depositions unduly. However, we intend to complete them in one session.

As for Ms. Porat, we are disappointed that you have offered only a second half-day for the continuation of her deposition. Ms. Porat's testimony that she routinely works 12-hour days demonstrates that she is able to sit for deposition at longer than half-day increments. Nevertheless, we accept the half-day you have offered with the understanding that we undoubtedly will need additional time to complete Ms. Porat's deposition in her individual and corporate representative capacities. Please propose additional dates now for Ms. Porat's deposition so that we may be sure to complete her deposition soon.

I enclose amended notices of deposition for these witnesses, as well as Mr. Perella, whose deposition has previously been arranged.

Very truly yours,

Michael T. Brody

MTB:cjg
cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

CHICAGO_1185889_1

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

AMENDED NOTICE OF TAKING VIDEOTAPED DEPOSITIONS

To: Thomas A. Clare, Esq.
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Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates and times set forth below:

DEPONENT	DATE AND TIME
Bruce Fiedorek	December 6, 2004 at 1:00 p.m.
Joseph Perella	December 8, 2004 at 3:00 p.m
Robert Scott	December 9, 2004 at 10:00 a.m.
Tarek Abdel-Meguid	December 14, 2004 at 1:00 p.m.

The depositions of Messrs. Scott, Abdel-Meguid, and Perella will be conducted at Morgan Stanley, 1585 Broadway, New York NY, 10036. Mr. Fiedorek's deposition will be conducted at Kirkland & Ellis LLP, Citigroup Center, 153 East 53rd Street, New York, NY 10036. The depositions will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until completed.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and federal express to all counsel on the attached Service List this 2nd day of December 2004.

Dated: December 2, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
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SEARCY DENNEY SCAROLA BARNHART
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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

NOTICE OF TAKING VIDEOTAPED DEPOSITION

To:

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Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings Inc. will take the continued deposition upon oral examination of Ruth Porat on December 10, 2004 at 1:00 p.m.

The deposition will be conducted at Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017. The deposition will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The deposition will be taken before a person authorized to administer oaths and will continue day to day until completed.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to all counsel on the attached Service List this 2nd day of December 2004.

Dated: December 2, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON MORGAN STANLEY & CO. INCORPORATED'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES

THIS CAUSE came before the Court, in Chambers, on Morgan Stanley & Co. Incorporated's Motion for Reconsideration of the Court's Order Granting Coleman (Parent) Holdings Inc.'s Motion to Amend Its Complaint to Seek Punitive Damages. Based on a review of the Motion, it is

ORDERED AND ADJUDGED that Morgan Stanley & Co. Incorporated's Motion for Reconsideration of the Court's Order Granting Coleman (Parent) Holdings Inc.'s Motion to Amend Its Complaint to Seek Punitive Damages is Denied.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 2 day of December, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
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Mark C. Hansen, Esq.
1615 M Street, NW, Suite 400
Washington, DC 20036

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

ORDER DENYING COLEMAN (PARENT) HOLDINGS INC.'S MOTION FOR A FINDING OF CONTEMPT AND FOR OTHER RELIEF DUE TO MORGAN STANLEY'S REFUSAL TO COMPLY WITH COURT ORDER

THIS CAUSE having come before the Court on December 3, 2004 upon Coleman (Parent) Holdings Inc.'s Motion for a Finding of Contempt and for Other Relief due to Morgan Stanley's Refusal to Comply with Court Order, and the Court having heard argument of counsel and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that:

Coleman (Parent) Holdings Inc.'s Motion for a Finding of Contempt and for Other Relief due to Morgan Stanley's Refusal to Comply with Court Order is DENIED as moot.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this ____ day of December, 2004.

SIGNED & DATED

DEC 0 3 2004

JUDGE ELIZABETH T. MAASS

ELIZABETH T. MAASS
Circuit Court Judge

WPB#585097.5

16div-008999

Copies furnished to:

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON ARTHUR ANDERSEN LLP'S OPPOSITION TO PLAINTIFF COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL NON-PARTY ARTHUR ANDERSEN LLP TO COMPLY WITH SUBPOENA FOR CUSTODIAN OF RECORDS DEPOSITION

THIS CAUSE came before the Court December 3, 2004 on Arthur Andersen LLP's Opposition to Plaintiff Coleman (Parent) Holdings, Inc.'s Motion to Compel Non-Party Arthur Andersen LLP to Comply with Subpoena for Custodian of Records Deposition, which the Court elects to treat as including a Motion for Protective Order, with all counsel and counsel for Arthur Andersen LLP present. Based on the foregoing and the proceedings before the Court, it is

ORDERED AND ADJUDGED that Arthur Andersen LLP's Motion for Protective Order is Denied. The Court determines that the deposition sought is reasonably related to the issues in this cause, but declines to enforce an Illinois subpoena. It is further

ORDERED AND ADJUDGED that on or before December 10, 2004 counsel for the parties shall confer and attempt to stipulate to the authenticity, source, creation, use, maintenance, and business purpose of the documents on which Coleman seeks to depose an Arthur Andersen representative.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 3 day of December, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

16div-009001

copies furnished:
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Mark C. Hansen, Esq.
1615 M Street, NW, Suite 400
Washington, DC 20036

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION FOR A FINDING OF CONTEMPT AND FOR OTHER RELIEF DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER

THIS CAUSE came before the Court December 3, 2004 on Coleman (Parent) Holdings, Inc.'s Motion for a Finding of Contempt and for Other Relief Due to Morgan Stanley's Disregard of Court Order, which the Court elects to treat as including a Motion to Compel, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that by December 10, 2004 CPH shall notify Morgan Stanley in writing which of the documents for which Morgan Stanley admitted both paragraphs 1 and 8 of CPH's Sixth Set of Requests for Admission that CPH continues to require responses to the remaining requests. It is further

ORDERED AND ADJUDGED that Coleman (Parent) Holdings, Inc.'s Motion to Compel is Granted. Morgan Stanley's Objections to CPH's Sixth Set of Requests for Admission are overruled. Morgan Stanley shall admit or deny the requests objected to, excluding requests directed to those documents listed by CPH under the above paragraph, by December 17, 2004. It is further

ORDERED AND ADJUDGED that Morgan Stanley shall produce a deposition witness in accordance with CPH's Notice of Taking Depositions the week of December 20,

2004, to be deposed on the listed topics for those documents (i) not included in the list generated by CPH in accordance with this Order; and (ii) for which Morgan Stanley denied either paragraph 1, 8, or both.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 3 day of December, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
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Chicago, Il 60611

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO ENFORCE STIPULATION CONCERNING PURPORTED MISREPRESENTATIONS AND OMISSIONS AND PLAINTIFF'S ORE TENUS MOTION IN LIMINE

THIS CAUSE came before the Court December 3, 2004 on Coleman (Parent) Holdings, Inc.'s Motion to Enforce Stipulation Concerning Purported Misrepresentations and Omissions and Plaintiff's ore tenus Motion in Limine, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Coleman (Parent) Holdings, Inc.'s Motion to Enforce Stipulation Concerning Purported Misrepresentations and Omissions is Granted, in part. "(A)nd on synergy analyses which MS & Co. received from CPH" is hereby deleted by interlineation from paragraph 43 of MS & Co.'s Amended Answer and Amended Affirmative Defenses. It is further

ORDERED AND ADJUDGED that Plaintiff's ore tenus Motion in Limine is Granted. No party shall argue or attempt to place before the jury evidence that CPH, its parents, subsidiaries, employees, officers, or affiliates, made misrepresentations or omissions to MS & Co., its parents, subsidiaries, employees, officers, or affiliates, in connection with the transaction forming the subject matter of this case without first proffering the good faith basis to believe the matter is relevant and otherwise admissible

outside the jury's presence.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 3 day of December, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
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One IBM Plaza, Suite 4400
Chicago, Il 60611

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON THE PARTIES' JOINT ORE TENUS MOTION TO EXTEND TIME TO APPOINT MEDIATOR

THIS CAUSE came before the Court December 3, 2004 on the parties' Joint ore tenus Motion to Extend Time to Appoint Mediator, with all counsel present.. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that the parties' Joint ore tenus Motion to Extend Time to Appoint Mediator is Granted. The parties shall select a mediator by December 10, 2004 or, if no agreement can be reached, serve a Notice of Impasse.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 3 day of December, 2004.

_____
ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
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Chicago, Il 60611

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON DEFENDANT MORGAN STANLEY & CO., INC.'S MOTION FOR PROTECTIVE ORDER

THIS CAUSE came before the Court December 3, 2004 on Defendant Morgan Stanley & Co., Inc.'s Motion for Protective Order, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that paragraphs I and II of Defendant Morgan Stanley & Co., Inc.'s Motion for Protective Order are Denied, as moot. It is further

ORDERED AND ADJUDGED that paragraph III of Defendant Morgan Stanley & Co., Inc.'s Motion for Protective Order is Denied, except as modified by the Court's December 3, 2004 Order on Coleman (Parent) Holdings, Inc.'s Motion for a Finding of Contempt and for Other Relief due to Morgan Stanley's Disregard of Court Order. It is further

ORDERED AND ADJUDGED that paragraph IV of Defendant Morgan Stanley & Co., Inc.'s Motion for Protective Order is Denied.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 3 day of December, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON MORGAN STANLEY & CO. INCORPORATED'S MOTION TO REMOVE CONFIDENTIALITY DESIGNATIONS AND DIRECTIONS TO THE CLERK

THIS CAUSE came before the Court December 3, 2004 on Morgan Stanley & Co. Incorporated's Motion to Remove Confidentiality Designations, with all counsel and counsel for Arthur Andersen present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Morgan Stanley & Co. Incorporated's Motion to Remove Confidentiality Designations is Granted. The Clerk is directed to unseal those items listed in subparagraphs 4 (a) - (o) of the Motion.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 3 day of December, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci
655 15th Street, NW, Suite 1200
Washington DC 20005

John Scarola, Esq.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy, Esq.
One IBM Plaza, Suite 4400
Chicago, Il 60611

Mark C. Hansen, Esq.
1615 M Street, NW, Suite 400
Washington, DC 20036

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER ON NON-PARTY SUNBEAM'S MOTION FOR PROTECTIVE ORDER ON RECORDS CUSTODIAN DEPOSITION

THIS CAUSE came before the Court December 3, 2004 on Non-Party Sunbeam's Motion for Protective Order on Records Custodian Deposition, with all counsel and counsel for Sunbeam present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Non-Party Sunbeam's Motion for Protective Order on Records Custodian Deposition is Granted, in part. On or before December 17, 2004 counsel for Sunbeam and the parties shall confer and attempt to reach stipulations as to the authenticity, source, creation, use, maintenance, and business purpose for each document. If the parties are unable to reach a stipulation as to any document, the records custodian deposition shall be taken the week of December 20, 2004.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 8 day of December, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

16div-009012

copies furnished:
Joseph Ianno, Jr., Esq.
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Chicago, Il 60611

Mark F. Bideau, Esq.
777 S. Flagler Dr., Suite 300E
West Palm Beach, FL 33401

#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

Case No. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

_____/

Case No. CA 03-5165 AI

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: December 15, 2004

TIME: 8:45 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

COLEMAN (PARENT) HOLDINGS INC.'S MOTION FOR CLARIFICATION OF OBLIGATIONS TO DISCLOSE OPINION TESTIMONY OF FACT WITNESSES

Moving counsel certifies that he or she contacted opposing counsel and attempted to resolve the discovery dispute without hearing.

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and US Mail to all Counsel on the attached list, this 7th day of Dec., 2004.

Jack P. Weh for

JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 478-0754
Attorney for CPH and MAFCO

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

COUNSEL LIST

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Thomas D. Yannucci, P.C.
Thomas A. Clare
Brett McGurk
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Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
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KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square
1615 M Street, N.W.
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FACSIMILE TRANSMISSION

TO:	**Jack Scarola, Esq.**	**FAX NO.:**	**561-478-0754**
	Michael Brody, Esq.		**312-840-7711**
	Thomas Clare, Esq.		**202-879-5200**
	Joe Ianno, Jr., Esq.		**561-659-7368**
FROM:	Rebecca Beynon	**CLIENT NO.:**	04123
PHONE:	202-326-7934		
DATE:	December 7, 2004		

MESSAGE:

Attached please find Defendant Morgan Stanley & Co. Incorporated's Motion for Leave to Take Deposition of Ernst & Young LLP.

Original will follow via Federal Express overnight mail.

TOTAL NUMBER OF PAGES: 22 **(INCLUDING THIS SHEET)**

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL US IMMEDIATELY OR CONTACT OUR COPY SERVICE CENTER AT (202) 326-7949

OUR FAX NUMBER: (202) 326-7999

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS PRIVILEGED AND CONFIDENTIAL ATTORNEY INFORMATION INTENDED ONLY FOR THE USE OF THE ADDRESSEE. PERSONS RESPONSIBLE FOR DELIVERING THIS COMMUNICATION TO THE INTENDED RECIPIENT ARE HEREBY NOTIFIED NOT TO READ THE ATTACHED AND THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, AND PLEASE RETURN THE ORIGINAL MESSAGE TO US AT OUR LETTERHEAD ADDRESS VIA THE U.S. POSTAL SERVICE.

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

CASE NO: CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MOTION FOR LEAVE TO TAKE DEPOSITION

Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") respectfully requests that this Court enter an order permitting Morgan Stanley to take the deposition of a representative designated by Ernst & Young LLP ("E&Y"). In support of this Motion, Morgan Stanley states as follows:

1. On November 23, 2004, Morgan Stanley served a subpoena duces tecum upon E&Y (former auditors of The Coleman Company ("Coleman")) in Florida,[1] seeking to obtain basic information regarding the valuation of warrants to purchase stock in Sunbeam Corporation ("Sunbeam"), which were issued in 1998 by Sunbeam to MacAndrews and Forbes Holdings, Inc. ("MAFCO"). A copy of this subpoena is attached hereto as "Exhibit A." Morgan Stanley was unable to conduct a deposition pursuant to this subpoena before discovery in this matter closed on November 24, 2004.

2. On December 2, 2004, Morgan Stanley learned, for the first time, that, at some point in early 1998, E&Y may have conducted due diligence on behalf of Coleman

[1] This subpoena was properly served. Pursuant to Florida law, service on a non-Florida partnership is effective if one of the partners is served in Florida. *See* Fla. Stat. § 48.061.

by reviewing Sunbeam's financial records. *See* Dec. 2, 2004 Levin Dep. at 26-27. Morgan Stanley wishes to depose a knowledgeable E&Y representative on E&Y's participation, if any, in any due diligence involving the acquisition of Coleman, including any review of prior period audit work papers prepared by Arthur Andersen LLP relating to Sunbeam.

3. Morgan Stanley should be permitted to depose E&Y because the information it seeks is critical to a proper understanding of the alleged damages of Plaintiff Coleman (Parent) Holdings ("CPH"), and Morgan Stanley will be severely prejudiced if it is unable to obtain information regarding how CPH arrived at the warrant valuations set forth in its 1998 financial statements. It is also critical that Morgan Stanley understand the precise steps that CPH took with respect to conducting due diligence relating to Sunbeam's acquisition of Coleman. Plaintiff, by contrast, will suffer *no* prejudice if this deposition is permitted to go forward.

I. Morgan Stanley Will Be Severely Prejudiced If It Is Unable To Depose an E&Y Representative

4. The information that Morgan Stanley seeks regarding the Sunbeam warrants is central to Plaintiff's damages claims, particularly with respect to the amount by which Plaintiff's alleged damages should be offset. Plaintiff has taken the position that the warrants it received as a result of its settlement with Sunbeam were worthless. *See* Nov. 18, 2004 Winoker Dep. at 63-64, 72, 80; Nov. 3, 2004 Maher Dep. at 428-29. However, in 1998, the warrants were variously valued at amounts ranging from $40 to $100 million. Memorandum from Susan C. Tripp to Sunbeam Audit Files (Apr. 2, 1999), MS 97. Not only is the ultimate value of the warrants a critical issue, but also the appropriate amount by which Plaintiff's alleged damages should be offset cannot be

established unless Morgan Stanley first understands the *methodology* through which the warrants were valued.

5. If it is prevented from obtaining this very basic information, Morgan Stanley will be seriously hindered in its effort to test and evaluate the validity of a substantial portion of Plaintiff's alleged damages.

6. Prior to November 18, 2004, Morgan Stanley reasonably anticipated that it would be able to obtain this critical information through a deposition of a CPH representative, without any need of burdening a non-party to this matter. Specifically, on October 25, 2004, Morgan Stanley noticed a deposition, pursuant to Fla. R. Civ. P. 1.310, requesting that CPH present a representative competent to testify regarding the "value of the warrants and other consideration that CPH received from Sunbeam pursuant to the August 12, 2004 Settlement Agreement between CPH and Sunbeam." Notice of Taking Videotaped Deposition (Oct. 25, 2004) (attached hereto as "Exhibit B").

7. CPH designated as its representative Laurence Winoker, who was Treasurer and Controller of Revlon, Inc. in 1998, when the warrants were issued to MAFCO. Mr. Winoker's deposition proceeded on November 18, 2004 — more than a month after Morgan Stanley had noticed the deposition.

8. Despite Morgan Stanley's identification of CPH's warrant valuation as an issue on which testimony would be required, Mr. Winoker was unable to provide meaningful testimony regarding this issue. Among other things, Mr. Winoker — CPH's designated witness on the topic — admitted that he was "not qualified to answer" questions regarding warrant valuation, Nov. 18, 2004 Winoker Dep. at 83; that he had no role in negotiating, drafting, analyzing, or even discussing the settlement agreement

pursuant to which the warrants were transferred to MAFCO, *see id.* at 45; and that he had no involvement with the transaction between Sunbeam and Coleman, *see id.*.

9. Mr. Winoker was able to testify only that MAFCO had recorded a $41 million figure in its December 1998 financial statements, but could provide no information regarding how MAFCO arrived at that valuation. *See id.* at 71, 74. Mr. Winoker stated that all questions regarding the valuation methodology (*i.e.*, assumptions, inputs, forecasts, timing, and so on) had been referred to E&Y. But Mr. Winoker could not recall his discussions with E&Y. *See id.* at 55-56, 58, 71-72, 77-78.

10. Accordingly, to obtain this important information regarding the methodology whereby CPH had valued the warrants, Morgan Stanley promptly issued a subpoena on third-party E&Y, seeking discovery into warrant valuation issues.

11. In addition, on December 2, 2004, Morgan Stanley learned that Coleman's former Chief Executive Officer, Jerry Levin, believes that E&Y conducted due diligence with respect to Sunbeam's financial statements. *See* Dec. 2, 2004 Levin Dep. at 26-27. Mr. Levin's statement is the first occasion on which Morgan Stanley has heard of any due diligence efforts undertaken by E&Y on behalf of Coleman. Coleman's due diligence efforts — *i.e.*, its investigation of the very facts that CPH claims Morgan Stanley concealed — are undeniably central to the issues in dispute in this case, and it is critical that the Court be provided with accurate information regarding the steps that were taken in this regard.

II. Plaintiff Will Suffer No Prejudice If the Court Permits this Deposition to Proceed

12. Permitting Morgan Stanley to take this deposition will cause no prejudice to Plaintiff. The chief issues on which Morgan Stanley would seek to depose the E&Y

witness relate to damages and have no bearing on the substantive merits of this matter. Allowing the deposition to proceed will cause no delay, nor will it impede or disrupt the parties' current efforts to brief issues for summary judgment.

13. In addition, discovery into these matters will not intrude into matters protected by any accountant-client privilege. It is well-settled that such a privilege does not exist if a party "injects into a case an issue that requires an examination of otherwise protected communications." *See Choice Restaurant Acquisition Ltd. v. Whitley, Inc.*, 816 So. 2d 1165, 1167 (Fla. 4th DCA 2002) (quoting *First S. Baptist Church of Mandarin, Fla., Inc. v. First Nat'l Bank of Amarillo,* 610 So.2d 452 (Fla. 1st DCA 1992)). CPH's claims of damages squarely injected the warrant-valuation issues into this case.

14. Finally, the burden associated with the deposition that Morgan Stanley is requesting is not great. The issues on which Morgan Stanley seeks testimony are narrow ones, and Morgan Stanley anticipates that the deposition could be completed in a few hours.

WHEREFORE, Morgan Stanley respectfully requests that this Court enter an order permitting Morgan Stanley to take the deposition of a representative designated by E&Y who is competent to testify regarding (a) E&Y's valuation of warrants to purchase shares of Sunbeam stock provided to MAFCO in 1998, including, but not limited to, communications with MAFCO concerning the process and methodology by which the value of the warrants was determined, and (b) any due diligence efforts undertaken by E&Y on behalf of Coleman or CPH in connection with Sunbeam's acquisition of Coleman, including any review of prior period audit work papers prepared by Arthur Andersen LLP relating to Sunbeam.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 7th day of December, 2004.

KELLOGG, HUBER, HANSEN, TODD & EVANS, PLLC
Sumner Square
1615 M Street, N.W., Suite 400
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Facsimile: (202) 326-7999

By: _____
Mark C. Hansen, *admitted pro hac vice*
James M. Webster, *admitted pro hac vice*
Rebecca A. Beynon, *admitted pro hac vice*

SERVICE LIST

Jack Scarola
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Coleman v. Morgan Stanley
Case No: 03-CA-005045 AJ
Motion for Leave to Take Deposition

EXHIBIT A

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

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.
_____/

CLERK OF CIRCUIT COURT
CIRCUIT CIVIL DIVISION
NOV 24 2004
COPY / ORIGINAL

NOTICE OF TAKING VIDEOTAPED DEPOSITION DUCES TECUM

TO: ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that pursuant to Fla.R.Civ.P. Rules 1.310 and 1.410, the undersigned counsel will take the deposition of the following:

NAME:	DATE/TIME:	LOCATION:
Ernst & Young L.L.P.	November 24, 2004 at 9:30 a.m.	Carlton Fields, P.A. 222 Lakeview Ave., Suite 1400 West Palm Beach, FL 33401

Upon oral examination before a notary public or other officer authorized by law to take depositions in the State of Florida. The videographer is Visual Evidence, 601 N. Dixie Highway, West Palm Beach, Florida. This examination may continue from day to day until completed. The deposition is being taken for the purpose of discovery, for use at trial, or for such other purposes, as is permitted under the applicable and governing rules.

PLEASE TAKE FURTHER NOTICE that, in connection with the taking of the deposition, Ernst & Young L.L.P. shall, pursuant to the subpoena duces tecum, appear and produce at the commencement of its deposition any and all documents in its possession or subject to its control concerning Ernst & Young L.L.P. valuation of warrants provided to MacAndrews and Forbes Holdings, Inc. ("MAFCO") in 1998 to purchase shares of Sunbeam stock, including but not limited to all communications with MAFCO concerning the process and methodology by which the value of the warrants was determined.

Individuals who have a disability that may need accommodation should contact the undersigned seven (7) days prior to the deposition.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile, e-mail and Federal Express on this 23 day of November, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
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BY: _____
Joseph Ianno, Jr.
Florida Bar No. 655351

Counsel for Morgan Stanley & Co. Incorporated

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

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.
_____/

CIRCUIT CIVIL DIVISION
NOV 24 2004
COPY / ORIGINAL

NOTICE OF TAKING VIDEOTAPED DEPOSITION DUCES TECUM

TO: ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that pursuant to Fla.R.Civ.P. Rules 1.310 and 1.410, the undersigned counsel will take the deposition of the following:

NAME:	DATE/TIME:	LOCATION:
Ernst & Young L.L.P.	November 24, 2004 at 9:30 a.m.	Esquire Deposition Services 216 East 45th Street, 8th Floor New York, NY 10017-3304

Upon oral examination before a notary public or other officer authorized by law to take depositions in the State of New York. The videographer is Esquire Deposition Services, 216 East 45th Street, 8th Floor, New York, New York. This examination may continue from day to day until completed. The deposition is being taken for the purpose of discovery, for use at trial, or for such other purposes, as is permitted under the applicable and governing rules.

PLEASE TAKE FURTHER NOTICE that, in connection with the taking of the deposition, Ernst & Young L.L.P. shall, pursuant to the subpoena duces tecum, appear and produce at the commencement of its deposition any and all documents in its possession or subject to its control concerning Ernst & Young L.L.P. valuation of warrants provided to MacAndrews and Forbes Holdings, Inc. ("MAFCO") in 1998 to purchase shares of Sunbeam stock, including but not limited to all communications with MAFCO concerning the process and methodology by which the value of the warrants was determined.

Individuals who have a disability that may need accommodation should contact the undersigned seven (7) days prior to the deposition.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile, e-mail and Federal Express on this 23rd day of November, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
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E-mail: jianno@carltonfields.com

BY: Joseph Ianno, Jr.
Florida Bar No. 655351

Counsel for Morgan Stanley & Co. Incorporated

SERVICE LIST

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Jerold S. Solovy
Michael Brody
JENNER & BLOCK, LLC
One IBM Plaza, Suite 400
Chicago, IL 60611

RETURN OF SERVICE

State of Florida **County of Palm Beach** **Circuit Court**

Case Number: 03 CA 005045 AI Court Date: 11/24/2004

Plaintiff:
COLEMAN (PARENT) HOLDINGS, INC.

vs.

Defendant:
MORGAN STANLEY & CO. INCORPORATED

For:
Joseph Ianno, Jr., Esq.
CARTLON, FIELDS P.A.,
222 Lakeview Avenue
Suite 1400
West Palm Beach, FL 33401

Received by BLACKHAWK LEGAL SERVICE INC on the 29th day of November, 2004 at 9:00 am to be served on **ERNST & YOUNG L.L.P., 5 Times Square, New York, NY 10036.**

I, Denise Sucato, do hereby affirm that on the **29th day of November, 2004** at **10:00 am, I:**

SERVED the within named **PARTNERSHIP** by delivering a true copy of this Subpoena Duces Tecum For Deposition/Witness Fee Check/Letter with the date and hour of service endorsed thereon by me to **PETER WELLMAN as PARTNER** of the same, pursuant to F.S. 48.061.

Additional Information pertaining to this Service:
Served at One Clearlake Center, Suite 900, West Palm Beach, FL.

Under penalty of perjury, I declare that I have read the foregoing and that the facts stated in it are true, that I am over the age of eighteen, that I am not a party to this case and have no interest in the above action, that I am a **Certified Process Server** in the circuit in which service was effected in accordance with Florida Statutes. Pursuant to F.S. 92.525(2) NO NOTARY IS REQUIRED.

COPY

Denise Sucato
CPS #PBC574

BLACKHAWK LEGAL SERVICE INC
4521 P G A Boulevard, #210
Palm Beach Gardens, FL 33418
(561) 622-0711

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RETURN OF SERVICE

State of Florida **County of Palm Beach** **Circuit Court**

Case Number: 03 CA 005045 AI Court Date: 11/24/2004

Plaintiff:
COLEMAN (PARENT) HOLDINGS, INC.

vs.

Defendant:
MORGAN STANLEY & CO. INCORPORATED

For:
Joseph Ianno, Jr., Esq.
CARTLON, FIELDS P.A.,
222 Lakeview Avenue
Suite 1400
West Palm Beach, FL 33401

Received by BLACKHAWK LEGAL SERVICE INC on the 29th day of November, 2004 at 9:00 am to be served on **ERNST & YOUNG L.L.P., 5 Times Square, New York, NY 10036.**

I, Denise Sucato, do hereby affirm that on the **29th day of November, 2004 at 10:00 am, I:**

SERVED the within named **PARTNERSHIP** by delivering a true copy of this Subpoena Duces Tecum For Deposition/Witness Fee Check/Letter with the date and hour of service endorsed thereon by me to **PETER WELLMAN** as **PARTNER** of the same, pursuant to F.S. 48.061.

Additional Information pertaining to this Service:
Served at One Clearlake Center, Suite 900, West Palm Beach, FL.

Under penalty of perjury, I declare that I have read the foregoing and that the facts stated in it are true, that I am over the age of eighteen, that I am not a party to this case and have no interest in the above action, that I am a **Certified Process Server** in the circuit in which service was effected in accordance with Florida Statutes. Pursuant to F.S. 92.525(2) NO NOTARY IS REQUIRED.

Denise Sucato
CPS #PBC574

BLACKHAWK LEGAL SERVICE INC
4521 P G A Boulevard, #210
Palm Beach Gardens, FL 33418
(561) 622-0711

Our Job Serial Number: 2004005712

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Coleman v. Morgan Stanley
Case No: 03-CA-005045 AJ
Motion for Leave to Take Deposition

EXHIBIT B

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INC.,

Defendant.

_____/

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") will take the deposition of Coleman (Parent) Holdings, Inc. ("CPH") through a CPH representative or representatives with knowledge on the following topics, pursuant to Florida Rules of Civil Procedure 1.280 and 1.310, on the dates and times set forth below. The oral examination will take place at Kirkland & Ellis LLP, Citigroup Center, 153 East 53rd Street, New York, NY 10022-4611. The deposition will be taken before a person authorized to administer oaths and recorded by stenographic and videographic means. The video operator will be Esquire Deposition Services of 216 E. 45th Street in New York, New York.

Deponent	Date & Time
The value of the warrants and other consideration that CPH received from Sunbeam pursuant to the August 12, 1998 Settlement Agreement between CPH and Sunbeam.	November 8, 2004 9:30 am
All gains and/or losses experienced by CPH as a result of CPH's investment in The Coleman Company, including the value of all payments, consideration, and other financial benefits received by CPH, directly or indirectly, as a result of that investment.	November 8, 2004 9:30 am
CPH's decision not to hedge its position in the Sunbeam stock that CPH received from Sunbeam in connection with the February 27, 1998.	November 9, 2004 9:30 am
The authenticity, source, creation, use, maintenance, and business purpose of documents produced and/or authored by CPH and/or MacAndrews & Forbes bearing the bates numbers identified in the attached Exhibit A.	November 9, 2004 9:30 am

Deponent	Date & Time
The balances due and available under any Mafco Finance Corp. (or Marvel IV Holdings Inc.) Credit Agreement or Mafco Holdings Inc. Guaranty (including any Amendments or Restatements) in the first and second quarters of 1998.	November 10, 2004 9:30 am

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 25th day of October, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
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Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
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MESSAGE:

Attached please find Defendant Morgan Stanley & Co. Incorporated's Notice of Hearing (re: Motion for Leave to Take Deposition).

Original will follow via Federal Express overnight mail.

TOTAL NUMBER OF PAGES: 4 **(INCLUDING THIS SHEET)**

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

CASE NO: CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a hearing has been set in the above-styled case as follows:

DATE:	December 15, 2004
TIME:	8:45 a.m.
PLACE:	Palm Beach County Courthouse, Courtroom 11B 205 North Dixie Highway West Palm Beach, Florida 33401
BEFORE:	Judge Elizabeth T. Maass
CONCERNING:	Defendant, Morgan Stanley & Co. Incorporated's Motion for Leave to Take Deposition (re: Ernst & Young LLP representative)

KINDLY GOVERN YOURSELVES ACCORDINGLY.

The undersigned counsel hereby certifies that a good faith attempt to resolve the issues contained in the foregoing motions or matters will be made with opposing counsel prior to hearing on these matters on the Court's Motion Calendar.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no costs to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-2431 within two (2) working days of your receipt of this notice; if you are hearing or voice impaired, call 1-800-955-8771.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 7th day of December, 2004.

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2004 WL 5779891 (Fla.Cir.Ct.) (Expert Report and Affidavit)
Circuit Court of Florida,
Fifteenth Judicial Circuit.
Palm Beach County

COLEMAN (PARENT) HOLDINGS, INC., Plaintiff,
v.
MORGAN STANLEY & CO., INC., Defendant.

No. CA 03-5045 AI.
December 7, 2004.

Expert Report of George P. Fritz

Case Type: Fraud & Misrepresentation >> Fraud - Fraud & Misrepresentation
Case Type: Fraud & Misrepresentation >> Negligent Misrepresentation
Case Type: Intentional Torts >> Conspiracy
Jurisdiction: Palm Beach County, Florida
Name of Expert: George P. Fritz, C.P.A.
Area of Expertise: Accounting & Finance >> Accountant

Representing: Defendant

I. Purpose of This Report

The purpose of this report is to express my opinion as to the several ways by which Coleman (Parent) Holdings Inc. ("CPH") could have obtained, prior to the sale of its interest in The Coleman Company, Inc. ("Coleman") to Sunbeam Corporation ("Sunbeam"), information relating to first quarter 1998 sales and earnings of Sunbeam. In two letters issued on March 19 and March 25, 1998,[1] Arthur Andersen LLP ("Andersen"), then the independent auditors of Sunbeam, informed Morgan Stanley & Co. Incorporated ("Morgan Stanley") that Sunbeam's sales and earnings for specified periods in the first quarter of 1998 had declined from the corresponding periods in 1997. Those two letters are commonly referred to as "comfort letters."

I will address whether CPH should have known (i) that the Andersen comfort letters existed and (ii) that the letters would have addressed declines, if any, in interim sales and earnings. I will discuss whether authoritative auditing standards in the United States would have permitted Andersen to furnish the same or similar letters to CPH, had CPH requested them. Finally, I will review how CPH otherwise could have obtained the interim Sunbeam information.

My opinion, summarized in Section IV herein, is based on the facts and data in Section V and the detailed analyses in Sections VI and VII. My qualifications and the terms of my engagement are outlined in Section II.

II. Information About Expert

A. *Qualifications*

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I am a founding member and managing director of Accounting & Auditing Consultants LLC ("A2C"), a specialized consulting firm formed in early 2004. The members of A2C are former partners of the "Big 4" accounting firms with a broad cross-section of professional experiences.

I have been a certified public accountant ("CPA") in New York, Connecticut, and Kentucky. In June 1959, I began my career in the public accounting profession after graduating *magna cum laude* from Xavier University, Cincinnati. In 1961, I became a CPA. I spent my entire career with Coopers & Lybrand L.L.P. ("C&L"), beginning with a regional firm that merged with C&L in 1970. I was admitted as a partner in 1971 and retired in 1997, although I continued until early 1999 as a full-time consultant to C&L and PricewaterhouseCoopers LLP ("PwC" the firm that was formed as the result of the 1998 merger of C&L and Price Waterhouse LLP).

Since my retirement from C&L/PwC, I have remained active in service to the public accounting profession. In 1999, I joined the staff of the Panel on Audit Effectiveness ("Panel"), commissioned by the Public Oversight Board ("POB"), a private sector body that, until May 1, 2002, oversaw the accounting profession's self-regulatory process. The Securities and Exchange Commission ("SEC") had asked the POB to form the Panel and charged it with the responsibility to review and evaluate how audits of public companies are performed. After the Panel issued its report in 2000,[2] I served as a consultant to the POB, assisting in its oversight of the Auditing Standards Board of the American Institute of Certified Public Accountants ("AICPA"). Later, I joined the Transition Oversight Staff, which was the successor organization to the POB until the Public Company Accounting Oversight Board ("PCAOB") was organized pursuant to the Sarbanes-Oxley Act of 2002. I participated in the Transition Oversight Staffs study in 2002 of the independence quality control systems of the four largest audit firms.[3]

Currently, I am a member of several committees and task forces of the AICPA, including the Auditing Standards Board ("ASB"), the Audit Issues Task Force, and the Antifraud Programs and Controls Task Force. The ASB has nineteen members, only fifteen of whom are current audit practitioners. I am one of the "public interest" representatives on the ASB. The ASB promulgates generally accepted auditing standards ("GAAS"), which are the authoritative standards for the conduct of financial statement audits in the United States. (The PCAOB recently assumed authority for the issuance of standards for the audits of public companies, while the ASB continues to set standards for the audits of all other entities.)

My service to the AICPA before retirement from PwC had been substantial. For the five years prior to 1997 I was a member of the Accounting Standards Executive Committee ("AcSEC"), the senior technical accounting body of AICPA. I chaired several AcSEC task forces, including task forces on software revenue recognition, reorganizations, and consolidations.

Since retirement, I have spoken on accounting and auditing standards and regulation of the profession. I have been a speaker at the AICPA's annual SEC Conference in Washington; the International Symposium on Audit Research in Singapore; and on the AICPA's webcast on the use of forensic procedures in auditing financial statements.

My practical experience in the field of auditing is extensive. My audit engagement responsibilities at C&L included some of C&L's most important multinational clients. Also, for many years I was a member of a small group of national consulting partners who were responsible for the resolution of auditing and accounting issues for all of C&L's clients. As a national consulting partner, I also helped develop internal training programs and firm policies on various issues, including the issuance of "comfort letters."

I have never been retained or testified as an expert in connection with any litigation. There are references to securities laws in this report. I do not purport to be an expert in the securities laws or any other legal matters. Auditors of public companies, however, must have an awareness of the securities laws as they relate to financial statements and the auditor's role in the capital raising process. Auditing standards also contain several references to relevant sections of the federal

securities laws. Any references to the securities laws in this report are based solely upon my understanding of these matters as an experienced auditor of public companies. My *curriculum vitae* is attached as Exhibit A.

B. Terms of Engagement

My engagement as an expert in accounting and auditing is pursuant to a letter of engagement among Kirkland & Ellis LP (attorneys for Morgan Stanley), Morgan Stanley, and me (as a managing director of AC). My compensation is not dependent on the outcome of any litigation. My current compensation is at the rate of $450 per hour, plus out-of-pocket costs.

III. Documents Reviewed

In preparing this report and the opinion expressed herein, I reviewed documents that Morgan Stanley provided me as well as others that I requested from Morgan Stanley. Morgan Stanley provided me access to all documents that I requested. A complete list of such documents is attached as Exhibit D. Those documents and materials fall generally into these categories:

1. The CPH complaint against Morgan Stanley and Morgan Stanley's answer thereto.

2. Agreements related to Sunbeam's acquisition of Coleman, including

• Agreement dated February 27,1998, pursuant to which Sunbeam would purchase CPH's controlling interest in Coleman [4] (the “first step” of the merger);

• Agreement dated February 27,1998, whereby Sunbeam would acquire the remaining public minority interest in Coleman [5] (the “second step” of the merger);

• Sunbeam's agreement dated as of March 29,1998 to register with the Securities and Exchange Commission (“SEC”) its shares issued to Coleman in the first step; [6] and

• Coleman's information statement dated December 6, 1999 (combined with a Sunbeam prospectus) sent to Coleman minority interest shareholders as part of the second step of the merger. [7]

3. Documents related to Sunbeam's sale of debentures in March 1998, including

• Offering memorandum (dated March 19, 1998); [8]

• Morgan Stanley agreement to initially purchase the debentures (similar. to an underwriting agreement) (dated March 19, 1998); [9]

• Comfort letters issued to Morgan Stanley by Andersen (dated March 19 and 25, 1998); [10]

• Comfort letters issued to Morgan Stanley by Coleman's auditors (dated March 20 and 25, 1998); [11] and

• Representation letters furnished by Sunbeam to Andersen in response to Andersen's comfort letter inquiries. [12]

4. Sunbeam's periodic SEC filings, including its

• 1997 Annual Report on Form 10-K (dated March 6, 1998); [13]

• Quarterly Report on Form 10-Q for the first quarter of 1998 (dated May 15, 1998); and

• Amended Quarterly Report on Form 10-Q/A for the first quarter 1998. [14]

5. Sunbeam press releases related to the first quarter 1998. [15]

In addition, I have reviewed professional auditing literature to the extent that I considered necessary and relevant, and have cited certain of that literature in this report. Exhibit C contains a list of cited Statements on Auditing Standards issued by the ASB and effective in 1998, the related AICPA codification references, and certain superseded authoritative documents mentioned for historical perspective.

IV. Opinion

My opinion is summarized below, and is based on the facts and data in Section V and the detailed analyses set forth in Sections VI and VII of this report.

In my opinion, prior to March 30,1998 (the date on which Sunbeam acquired CPH's interest in Coleman), CPH had both the contractual right and multiple avenues of access to obtain Sunbeam's interim first quarter financial data, including access to the Andersen comfort letters. The merger agreement between CPH and Sunbeam provided both Sunbeam and CPH with reasonable access to the other party's books, records, and personnel *and* to the other party's financial advisers, legal counsel, accountants, consultants, and other representatives. [16] In addition, Sunbeam was required to notify Coleman in the event of any material adverse changes to its financial performance, and CPH owed a corresponding contractual duty to Sunbeam. [17] Thus, CPH had the right to speak with anyone at Andersen or Sunbeam about Sunbeam's accounting policies and practices, and also about Sunbeam's 1998 interim first quarter financial data.

Accordingly, at any time prior to the sale, CPH could have requested that Sunbeam provide:

•. Copies of the Andersen comfort letters issued to Morgan Stanley. [18] (The merger agreement gave CPH the right later to obtain similar comfort letters pursuant to CPH's registration rights [19]);

• Copies of the representation letter(s) Sunbeam furnished to Andersen, which were the source of much of the interim disclosures information contained in the Andersen comfort letters; [20]

• A comfort letter (or an equivalent letter) from Andersen addressed to CPH as an "other requesting party," [21] covering the same matters as in the comfort letters to Morgan Stanley; or

• Pursuant to its contractual rights of access, any interim financial statements or other interim financial data for the first quarter of 1998.

Any such request for copies of Sunbeam letters of representation to Andersen would have been reasonable because Coleman's auditors, Ernst & Young ("E&Y"), issued contemporaneous comfort letters to Morgan Stanley, and Coleman (or its parent company) furnished similar representations about interim financial data to E&Y. [22] In addition to seeking

copies of comfort or representation letters, CPH could have asked Sunbeam to allow Andersen or Coleman's auditors to perform specified procedures to seek to identify sales or earnings declines at Sunbeam. [23]

The authoritative standards that guide auditors in these areas (i.e., GAAS) would have allowed Andersen to issue comfort or equivalent letters to CPH that would have identified the interim sales and earnings declines. Among other things, those standards specifically provide for the issuance of comfort letters to buyers and sellers in acquisitions where there is an exchange of shares, [24] as occurred in the Sunbeam/CPH transaction.

V. Facts and Data Relied Upon

The following is a summary of transactions and events from Sunbeam's first quarter of 1998 that are relevant to my opinion. A chronology of events cited herein is summarized in Exhibit B.

On February 27, 1998, Sunbeam agreed to acquire Coleman. [25] CPH indirectly owned over 80% of Coleman, and the balance was owned by public shareholders. The acquisition was to be accomplished in two steps, the first of which was the purchase on March 30, 1998, of CPH's 80% interest in Coleman for approximately $160 million cash and 14.1 million shares of Sunbeam common stock. The second step - the acquisition of the public minority interest in Coleman - was delayed, but was completed in January 2000, when Sunbeam issued to the Coleman shareholders cash, common stock, and, pursuant to a court-approved litigation settlement, warrants to purchase shares of Sunbeam common stock.

Coleman was one of three companies that Sunbeam contracted to acquire in February 1998. The other two acquisitions, which were completed in April 1998, were all-cash transactions.

In March 1998, Sunbeam initiated a financing plan that would provide it over $2 billion to (a) repay the indebtedness of the three companies about to be acquired (approximately $1.5 billion, of which approximately $1.1 billion went to repay indebtedness of Coleman and its parent companies), (b) repay its own indebtedness (approximately $202 million), and (c) pay the cash necessary for the acquisitions (approximately $500 million, of which approximately $261 million related to the Coleman acquisition). [26]

Sunbeam's financing sources were a new $1.7 billion credit facility (comprising term loans of up to $1.3 billion and a revolving credit facility of $400 million) and a private placement on March 25, 1998, of $2 billion (face value) of zero coupon convertible debentures with net proceeds of approximately $750 million. A Morgan Stanley affiliate (Morgan Stanley Senior Funding, Inc.) provided $680 million in loans to Sunbeam under the $1.7 billion credit facility, and Morgan Stanley initially purchased all the debentures and resold them to qualified institutional buyers pursuant to a Rule 144A offering. [27]

The offering memorandum for the debentures, dated March 19, 1998, [28] included the 1995, 1996, and 1997 audited financial statements of Sunbeam and each of the companies to be acquired, [29] and pro forma financial data of Sunbeam setting forth the estimated effects of the acquisitions and the new financings. Although the debenture offering was exempt from registration with the SEC under Rule 144A, these financial statement presentations were substantially the same as those that would have been required in a registration statement filed with the SEC for the sale of securities.

Morgan Stanley conditioned its purchase of the debentures on the receipt of “comfort letters” from the auditors of Sunbeam and of each of the three companies to be acquired. Specifically, Morgan Stanley required that comfort letters be provided both on the date that the offering was launched (March 19, 1998) and on the closing date (March 25, 1998). [30]

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Andersen's March 19, 1998, comfort letter set forth the amounts of sales and net income (loss) for January of 1998 and 1997, indicating that the 1998 amounts had declined from 1997. That letter also stated that, although Sunbeam had not provided Andersen with any February 1998 financial statements, management had "provided net sales from December 29, 1997 through March 1, 1998, which were $72,018,000 as compared to $143,499,000 for the corresponding period of the preceding year." [31] Andersen indicated (without quantification) that the declines in sales and earnings continued through March 16, the cut-off date of the letter, and that the sales declines were "primarily due to the Company's new early-buy program for outdoor grills which accelerated outdoor grill sales into the fourth quarter of fiscal 1997" as well as "a non-recurring sale in January 1997 of discontinued stock keeping units and excess and obsolete inventory in connection with the Company's November 1996 restructuring." [32] Andersen noted that the decrease in net income was due primarily to the "sales decrease and a first quarter compensation charge from restricted stock issued in connection with new employment agreements for key officers." [33]

Andersen's March 25, 1998 comfort letter (the "bring-down letter") [34] reaffirmed and updated the information in the March 19 letter. The updated information included net sales and net income (loss) information for the first two months of 1998 and 1997. The March 25, 1998 letter again indicated that 1998 amounts had decreased from the prior year, and stated that the net loss for the first two months of 1998 of $41.2 million included "a compensation charge of approximately $30.2 million recorded in February 1998 from restricted stock issued in connection with new employment agreements with key officers." [35]

Sales and earnings amounts cited in Andersen's letters included the following:

TABLE

On March 19, 1998, Sunbeam issued a press release (which was disclosed as a "Recent Announcement" in the offering memorandum for the debentures). [38] The press release stated that "it is possible that [Sunbeam's] net sales for the first quarter of 1998 may be lower than the range of Wall Street analysts' estimates for $285 million to $295 million, but net sales are expected to exceed 1997 first quarter net sales of $253.4 million" [39]

On April 3, 1998, Sunbeam disclosed that its first quarter 1998 sales were expected to be approximately 5% less than comparable 1997 levels and that it expected to report a loss for the first quarter. [40] Sunbeam released its first quarter results on May 11, 1998. [41] In November 1998 Sunbeam issued restated financial statements from the fourth quarter 1996 through the first quarter of 1998 [42] The first quarter amounts (in millions of dollars) were:

TABLE

VI. Comfort Letters and Related Authoritative Professional Standards

The following is a discussion of authoritative professional standards that are relevant to this report.

A. *Generally Accepted Auditing Standards*

Generally accepted auditing standards are the authoritative pronouncements that guide auditors in the United States in conducting audits of financial statements and related services, such as the issuance of comfort letters. These standards are issued by the AICPA's Auditing Standards Board in the form of Statements on Auditing Standards ("SASs"), and codified by the AICPA in a reference volume. The codification organizes the SASs according to AU (*i.e.,* auditing) topics

called AU Sections. For example, the standard relating to comfort letters (Statement on Auditing Standards No. 72, *Letters for Underwriters and Certain Other Requesting Parties* ("SAS 72")) is included in the AICPA's codification under AU Section 634 and referred to as AU § 634. AU § 634 also includes two subsequent amendments to SAS 72. [43] AU § 634 in its current version was in effect in 1998.

The AICPA Code of Professional Conduct requires that an AICPA member comply with the SASs. [44] The SASs are authoritative because, prior to issuance, they have undergone a deliberative process by the Auditing Standards Board that is open to the public, including an exposure process seeking public comment from the accounting profession, regulators, academics and other interested parties. In 1998, the SASs issued by the Auditing Standards Board were authoritative for the audits of all entities. [45]

B. *Comfort Letters and Section 11 Defenses*

Comfort letters issued by auditors have their origins in the Securities Act of 1933 ("the Securities Act"). Section 11 of the Securities Act imposes possible liability on underwriters (among others) for materially misleading statements in, or omissions from, a registration statement for the offer of securities. However, a "due diligence" defense against liability is provided if an underwriter can demonstrate that it had, *after reasonable investigation,* reasonable grounds to believe and did believe that the statements were true. [46]

Under the provisions of the Securities Act, whether a registration statement is materially misleading or omits material facts is assessed as of its effective date. In other words, information contained in a registration statement must be true and there must be no material omissions when the SEC declares a registration statement effective. [47] If any information changes materially between the date that the registration statement is prepared and the date it becomes effective, the registration statement must reflect that change.

Accordingly, to establish a Section 11 due diligence defense, an underwriter must show that, as of the effective date of the registration statement, it had reasonable grounds to believe that, *after reasonable investigation,* the disclosures in the registration statement were true. However, with respect to any information in the registration statement that purports to be made on the authority of a named expert (*i.e.,* is "expertized"), the underwriter must only have no reasonable ground to believe that the "expertized" information is untrue, and need not make any additional investigation. [48] Because of the protection afforded by this provision, underwriters usually insist on including an "Experts" section in registration statements indicating the extent of reliance on experts and identifying material in the document that is "expertized." Audited financial statements are typically "expertized," and auditors consent in registration statements to references to their firms as experts in accounting and auditing. [49]

Because of the auditor's familiarity with the company's operations and financial systems, underwriters ask auditors to perform directed procedures with respect to certain "non-expertized" financial and other data appearing in the registration statement, as well as information about whether changes in financial position or results of operations have occurred since the date of the most recent financial statements in the registration statement. Thus, a letter from an auditor on the results of those procedures provides a level of "comfort" (sometimes called "cold comfort") that the underwriter has been duly diligent in those areas of investigation - hence the term "comfort letter."

Comfort letters are not required by the Securities Act and are not filed with the SEC. However, underwriters uniformly condition their underwriting of sales of securities upon the receipt of comfort letters. No two offerings are the same, and therefore comfort letters are not identical in all respects. However, in all cases, an underwriter will ask the auditor to provide "comfort" regarding the most recent financial information and any indicated declines in sales and earnings, and the auditing standards provide a uniform structure for auditors to report this information.

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C. *Content of Comfort Letters*

A typical comfort letter provides information regarding (a) the auditor's independence, (b) compliance of financial statements with applicable accounting requirements of the SEC, (c) the results of performing specified procedures on tables, statistics and other financial information contained in the registration statement (and apart from the financial statements), and (d) comments on any declines in sales and earnings or certain other financial statement changes during the "change period," i.e., in general, the period from the date of the most recent financial statements included in the registration statement until the cut-off date of the comfort letter (a few days before the effective date of the registration statement). Underwriters also ask for a "bring-down" comfort letter from the auditors at closing (typically a week after the effective date) that reaffirms and updates any matters addressed in the comfort letter that was delivered on the effective date.

D. *Comfort Letter Comments on Subsequent Changes*

Comments in comfort letters regarding any changes in financial statement items (such as declines in sales and earnings) help the underwriter assess whether any material changes have occurred that need to be disclosed or otherwise addressed in the registration statement Years ago, underwriters asked auditors to provide "negative assurance" in comfort letters regarding subsequent changes - that is, to state that nothing had come to their attention to indicate that there had been a *material adverse change* in the issuer's financial position or results of operations.[50] In 1971, notwithstanding the then-longstanding practice of auditors providing such negative assurance, the AICPA proscribed the expression of any such negative assurance as to the absence of an adverse change.[51] The AICPA's Committee on Auditing Procedure reasoned that there was no common agreement or objective measure as to what constituted a "material adverse change" and that, as a result, the term had been misinterpreted on some occasions by underwriters as encompassing judgments and conclusions not contemplated by auditors.

Thus, the thrust of current letters moved from subjectively determinable "material adverse changes" to objectively determinable changes in financial statement items. Instead of negative assurance as to the absence of a material adverse change, auditors now simply express negative assurance as to the absence of subsequent changes or declines in specified, objectively measurable financial statement items, such as revenues and earnings. If interim financial statements are available, and if a change such as a decline in sales or earnings occurs, the auditor cites the comparative amounts in the comfort letter.

While proscribing negative assurance as to adverse changes in 1971, the AICPA nonetheless continued a reporting accommodation unique to the Securities Act environment. Auditors were (and still are) allowed to express negative assurance as to the absence of declines in financial statement items up to the cut-off date of the letter, even without financial statements being available and based only on limited procedures.[52] However, if subsequent financial statements or other data are available and indicate declines in specified financial statement items, the auditor must report in the comfort letter the financial statement items and related comparative amounts.

The comfort letters provided by Andersen to Morgan Stanley on March 19 and 25, 1998, provide examples of how auditors report financial information in the "change period." The most recent Sunbeam financial statements in the offering memorandum were as of December 28, 1997 (the end of fiscal year 1997). Thus, the "change period" was from December 29, 1997, to March 16, 1998, the "cut-off date" of the first Andersen comfort letter. On March 16, 1998, financial statements for January 1998 were available, and Andersen noted the amounts for specified financial statement items that had declined as compared to January 1997. Andersen further indicated (without quantification) that sales and net income for the first quarter of 1998 through the cut-off date had decreased from that same period in 1997. In the second ("bring-down") comfort letter of March 25, 1998, financial statements for February 1998 had become available

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and Andersen cited specific declines for the first two months of 1998 compared to that same period in 1997, and indicated (again without quantification) that sales and net income through the new cut-off date (March 23, 1998) had decreased.

E. *Written Management Representations Supporting Responses to Auditor Inquiries*

A party requesting a comfort letter asks the auditor to inquire of management about several matters, the most important of which often relate to the "change period" described above. For example, the auditor inquires as to the availability of interim financial statements and minutes of meetings of the stockholders, the board of directors, and other appropriate committees, if any. The auditor reads any available interim minutes and financial statements and inquires of management as to whether (i) available interim financial statements are stated on a basis substantially consistent with that of the audited financial statements included in the registration statement and (ii) there were any changes in specified financial statement items (including declines in revenues and earnings) as of or through the date of those interim statements.

Further, the auditor inquires of management as to whether there were any changes in specified financial statement items (including declines in revenues and earnings) for the *entire* "change period," *i.e.,* from the date of the most recent financial statements included in the registration statement to the cut-off date of the letter. As indicated above, the change period almost always includes an interval for which no financial statements will have been prepared. For example, in the March 19, 1998 Andersen comfort letter referred to in the preceding paragraph, that "dark" interval was from February 2, 1998 (the day after the date of the most recent available interim financial statements, for the fiscal month of January 1998 [53]) through March 16, 1998, the comfort letter cut-off date. [54]

SAS 72 requires that management responses to the auditor's comfort letter inquiries be supported by appropriate *written* representations of the company officials. [55] Auditing standards also require that these written representations to auditors be signed by those members of management with overall responsibility for financial and reporting matters, typically including the chief executive officer, the chief financial officer and others with equivalent positions in the company. [56] The written representations Sunbeam furnished to Andersen on the cut-off dates of March 16 and 23, 1998 were signed by Albert J. Dunlap, Chairman and Chief Executive Officer; Russel A. Kersh, Executive Vice President Finance and Administration; David C. Fanin, Executive Vice President General Counsel; and Robert J. Gluck, Vice President Chief Accounting Officer. [57]

F. *SAS 72: Comfort Letters Available to Other Requesting Parties*

Before 1993, auditing standards contemplated that comfort letters would be issued solely to underwriters, and then only in the context of registrations statements filed with the SEC under the Securities Act. However, auditors increasingly were being asked for comfort letters (or substantially equivalent reports) in two general circumstances.

First, parties other than underwriters requested such letters. For example, buyers and sellers sought "cross-comfort letters" in connection with acquisition transactions. Cross-comfort letters are letters issued by the seller's auditor to the buyer and by the buyer's auditor to the seller.

Second, underwriters sought comfort letters in connection with offerings and transactions not requiring registration under the Securities Act. Examples include foreign offerings, private placements under Rule 144A [58] (such as the Sunbeam debenture offering), and securities offerings by governmental and other issuers exempt from registration under the Securities Act.

In transactions exempt from registration with the SEC, including Rule 144A offerings, underwriters and others remain subject to the liability provisions of Rule 10b-5 under the Securities Exchange Act of 1934 [59] for untrue or omitted

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statements made in connection with the purchase or sale of a security. Thus, even though Section 11 of the Securities Act does not apply to such transactions, many participants in exempt offerings nonetheless refer to it defensively as a standard against which violations of Rule 10b-5 may be measured. Thus, underwriters and financial intermediaries in exempt offerings generally require the receipt of comfort letters for due diligence purposes.

Before SAS 72 was adopted in 1993, practice had varied with respect to auditors' responses to requests for comfort letters by parties other than underwriters or in connection with exempt offerings. Accordingly, in February 1993, in order to provide for uniformity of practice, the AICPA's Auditing Standards Board issued SAS 72, which authoritatively stated for the first time (i) the conditions under which auditors could issue comfort letters to parties other than underwriters and for transactions not subject to the Securities Act, and (ii) guidelines for the content of those letters. SAS 72 acknowledged that there was a strong demand for comfort letters in a wide variety of circumstances.

G. *Comfort Letters to Buyers or Sellers in Business Combinations*

Of particular relevance to this report, SAS 72 specifically permits auditors to issue comfort letters to buyers or sellers (or both) in connection with acquisition transactions in which there is an exchange of stock. (SAS 72 cites as an example cross-comfort letters in a typical Form S-4 or merger proxy transaction. [60]) To obtain such comfort letters, requesting buyers or sellers must provide a letter to the auditor representing that they are knowledgeable with respect to the due diligence process under the Securities Act and that their review process is substantially consistent with that process. However, if such a representation cannot be made, a substantially similar version of a comfort letter nonetheless may be issued. [61] This form of letter is different only in that information as to absence of changes in certain items of financial position and operations in the "change period" is attributed to management's positive assertions rather than the auditor's expressions of negative assurance.

SAS 72 also notes that a requesting party who does not meet the conditions for receipt of a comfort or equivalent letter still may engage an auditor to perform specified procedures and report on the results of those procedures. [62] That sort of limited service, referred to as an "agreed-upon procedures" engagement, is less than an audit or a review and consists of procedures applied by the accountant to specified financial statement accounts or elements. The requesting party and the accountant "agree upon" the procedures that the requesting party believes are appropriate for its purposes.

Many of the procedures requested in a comfort letter (or different procedures) could be performed in an agreed-upon procedures engagement. For example, a requesting party could ask the auditor to compare sales and earnings in the most recent available interim financial statements to the corresponding amounts in the preceding year and report any indicated declines.

H. Summary of Reporting Alternatives Under Professional Standards

In sum, professional auditing standards provide requesting parties with a variety of ways to seek specific current information about a company from its auditors. Depending on the circumstances, auditors may issue a comfort letter (SAS 72), provide comparable information in a letter very similar to a comfort letter (SAS 76) or report on the results of having applied agreed-upon procedures (SAS 75)..

VII. Analysis of Facts and Relevant Authoritative Standards

A. *CPH Had Reason To Wish To Obtain Sunbeam Interim Financial Information*

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The CPH complaint indicates that Sunbeam's sales and earnings projections for the first quarter and full year of 1998 were discussed during the merger negotiations. In that regard, the complaint also indicates that CPH was made aware of Sunbeam's "early buy" program, [63] which Sunbeam disclosed in a public filing of its 1997 Form 10-K in early March 1998. [64] Thus, even before March 19, 1998, CPH might well have had a keen

In addition, as of February 23, 1998, CPH was aware that Sunbeam's January and February sales were "slow." [65] Coleman's chief executive officer has testified that, on this same date, he told CPH executives that Sunbeam's long-range sales and net income expectations "were quite a stretch" and that he "did not think they were achievable." [66]

Certainly, by at least March 19, 1998, CPH had a particular and significant reason to want to obtain interim Sunbeam financial information. Specifically, on that date, the same date on which the debenture offering was launched, Sunbeam issued a press release warning about first-quarter revenue expectations. To anyone familiar with the capital-raising process in the United States, that coincidence of timing would have at least suggested that the due diligence investigations undertaken in connection with the debenture offering had triggered the revenues warning. Any party familiar with securities underwritings would have known that the comfort letters issued by the auditors to the underwriter would have contained more specific interim information than appeared in the press release.

Also, the March 19, 1998 press release included a possible causal relationship that would have heightened CPH's interest in wanting to know more about Sunbeam's first quarter results. The press release stated that any shortfall from analysts' estimates of Sunbeam's sales would be due to "changes in inventory management and order patterns at certain of [Sunbeam's] major retail customers." Given CPH's awareness of the Sunbeam's "slow" sales in January and February 1998, as well as its awareness of Sunbeam's "early buy programs," CPH could well have wanted to determine more information Sunbeam's customers' inventory levels (or the "pipeline" of Sunbeam products).

B. *CPH Could Have Obtained Sunbeam Interim Financial Information in Numerous Ways*

If, as a result of Sunbeam's March 19, 1998 press release [67] or otherwise, CPH wanted information about quarter-to-date sales and earnings, it had at least five options for obtaining such information.

1. *CPH Could Have Requested and Received a Copy of Andersen's Comfort Letter to Morgan Stanley*

CPH could have obtained the underwriter's due diligence information about Sunbeam's interim financial information by requesting, from either Sunbeam or Morgan Stanley, a copy of the Andersen comfort letter(s). [68] SAS 72 afforded CPH, as a party to the merger transaction, the same right as Morgan Stanley to request and receive from Andersen a comfort letter that would address recent sales and earnings.

In my opinion, there is every reason to believe that CPH would have or should have known that in March 1998 that Andersen issued comfort letters to Morgan Stanley and that the letters would have addressed any identified decreases in interim sales and earnings.

First, CPH was familiar with the comfort letter process. [69] Senior CPH officials have testified that CPH and its affiliates had participated in the issuance of billions of dollars of debt securities. [70] Accordingly, CPH's auditors would have, in prior transactions, provided underwriters with comfort letters regarding CPH's financial condition.

Second, CPH would have been familiar with the debenture offering, not only because it was integral to Sunbeam's funding the Coleman acquisition, but also because summary descriptions of Coleman's business and three years of Coleman's

financial statements were included in the offering memorandum. The Coleman disclosures in the offering memorandum were more than a mere "paste and patch" from Coleman's SEC filings. [71] For example, Coleman's financial statement disclosures were modified from those in its 1997 Annual Report on Form 10-K to add a footnote about the potential technological impact of the year 2000 [72] and to make conforming changes to company names. It is my opinion that Sunbeam would not have altered Coleman's public disclosures without Coleman's participation or at least its consent.

Similarly, the report of Ernst & Young LLP ("E&Y"), Coleman's auditors, that was contained in the offering memorandum was modified from E&Y's report in Coleman's 1997 Form 10-K to reflect that it was reporting on less financial statement data in the offering memorandum than they had in the Form 10-K. Again, in my opinion, Sunbeam interest in any recent developments regarding the sales and earnings of Sunbeam. would not have modified the information in E&Y's report without the participation of E&Y.

Third, the materials I have reviewed make clear that both Coleman officials and E&Y actively participated in aspects of Sunbeam's debenture offering. On March 12, 1998, Morgan Stanley held a due diligence meeting about Coleman that included presentations by Coleman's chief executive and finance officers and a plant tour of the Coleman facilities. [73] On the same day, E&Y participated in an accounting due diligence conference call organized by Morgan Stanley. [74] Morgan Stanley requested that E&Y and the auditors of each of the other three companies whose financial statements were to be included in the offering memorandum answer eighteen questions about their clients' accounting and control environments. [75] In my opinion, E&Y could not have done so without the knowledge and consent of CPH/Coleman.

Fourth, E&Y supplied comfort letters to Morgan Stanley. [76] *The letters were also addressed to Coleman's parent, CLN Holdings. Inc.* [77] As part of its comfort letter procedures, and as required by SAS 72, E&Y made certain inquiries of management of CLN Holdings Inc. and, as explained in the preceding section, was required pursuant to applicable auditing standards to obtain written representations from management to support the results of the inquiries. In my opinion, as sophisticated business entities that had themselves participated in transactions involving substantial debt offerings and that had prior experience with the comfort letter process, CPH and CLN Holdings Inc. should have been aware that Morgan Stanley would obtain a parallel comfort letter from Andersen, the auditor of the entity selling the securities (i.e., Sunbeam).

As a result of this participation of Coleman and its auditors in the debenture offering, it is my opinion that the management of CPH would have or should have known that Andersen would issue comfort letters to Morgan Stanley in connection with Sunbeam's acquisition of Coleman and that those letters could include significant, specific information about recent sales and earnings trends.

2. *CPH Could Have Requested and Received a Copy of the Representation Letters Supplied by Sunbeam*

Pursuant to its contractual rights of access, [78] CPH could have requested copies of the representation letters supplied by Sunbeam's senior executives to Andersen to support Sunbeam's responses to Andersen's comfort letter inquiries about interim financial statement changes, including any declines in sales and earnings.

CPH would or should have known that Sunbeam's management would be furnishing similar written representations to Andersen that would be (and were) a primary source of any current trend information reported by Andersen in its comfort letter to Morgan Stanley, since Coleman's management at that time was responding to comfort letter inquiries from E&Y. Although I have not been provided a copy of letters from Coleman's management to E&Y regarding the statements made in the E&Y comfort letters, it is clear that Coleman provided such representations to E&Y. The E&Y comfort letters *specifically reference* such representations and state that E&Y made the same standard comfort letter inquiries about subsequent changes at Coleman that Andersen made of Sunbeam: *"We have inquired of Company officials*

who have responsibility for financial and accounting matters as to whether ... for the period from January 1, 1998, to March 18, 1998, there was any decrease, as compared with the corresponding period in the preceding year, in total operating revenues, income from operations or increase in net loss. *On the basis of these inquiries* and our summary of the minutes... nothing came to our attention that caused us to believe that there was any such increase or decrease ...." [79] E&Y's statement is consistent with standard practice; any auditor, in the normal course of preparing a comfort letter, would require management to provide such representations before issuing a comfort letter. [80]

Significantly, Coleman's responses to E&Y's comfort letter inquiries would have been supplied by the highest levels of management, including those who participated in Morgan Stanley's due diligence meetings. Comfort letter inquiries are not directed at middle or lower levels of management. By way of example, as described in the previous section, the Sunbeam representation letters were signed by four of the highest-ranking Sunbeam officers and contained specific data about comparative sales and earnings data for January and February of 1998 and 1997.

Not only would E&Y's inquiries to Coleman have made Coleman aware that its counterparty, Sunbeam, had similarly made its interim financial information available to other parties, but Sunbeam also had agreed to provide comfort letters to CPH or Coleman in each instance in which CPH or Coleman would have Securities Act liability (Section 11) risks. [81] These agreements indicate that CPH was well aware of the importance and availability of comfort letters:

• *CPH registration rights agreement* - if the shares were sold through an underwriter, Sunbeam agreed to use reasonable best efforts to furnish to CPH a *signed counterpart of a comfort letter delivered to underwriters.* [82]

• *Coleman merger agreement* - Sunbeam and Coleman each agreed to use reasonable best efforts to cause their auditors to issue a *cross-comfort letter* to the other company. [83]

3. *CPH Could Have Requested and Received a Separate Comfort Letter from Andersen*

In addition to seeking a copy of the comfort letters that Andersen had provided to Morgan Stanley, CPH could have requested, and the authoritative auditing standards would have authorized, Andersen's furnishing a comfort letter directly to CPH that otherwise contained the same information as the letter addressed to Morgan Stanley.

If Sunbeam or Morgan Stanley had been reluctant to furnish a copy of the Andersen letter to CPH, [84] then Coleman could have requested that Sunbeam cause Andersen to issue a comfort letter with the same content but addressed to CPH. [85] If CPH had been unable to supply to Andersen the due diligence representations required by SAS 72 [86] to receive the identical letter, [87] CPH would still have been entitled, pursuant to SAS 76, to a substantially similar letter from Andersen covering the same matters, but referring to subsequent change comments as being the assertions of management rather than negative assurances of the auditor. [88]

4. *CPH Could Have Invoked Its Contractual Rights of Access*

Finally, the February 27, 1998 Agreement and Plan of Merger between Sunbeam and CPH provided both Sunbeam and CPH with reasonable access to their counterpart's books, records and personnel *and* to the other's financial advisers, legal counsel, accountants, consultants, and other representatives. [89] Thus, CPH had a contractual right of access both to Sunbeam and Andersen personnel, as well as the contractual right, at any time prior to the sale of its interest in Coleman, to seek interim Sunbeam financial information such as that contained in the Andersen letters to Morgan Stanley.

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5. *CPH Could Have Engaged an Auditor to Perform Agreed-Upon Procedures*

If for any reason CPH had wanted more or different procedures applied to Sunbeam's interim information, and as provided for in AU § 634.10, CPH could have engaged Andersen, E&Y, or a third firm to perform specified procedures to identify and report changes in financial statement items, such as sales and earnings.

D. Summary

Based upon a review of the facts in this report, I conclude that, prior to the sale of its interest in Coleman to Sunbeam, CPH had several avenues available to it to obtain Sunbeam financial information related to the first quarter of 1998.

First, CPH could have requested from Sunbeam or Morgan Stanley a copy of Andersen's comfort letters to Morgan Stanley. As a seller in a business combination involving the exchange of stock, CPH could have requested, and the authoritative auditing standards would have sanctioned, Andersen's furnishing a comfort letter to CPH. CPH was or should have been aware that the Andersen letters existed and that they would have contained specific, important information about any changes in Sunbeam's first quarter 1998 sales and earnings.

Second, pursuant to its contractual rights of access, CPH could have requested copies of the representation letters supplied by Sunbeam's senior executives to Andersen to support Sunbeam's responses to Andersen's comfort letter inquiries about interim financial statement changes, including any declines in sales and earnings. CPH knew or should have known of the existence of those representation letters and that those letters would have contained specific, important information about any changes in Sunbeam's first quarter 1998 sales and earnings.

Third, instead of a copy of the comfort letters to Morgan Stanley, CPH could have requested, and the authoritative auditing standards would have sanctioned, Andersen's furnishing a comfort letter addressed to CPH that otherwise contained the same information as the letter addressed to Morgan Stanley.

Fourth, CPH had contractual rights of access to Sunbeam records, personnel accountants and other advisers and could have requested information directly from Sunbeam or its representatives, including Andersen

Fifth, instead of a comfort letter, CPH could have requested, and the authoritative auditing standards would have sanctioned, that an accountant perform specified or "agreed upon" procedures with respect to Sunbeam financial statement accounts directed at determining, *e.g.,* if declines in interim sales and earnings had occurred.

Footnotes

1 See March 19, 1998 Letter from Arthur Andersen LLP to Morgan Stanley, MS 9 ("March 19 Andersen Comfort Letter"); March 25, 1998 Letter from Arthur Andersen LLP to Morgan Stanley, MS 10 (March 25 Andersen Comfort Letter").

2 *See* Aug. 31, 2000 Report, "The Panel on Audit Effectiveness Report and Recommendations," *available at* http://www.pobauditpanel.org/index.html.

3 *See* Dec. 19, 2002 Report, Transition Oversight Staffs Report on the Independence Quality Control Systems of the Four Reviewed Firms," *available at* http/www.oversighstaff.org/reports.htm

4 *See* Feb. 27, 1998 Agreement and Plan of Merger Among Sunbeam Corporation, Laser Acquisition Corp., CLN Holdings Inc. and Coleman (Parent) Holdings, Inc. ("Merger Agreement"), MS 93.

5 *See* Feb. 27,1998 Agreement and Plan of Merger Among Sunbeam Corporation, Camper Acquisition Corp. and The Coleman Company, Inc. ("Company Merger Agreement"), MS 117.

6 *See* March 29, 1998 Registration Rights Agreement, MS 278.

7 *See* Dec. 6, 1999 Notice of Merger and Appraisal Rights and Information Statement, Sunbeam Corporation Prospects, MS 279.

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8 *See* March 19, 1998 Offering Mem, MS 166.

9 *See* March 19,1998 Purchase Agreement, MS 242.

10 *See* March 19 Andersen Comfort Letter, MS 9; March 25 Andersen Comfort Letter, MS 10.

11 See March 20,1998 Letter from Ernst & Young LLP to CLN Holdings, Inc. and Morgan Stanley, MS 243 ("March 20 E&Y Comfort Letter"); March 25, 1998 Letter from Ernst & Young LLP to CLN Holdings, Inc. and Morgan Stanley, MS 0000462-464 ("March 25 E&Y Comfort Letter").

12 *See* March 16, 1998 Letter from Sunbeam Corp. to Arthur Andersen LLP, CPH 120 ("March 16 Sunbeam Representation Letter"); March 23, 1998 Letter from Sunbeam Corp. to Arthur Andersen LLP, CPH 124 ("March 23 Sunbeam Representation Letter").

13 *See* Sunbeam Form 10-K for the Fiscal Year Ended December 28, 1997 (dated March 6,1998), MS 12.

14 *See* Sunbeam Amended Quarterly Report on Form 10-QA for the First Quarter 1998 (dated Nov. 25, 1998), MS 282.

15 *See* March 19, 1998 Press Release, MS 39; April 3, 1998 Press Release, MS 58; May 11, 1998 Press Release, MS 115.

16 *See* Merger Agreement § 6.7, MS 93.

17 *See id.* § 6.8.

18 *See* March 19 Andersen Comfort Letter, MS 9; March 25 Andersen Comfort Letter, MS 10.

19 *See* March 29, 1998 Registration Rights Agreement, § 2.4(12), MS 278.

20 *See* March 16 Sunbeam Representation Letter, CPH 120; March 23 Sunbeam Representation Letter, CPH 124.

21 "Other requesting party" is discussed in Section VI.F, *infra,* of this report under "SAS 72: Comfort Letters Available to Other Requesting Parties."

22 *See* March 20 E&Y Comfort Letter, MS 243.

23 As would have been permitted by the relevant standard then in effect, *viz.,* Statement on Auditing Standards No. 75, *Engagements to Apply Agreed-Upon Procedures to Specified Elements, Account, or Items of a Financial Statement* ("SAS 75"

24 *See* AICPA Codification of Auditing Standards, AU § 634.05, *Letters for Underwriters and Certain Other Requesting Parties.*

25 *See* Merger Agreement, MS 93; Company Merger Agreement, MS 117.

26 *See* March 19,1998 Offering Mem. at 23, MS 166. The $261 million included cash-out of options.

27 The SEC promulgated Rule 144A to permit certain companies to raise funds from sophisticated institutional investors without registering with the SEC. The disclosure requirements for 144A offerings are more relaxed than those for registered offerings. However, in a 144A offering the issuer may promise to register the securities shortly after issuance to enable the buyers to resell the securities in the public markets, and the private placement memorandum often forms the basis of the subsequent registration statement In those instances, the issuer generally strives to make the disclosures in the private placement memorandum substantially equivalent to those in a registration statement filed under the Securities Act of 1933. Sunbeam granted registration rights to the purchasers of the debentures. *See id.* at 62-63.

28 *See* March 19,1998 Offering Mem., MS 166.

29 The financial statements for Coleman in the offering memorandum were the consolidated statements of CLN Holdings Inc., a CPH subsidiary. CLN Holdings Inc. was a holding company and the indirect owner of the 82% interest in Coleman, the operating company. Coleman's statements were consolidated in the statements of CLN Holdings Inc. For ease of reference herein, the financial statements of CLN Holdings Inc. in the offering memorandum are referred to as the statements of Coleman. See *id.* at F-27 to F-54.

30 See March 19,1998 Purchase Agreement at 10-11, MS 242.

31 *See* March 19 Andersen Comfort Letter at 5, MS 9. Sunbeam had used a 52/53-week fiscal year-end close ending on the Sunday nearest December 31. Although Sunbeam continued to use a fiscal close for its January and February 1998 internal *financial* statements (five weeks from December 29, 1997 through February 1, 1998 for the fiscal month of January, and four weeks from February 2, 1998 through March 1, 1998 for fiscal February 1998), at the end of the first quarter 1998 Sunbeam adopted a calendar year- and quarter-end close. For ease of reference herein, references to Sunbeam's fiscal months of January and February are simply "January" and "February."

32 *See id* at 4.

33 *See id*

34 *See* March 25 Andersen Comfort Letter, MS 10.

35 *See id.* at 2.

38 *See* March 19,1998 Press Release, MS 39; March 19,1998 Offering Mem. at 8, MS 166.

39 *See* March 19, 1998 Press Release, MS 39.

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40 *See* April 3, 1998 Press Release, MS 58.

41 *See* May 11, 1998 Press Release, MS 115.

42 The restated first quarter amounts appear in Sunbeam's amended quarterly report on Form 10-Q/A filed with the SEC on November 25, 1998. *See* MS 282.

43 *See* Statement on Auditing Standards 76, *Amendment to Statement on Auditing Standards No. 72, Letters for Underwriters and Certain Other Requesting Parties,* issued in September 1995 ("SAS 76"), and Statement on Auditing Standards 86, *Amendment to Statement on Auditing Standards No. 72, Letters for Underwriters and Certain Other Requesting Parties* ("SAS 86"), issued in March 1998; *see also infra* note 61. SAS 86 dealt principally with comfort letter comments on Management's Discussion and Analysis. SAS 86 is unrelated to the matters at issue in this report.

44 *See* Rule 201, *General Standards,* and Rule 202, *Compliance with Standards,* of the AICPA Code of Professional Conduct, which require an AICPA member who performs an audit of financial statements to comply with standards promulgated by the Auditing Standards Board. The auditor should have sufficient knowledge of the SASs to identify those that are applicable and should be prepared to justify departure from the SASs.

45 In 2003, pursuant to the Sarbanes-Oxley Act of 2002, the Public Company Accounting Oversight Board assumed the responsibility for setting auditing and related standards to be used in audits of public companies and initially adopted GAAS as its interim standards. The ASB continues to establish standards for the audits of non-issues.

46 *See* Securities Act (15 USC § 77a *et seq.),* Section 11.b.3.

47 *See* Securities Act, Section 11.a

48 *See* Securities Act, Section 11.b.3(A) and (C).

49 Underwriters and their counsel generally include similarly worded indications of reliance on auditors in exempt offerings such as Rule 144A transactions. However, the auditors are not referred to as "experts" because the transaction is not a Securities Act offering, and the notion of liability relief for "expertized" data is unique to Section 11. *See, e.g.,* March 19, 1998 Offering Mem. at 71, MS 166.

50 The first authoritative guidance for accountants regarding comfort letters was Statement on Auditing Procedure No. 35, *Letters for Underwriters* ("SAP 35"), issued in November 1965 by the AICPA's Committee on Auditing Procedure ("CAP"). The CAP was the predecessor of the ASB, whose first pronouncement in 1972 was the codification of the 54 previously issued SAPs as Statement on Auditing Standards No.1. SAP 35 noted that there were sometimes differences of opinion as to what constitutes an "adverse change" and that some accountants looked primarily to absolute relationships between amounts in current and prior corresponding periods, while others thought it necessary to investigate the reasons for apparently adverse changes. SAP 35 did not resolve this issue, but advised that whichever approach was used, the client should consider disclosure.

51 *See* Statement on Auditing Procedure No. 48, *Letters for Underwrite,* issued November 1971, which superseded SAP 35.

52 SAS 72 states that, in most cases, these procedures will be limited to the reading of the minutes and the inquiries of company officials (AU § 634.45).

53 *See supra* note 31.

54 *As* a result of the knowledge of the company's internal control structure obtained by having audited the company's financial statements, the auditor can assess whether management has sufficient information to support positive representations as to the status of financial statement items at the letter's cut-off date. For example, a company may have "flash reports" or other condensed reporting techniques that may provide management with sufficient confidence to make the representations.

55 See AU § 634.45 n.31. SAS 72 indicates that these answers "generally" should be supported by written representations by company officials. However, many auditors insist that the responses be supported by written representations (rather than document the results of oral discussions). Moreover, in Securities Act filings auditors are required to obtain written representations from officers about whether any subsequent events have occurred that may have a material effect on the audited financial statements (AU § 711.10), and frequently the two sets of representations are included in the same letter. Many auditors follow the requirements of AU § 711, *Filings Under Federal Securities Statutes,* in exempt transactions as well as Securities Act filings. For example, the Sunbeam letters to Andersen include both sets of representations.

56 *See* AU § 333.10, *Management Representations.*

57 See March 16 Sunbeam Representation Letter at 3, CPH 120; March 23 Sunbeam Representation Letter at CD 3, CPH 124.

58 *See supra* note 27.

59 *See* 17 CFR Part 240, General Rules and Regulations promulgated under the Securities Exchange Act of 1934, Rule *10b-5, Employment of Manipulative and Deceptive Devices.*

60 Form S-4 is used to register securities with the SEC in connection with business combinations and exchange offers, and may be used as the proxy/information statement for the transaction.

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61 *See* SAS 76, *Amendment to Statement on Auditing Standards No. 72, Letters for Underwriters and Certain Other Requesting Parties,* issued in September 1995. SAS 76 provided guidance on the form of report that could be issued to a qualified requesting party (including a buyer and seller in an acquisition) who could not furnish the representations required by SAS 72 regarding knowledge of the Securities Act due diligence process and performance of a review substantially consistent with that process. A "SAS 76" letter covers the same matters as a "standard" comfort letter; however, the accountant may not express negative assurance as to absence of changes in certain items of financial position and operations in the "change period" as in a "standard" letter. Rather, the accountant reports on the same information as the results of management inquiries. In a "standard" letter the accountant would state that "nothing came to our attention that there had been a decline in sales or earnings ...." However, in a "SAS 76" letter, the accountant would indicate that *officials of the company* stated that "there had been no decline in sales or earnings ...." In the codified AU § 634, the SAS 76 report example is Example Q.

62 *See* SAS 75, *Engagements to Apply Agreed-Upon Procedures to Specified Elements, Account, or Items of a Financial Statement,* issued in September 1995 ("SAS 75"), superseding a similar standard issued in 1981. In 2000, the Auditing Standards Board withdrew SAS 75 in order to consolidate the guidance applicable to agreed-upon procedures engagements in what are called the "attestation" standards applicable to a variety of engagements to report on financial assertions other than financial statements. (SAS 75 was consolidated into Section 201, *Agreed-Upon Procedures Engagements,* of the AICPA's Codification of Statements on Standards for Attestation Engagements.) Unlike SAS 72 and 76, SAS 75 did not require that an accountant have an "audit base" of knowledge of an entity's control structure to perform agreed-upon procedures.

63 *See* May 8,2003 Complaint ¶ 39.

64 *See* Sunbeam 10-K at 14, MS 12.

65 I have been advised by counsel to Morgan Stanley that, on February 23, 1998, Morgan Stanley, Sunbeam, and CPH management met to discuss the transaction, and that Jerry Levin, then chief executive officer of Coleman, made notations on materials that were used at the meeting indicating he was informed that Sunbeam's January and February sales were "slow." *See* Sunbeam: Long Range Strategic Plan at MF 00016, MS 84.

66 Dec. 2,2004 Levin Dep. at 10.

67 *See* March 19, 1998 Press Release, MS 39.

68 It s important to distinguish between the actual Andersen letters to Morgan Stanley and the information contained in those letters. As indicated throughout this report, it is my belief that CPH could have obtained the exact same *information* in a variety of ways. The Andersen letters were appropriately addressed to and, as required by AU § 634.61, restricted to the use of Morgan Stanley. Thus, Sunbeam or Morgan Stanley might have refrained from giving to CPH copies of the letters to Morgan Stanley. Because CPH was entitled to access to the same information, however, Sunbeam or Morgan Stanley might well just have given CPH copies of the Andersen letters as a matter of convenience. (As a matter of fact, and as described below in this section, Sunbeam agreed to later provide to CPH with a signed counterpart of an auditor's restricted comfort letter to the underwriter under the registration rights agreement with CPH. *See* March 29, 1998 Registration Rights Agreement § 2.4(12), MS 278.) If a copy of the letters to Morgan Stanley were not provided to CPH, and as explained in this section of the report, CPH would then simply ask that Andersen issue the same letter addressed to CPH either in addition to or instead of Morgan Stanley. Depending on whether CPH could furnish due diligence representations, Andersen would have issued either a "standard" comfort letter or a "SAS 76" comfort letter, each of which would have had the same information content *See supra* note 61.

69 *See Nov.* 19,2004 Gittis Dep. at 54:24-56:25, 112:1-5; June 25,2004 Schwartz Dep. at 161:2-9, 195:23-196:8.

70 *See* Gittis Dep. at 18:11-23; Nov. 17,2004 Perelman Dep. at 49:15-20.

71 The offering memorandum stated that information in the document with respect to Coleman and the other companies to be acquired had been derived from their SEC filings "or from information supplied by them for inclusion herein." *See* March 19,1998 Offering Mem. at 3, MS 166.

72 *See id.* at F-53 to F-54.

73 *See* March 10, 1998 Memorandum, CPH 302.

74 *See* March 10, 1998 Fax, MS 56.

75 *See id* at 3-4.

76 *See* March 20 E&Y Comfort Letter, MS 243; March 25 E&Y Comfort Letter, MS 0000462-464.

77 *See supra* note 29.

78 Feb. 27,1998 Merger Agreement § 6.7, MS 93.

79 March 20 E&Y Comfort Letter at 2, MS 243 (emphasis added); March 25 E&Y Comfort Letter at 2, MS 0000463. The same language was included in the March 25 E&Y Comfort Letter, with the only change being the letter cut-off date (March 25, 1998 vs. March 18, 1998).

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80 *See supra* note 55.

81 As indicated previously, Morgan Stanley conditioned its initial purchase of the debentures on the receipt of comfort letters from the auditors of Sunbeam and each of the three companies Sunbeam would acquire (*See* March 19,1998 Purchase Agreement at 10, MS 242). CPH was not a party to the purchase agreement between Morgan Stanley and Sunbeam, and the agreement did not provide for the issuance of comfort letters to CPH or any other entities not party to the agreement

82 *See* March 29,1998 Registration Rights Agreement § 2.4(12), MS 278.

83 *See* Company Merger Agreement § 73, MS 117.

84 *See supra* note 68

85 *See* AU § 634.05.

86 AU § 634.06-.07 call for written representations by the requesting party that it is knowledgeable of the C Securities Act due diligence process and has performed a review substantially consistent with that process.

87 As to the required due diligence representations to receive a "standard" comfort letter, the comfort letter from E&Y was addressed to both Morgan Stanley and CLN Holdings, Inc. E&Y stated that their letter was furnishced in reliance on the required due diligence representations. See March 20 E&Y Comfort Letter at 1, MS 243.

88 *See supra* note 61.

89 *See* Merger Agreement § 6.7, MS 93.

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

CASE NO: CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MOTION FOR LEAVE TO TAKE DEPOSITION

Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") respectfully requests that this Court enter an order permitting Morgan Stanley to take the deposition of a representative designated by Coleman (Parent) Holdings, Inc. who is competent to testify on any steps that may have been taken by Ernst & Young LLP (former auditors of The Coleman Company ("Coleman")) relating to due diligence efforts on behalf of CPH in connection with Sunbeam Corporation's ("Sunbeam") acquisition of The Coleman Company ("Coleman"), including a review of Sunbeam's audit work papers.

In support of this Motion, Morgan Stanley states as follows:

1. On December 2, 2004, Morgan Stanley learned, for the first time, that at some point in early 1998, E&Y may have conducted due diligence on behalf of Coleman by reviewing Sunbeam's financial records. *See* Dec. 2, 2004 Levin Dep. at 26-27. Specifically, Coleman's former Chief Executive Officer, Jerry Levin, testified that he believes that E&Y conducted due diligence with respect to Sunbeam's financial statements. *See id.*

("Coleman"), including any review of prior period audit work papers prepared by Arthur Andersen LLP relating to Sunbeam.

16div-009062

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 8th day of December, 2004.

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Facsimile: (202) 326-7999

By: _____
Mark C. Hansen, *admitted pro hac vice*
James M. Webster, *admitted pro hac vice*
Rebecca A. Beynon, *admitted pro hac vice*

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EXHIBIT A

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December 6, 2004

Via Facsimile and U.S. Mail

Michael Brody, Esq.
Jenner & Block, L.L.C.
One IBM Plaza
Chicago, IL 60611-7603

Re: Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co. Incorporated, Case No. CA 03-5045 AI

Dear Mike:

In the deposition of Jerry Levin conducted on December 2, 2004, Mr. Levin testified that he recalled that Ernst & Young, LLP ("E&Y") had undertaken due diligence efforts on behalf of Coleman (Parent) Holdings, Inc. ("CPH") in connection with Sunbeam Corporation's ("Sunbeam") acquisition of The Coleman Company ("Coleman"), including a review of Sunbeam's audit work papers.

Prior to Mr. Levin's reference, Morgan Stanley was unaware of the possibility that E&Y had participated in any aspect of Coleman's due diligence efforts, an issue that is plainly central to the issues in dispute in this matter. Morgan Stanley is entitled to discovery on whether and the extent to which E&Y assisted in due diligence efforts relating to Sunbeam's acquisition of Coleman.

Accordingly, pursuant to Fla. R. Civ. P. 1.310(b)(6), Morgan Stanley requests that CPH make available a witness competent to address any due diligence efforts undertaken by E&Y on behalf of CPH or Coleman in connection with Sunbeam's

acquisition of Coleman. We also ask that CPH consent to the deposition of an appropriate E&Y representative on this topic. Alternatively, if CPH wishes to stipulate that E&Y did not undertake any due diligence on behalf of CPH or Coleman in connection with Sunbeam's acquisition of Coleman, including any review of prior period work papers prepared by Arthur Andersen LLP, no deposition on this topic would be necessary.

Please let me know at your earliest convenience, and no later than Tuesday, December 7, 2004, of your client's position on this matter.

Very truly yours,

Rebecca A. Beynon

cc: Lawrence P. Bemis, Esq.
Joseph Ianno, Esq.

****
*** MULTI TX/RX REPORT ***
****

TX/RX NO	1618	
INCOMPLETE TX/RX		
TRANSACTION OK	(1)	79340412315616845816
	(2)	79340412313128407671
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ERROR		

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	Joseph Ianno, Jr., Esq.		**561-659-7368**
	Thomas Clare, Esq.		**202-879-5200**
FROM:	Rebecca Beynon	**CLIENT NO.:**	04123
PHONE:	202-326-7934		
DATE:	December 8, 2004		
MESSAGE:			

Attached please find Motion for Leave to Take Deposition (re: CPH representative). Original will follow via overnight mail.

Thank you.

CARLTON FIELDS, P.A.

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FAX COVER SHEET

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Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 6

Message:

Coleman v. Morgan Stanley & Co., Inc.

To follow please find a copy of Morgan Stanley's Motion to Compel Answers to Fifth Set of Interrogatories.

☐ ***Original to follow Via Regular Mail*** ☐ ***Original will Not be Sent*** ☐ ***Original will follow via Overnight Courier***

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IF THERE ARE ANY PROBLEMS OR COMPLICATIONS, PLEASE NOTIFY US IMMEDIATELY AT:
(561) 659-7070

TELECOPIER OPERATOR: _____

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INC.,

Defendant.
_____/

MORGAN STANLEY & CO. INC.'S MOTION TO COMPEL ANSWERS TO FIFTH SET OF INTERROGATORIES

Defendant, Morgan Stanley & Co. Inc. ("Morgan Stanley"), by its attorneys, pursuant to Fla. R. Civ. P. 1.340 and 1.380, respectfully requests that the Court enter an order compelling Coleman (Parent) Holdings, Inc. ("CPH") to identify the "one or more CPH and/or Coleman representatives [who] reached out to and spoke with one or more Sunbeam and/or Morgan Stanley employees concerning" Sunbeam's March 19, 1998 Press Release. In support of this Motion, Morgan Stanley states as follows:

1. On October 25, 2004, Morgan Stanley served its Fifth Set of Interrogatories to Plaintiff. Interrogatory No. 2 of the Fifth Set of Interrogatories sought the following:

> Identify all communications between Coleman, CPH, or Mafco (or any of their attorneys or financial advisors) and Sunbeam, Arthur Andersen, Morgan Stanley, or Skadden Arps between March 19, 1998 and March 30, 1998 concerning Sunbeam's sales during the first quarter of 1998, Sunbeam's March 19, 1998 Press Release, or any of the information contained in Sunbeam's March 19, 1998 Press Release.

2. On November 24, 2004, CPH served its Responses and Objections to Morgan Stanley & Co. Inc.'s Fifth Set of Interrogatories. Its answer to Interrogatory No. 2 states, in pertinent part, as follows:

> Further, after the March 19, 1998 press release was issued, one or more CPH and/or Coleman representatives reached out to and spoke with one or more Sunbeam and/or Morgan Stanley employees concerning the subject matter of the interrogatory. Sunbeam and/or Morgan Stanley assured CPH and/or Coleman that Sunbeam would make the sales numbers it previously had projected for the first quarter of 1998 and the full year.

3. CPH failed to identify any "representatives" who "reached out to and spoke with" any Sunbeam and/or Morgan Stanley employees about the March 19, 1998 Press Release.

4. Clearly, the identity of those representatives who are referenced in CPH's response to Interrogatory Number 2 is relevant and necessary.

5. Morgan Stanley has attempted to obtain this information through deposition testimony of numerous individuals affiliated with CPH but has not obtained the information responsive to this Interrogatory. Each CPH and Coleman witness deposed has denied having personally been involved in the event that CPH alleges occurred.

6. CPH filed its case in May of 2003 and the parties have engaged in extensive discovery. Fact discovery has now closed and CPH cannot vaguely assert that one or more "representatives" contacted Sunbeam and/or Morgan Stanley without knowledge as to which of its own representatives was involved.

7. Morgan Stanley is entitled to know ***which*** representative(s) of CPH "reached out to and spoke with" Sunbeam and/or Morgan Stanley employees, and Morgan Stanley is entitled to know ***which*** employees from Sunbeam and/or Morgan Stanley the representative(s) "reached

out to and spoke with." In addition, Morgan Stanley is entitled to know whether any representative of Coleman, CPH, or Mafco (or any of their attorneys or financial advisors) spoke to any of the other companies listed in the Interrogatory.

8. Morgan Stanley reserves the right to seek additional discovery from those "representatives" to determine the content and extent of the conversations between any "representatives" and employees referred to in CPH's answer to Interrogatory No. 2.

WHEREFORE, Morgan Stanley requests the Court to enter an order compelling CPH to identify the "CPH and/or Coleman representatives [who] reached out to and spoke with one or more Sunbeam and/or Morgan Stanley employees" concerning the subject matter of the interrogatory, permit Morgan Stanley to depose these individuals and award such other and further relief as is just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 8th day of December, 2004.

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BY: Joseph Ianno
Joseph Ianno, Jr.
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Chicago
Dallas
Washington, DC

Date: December 8, 2004

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		Voice:	(202) 879-5993
	Joseph Ianno, Jr., Esq.	Fax:	(561) 659-7368
		Voice:	(561) 659-7070
	John Scarola, Esq.	Fax:	(561) 684-5816 (before 5 PM)
		Voice:	(561) 686-6350, Ext. 140
	Mark C. Hansen, Esq.	Fax:	(202) 326-7999
		Voice:	(202) 326-7900

From: Michael T. Brody
312 923-2711

Employee Number: Client Number: 41198-10003

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JENNER&BLOCK

December 8, 2004

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Michael T. Brody
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By Telecopy

Thomas A. Clare, Esq.
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Tom:

I write to follow up on the issues we raised on November 23, 2004 and again on November 30, 2004 concerning the November 22, 2004 deposition of Mr. Petrick.

You have not responded to any of the issues raised on my letters, except to provide the loan history information you promised to provide at Mr. Petrick's deposition and you provided that only after we after we re-noticed the Rule 1.310 deposition on that topic. Please provide the information we requested by Monday, December 13, 2004. Otherwise, we will proceed with a further Rule 1.310 deposition to obtain answers to the questions on which Mr. Petrick was unable to testify. I enclose an amended deposition notice for that deposition.

With regard to the loan history Rule 1.310 deposition, we will not proceed with that deposition at this time in light of the materials you have provided.

Very truly yours,

Michael T. Brody

MTB:cjg
Enclosures
cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

AMENDED NOTICE OF TAKING VIDEOTAPED DEPOSITION

To:

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following party pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co., Inc. on the topics identified on Exhibit A.	December 17, 2004

The deposition will be conducted at Esquire Deposition Services, 216 East 45th Street, New York, NY 10017 and will begin at 9:30 a.m. The depositions will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The depositions will be taken before a person authorized to administer oaths and will continue day to day until completed.

Please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List this 8th day of December 2004.

Dated: December 8, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART
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Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
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West Palm Beach, FL 33401

Exhibit A

CORPORATE DEPOSITION TOPICS

1. The value of any interest of MS&Co., MSSF, or any affiliate of MS&Co. in American Household, Inc. on the following dates: (a) February 6, 2001; and (b) September 20, 2004.

2. Any mark-downs or write-offs taken by MS&Co., MSSF, or any affiliate of MS&Co. in connection with any debt owed by Sunbeam Corporation, including without limitation any mark-downs taken prior to April 30, 1999.

CARLTON FIELDS, P.A.

ATTORNEYS AT LAW

ESPERANTÉ
222 LAKEVIEW AVENUE, SUITE 1400
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	Mark/BideauLorie Gleim	(561) 665-7900	(561) 655-6222
	Thomas Clare	(202) 879-5993	(202) 879-5200
	Rebecca Beynon/Mark Hansen	(202) 326-7900	(202) 326-7999
From:	Joyce Dillard, CLA	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 16

Message:

Coleman v. Morgan Stanley & Co., Inc.

To follow please find a copy of Morgan Stanley's Motion to Determine Sufficiency of Service of Process on Jerry Levin and Notice of Hearing for December 16, 2004.

☐ ***Original to follow Via Regular Mail*** ☐ ***Original will Not be Sent*** ☐ ***Original will follow via Overnight Courier***

****

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****

IF THERE ARE ANY PROBLEMS OR COMPLICATIONS, PLEASE NOTIFY US IMMEDIATELY AT:
(561) 659-7070

TELECOPIER OPERATOR: _____

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a hearing has been set in the above-styled case as follows:

DATE:	December 16, 2004
TIME:	8:45 a.m.
PLACE:	Palm Beach County Courthouse, Courtroom 11A 205 North Dixie Highway West Palm Beach, Florida 33401
BEFORE:	Judge Elizabeth T. Maass
CONCERNING:	Morgan Stanley's Motion to Determine Sufficiency of Service of Process on Jerry Levin

KINDLY GOVERN YOURSELVES ACCORDINGLY.

The undersigned counsel hereby certifies that a good faith attempt to resolve the issues contained in the foregoing motions or matters will be made with opposing counsel prior to hearing on these matters on the Court's Motion Calendar.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no costs to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-2431 within two (2) working days of your receipt of this notice; if you are hearing or voice impaired, call 1-800-955-8771.

WPB#571076.25

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 9th day of December, 2004.

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BY: Sarah Clark
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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MOTION TO DETERMINE
SUFFICIENCY OF SERVICE OF PROCESS ON JERRY LEVIN

Defendant, Morgan Stanley & Co,. Incorporated ("Morgan Stanley"), requests that this Court determine sufficiency of service of process on Jerry Levin. In support of this Motion, Morgan Stanley states as follows:

1. Pursuant to a Motion for Protective Order filed by non-party Jerry Levin, this Court entered an Order requiring Mr. Levin to appear for deposition on December 1 and 2, 2004 in New York City and, if necessary, on December 3, 2004 in Florida. Mr. Levin's deposition was taken in New York as an accommodation to his schedule. Since Mr. Levin has an office and a home in Florida, Morgan Stanley was entitled to have Mr. Levin appear for his deposition in Florida.

2. Because Plaintiff did not ask any questions of Mr. Levin, the deposition was concluded on December 2, 2004. Consequently, Mr. Levin's deposition did not continue in Florida.

3. During the course of Mr. Levin's deposition, counsel for Morgan Stanley provided Mr. Levin and his counsel with a subpoena for Mr. Levin to appear for trial in this action. No objection was made at that time, and counsel accepted the subpoena.

4. On December 8, 2004, counsel for Mr. Levin returned the trial subpoena stating, for the first time, that he was unauthorized to accept service. A copy of counsel's letter with enclosures is attached hereto as Exhibit "A".

5. Mr. Levin should not be permitted to evade service of process because counsel and this Court accommodated his scheduling commitments. Had Morgan Stanley insisted that Mr. Levin appear for his deposition in Florida, Mr. Levin could have easily been served with the trial subpoena.

WHEREFORE, Morgan Stanley requests that this Court enter an Order determining that Mr. Levin was properly served and requiring him to appear for trial in this action as necessary and award such other and further relief as is just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 9th day of December, 2004.

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BY: Sarah Clark
Joseph Ianno, Jr. 718947
Florida Bar No. 655351

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Greenberg Traurig

MARK F. BIDEAU, ESQ.
WEST PALM BEACH OFFICE
DIRECT DIAL: (561) 650-7918
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December 7, 2004

VIA FEDEX

Larry Bemis, Esq.
Kirkland & Ellis, LLP
655 15th Street, N.W.
Washington, DC 20005

Re: Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Company, Inc.

Dear Larry:

I am enclosing herewith a copy of the Subpoena addressed to Jerry Levin and the Witness Fee check that your associate gave to me at Mr. Levin's deposition. As I discussed with her at that time, I did not have authority to accept the Subpoena on behalf of Mr. Levin. Unfortunately, I still have not obtained the authority to accept a trial subpoena on Mr. Levin's behalf and I did not frankly want to lose these documents by holding them any longer. I am therefore returning them to you as requested.

Very truly yours,

Mark F. Bideau

MFB/dt
Enclosure

WPB-FS1\BIDEAUM\513882v01\10/4/04\16560.071300

EXHIBIT "A"

ALBANY
AMSTERDAM
ATLANTA
BOCA RATON
BOSTON
CHICAGO
DALLAS
DENVER
FORT LAUDERDALE
LOS ANGELES
MIAMI
NEW JERSEY
NEW YORK
ORANGE COUNTY, CA
ORLANDO
PHILADELPHIA
PHOENIX
SILICON VALLEY
TALLAHASSEE
TYSONS CORNER
WASHINGTON, D.C.
WEST PALM BEACH
WILMINGTON
ZURICH

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

CASE NO: CA 03-5045 AI

SUBPOENA FOR TRIAL

THE STATE OF FLORIDA

TO: JERRY W. LEVIN, Chief Executive Offier
American Household, Inc. f/k/a Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, Florida 33431

YOU ARE COMMANDED to appear before The Honorable Elizabeth Maass, Judge of the Circuit Court, at the Palm Beach County Courthouse, Courtroom 11A, 205 North Dixie Highway, West Palm Beach, Florida on February 22, 2005* at 9:30 a.m., to testify in this action. If you fail to appear, you may be in contempt of court.

Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.
Case No: CA 03-5045 AI
Subpoena for Trial

You are subpoenaed to appear by the following attorneys, and unless excused form this subpoena by these attorneys or the Court, you shall respond to this Subpoena as directed.

Dated: November 30th 2004

BY: _____
Joseph Ianno, Jr.
For the Court

Joseph Ianno, Jr.,
Florida Bar No: 655351
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368

Lawrence P. Bemis
Florida Bar No: 618349
Thomas A. Clare
KIRKLAND & ELLIS LLP
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Washington, D.C. 20005
Telephone: (202) 879-5000

Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7999

Counsel for Defendant
Morgan Stanley & Co. Incorporated

***BEFORE YOU APPEAR**

PLEASE CALL JOYCE DILLARD, CLA AT (561) 659-7070 TO CONFIRM THE EXACT TIME AND DATE YOU WILL BE CALLED TO TESTIFY

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

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Morgan Stanley & Co. Incorporated

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COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

CASE NO: CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

SUBPOENA FOR TRIAL

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For the Court

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1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7999

Counsel for Defendant
Morgan Stanley & Co. Incorporated

***BEFORE YOU APPEAR**

PLEASE CALL JOYCE DILLARD, CLA AT (561) 659-7070 TO CONFIRM THE EXACT TIME AND DATE YOU WILL BE CALLED TO TESTIFY

CARLTON FIELDS
ATTORNEYS AT LAW

P.O. Box 150
West Palm Beach, Florida 33402-0150
Ph. 561.659.7070

11275

NUMBER
11275

PAY: TEN AND 00/100 U.S. DOLLARS

DATE: 11/30/04

AMOUNT: $10.00

CARLTON FIELDS, P.A.
General Account

BY _____

NON VALID AFTER 180 DAYS

AUTHORIZED REPRESENTATIVE(S)

TO THE ORDER OF
JERRY W. LEVIN
AMERICAN HOUSEHOLD, INS. F/K/A SUNBEAM CORP.
2381 EXECUTIVE CENTER DR.
BOCA RATON, FL 33431

⑈011275⑈ ⑆067006432⑆ 216222859816 2⑈

16div-009096

CARLTON FIELDS, P.A.

ATTORNEYS AT LAW

ESPERANTÉ
222 LAKEVIEW AVENUE, SUITE 1400
WEST PALM BEACH, FLORIDA 33401-6149

MAILING ADDRESS
P.O. BOX 150, WEST PALM BEACH, FL 33402-0150
TEL (561) 659-7070 FAX (561) 659-7368

FAX COVER SHEET

		Phone Number	Fax Number
Date:	December 9, 2004		
To:	Jack Scarola	(561) 686-6300	(561) 684-5816
	Jerold Solovy/Michael Brody	(312) 222-9350	(312) 840-7711
	Lorie Gleim	(561) 665-7900	(561) 655-6222
	Thomas Clare	(202) 879-5993	(202) 879-5200
	Rebecca Beynon/Mark Hansen	(202) 326-7900	(202) 326-7999
From:	Joyce Dillard, CLA	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 4

Message:

Coleman v. Morgan Stanley & Co., Inc.

To follow please find a copy of Morgan Stanley's Notice of Hearing setting its Motion to Compel Answers to Fifth Set of Interrogatories for December 15, 2004.

☐ ***Original to follow Via Regular Mail*** ☐ ***Original will Not be Sent*** ☑ ***Original will follow via Overnight Courier***

****

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (if long distance, please call collect) and return the original message to us at the above address via the U.S. Postal Service. Thank you.

****

IF THERE ARE ANY PROBLEMS OR COMPLICATIONS, PLEASE NOTIFY US IMMEDIATELY AT:
(561) 659-7070

TELECOPIER OPERATOR: _____

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a hearing has been set in the above-styled case as follows:

DATE:	December 15, 2004
TIME:	8:45 a.m.
PLACE:	Palm Beach County Courthouse, Courtroom 11A 205 North Dixie Highway West Palm Beach, Florida 33401
BEFORE:	Judge Elizabeth T. Maass
CONCERNING:	Morgan Stanley's Motion to Compel Answers to Fifth Set of Interrogatories

KINDLY GOVERN YOURSELVES ACCORDINGLY.

The undersigned counsel hereby certifies that a good faith attempt to resolve the issues contained in the foregoing motions or matters will be made with opposing counsel prior to hearing on these matters on the Court's Motion Calendar.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no costs to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-2431 within two (2) working days of your receipt of this notice; if you are hearing or voice impaired, call 1-800-955-8771.

WPB#571076.24

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 9th day of December, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
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Mark C. Hansen
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Telephone: (561) 659-7070
Facsimile: (561) 659-7368
E-mail: jianno@carltonfields.com

BY: Sarah Clark
Joseph Ianno, Jr.
Florida Bar No. 655351 718947

Counsel for Morgan Stanley & Co. Incorporated

WPB#571076.24

SERVICE LIST

Jack Scarola
SEARCY, DENNEY, SCAROLA, BARNHARDT & SHIPLEY, P.A.
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West Palm Beach, FL 33409

Jerold S. Solovy
Michael Brody
JENNER & BLOCK, LLC
One IBM Plaza, Suite 400
Chicago, IL 60611

Lorie M. Gleim
GREENBERG TRAURIG, P.A.
777 South Flagler Drive
Suite 300 East
West Palm Beach, FL 33401

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

_____/

MORGAN STANLEY & CO. INCORPORATED'S MOTION FOR SUMMARY JUDGMENT

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar # 618349)
Christopher Landau
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
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222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368

Counsel for:
Defendant Morgan Stanley & Co. Incorporated

Dated: December 10, 2004

Defendant Morgan Stanley & Co. Incorporated respectfully moves for summary judgment on all four claims advanced by plaintiff Coleman (Parent) Holdings Inc. ("CPH") in the Complaint filed on May 8, 2003. In support of this motion, Morgan Stanley submits its Proposed Findings of Fact and Conclusions of Law, a Memorandum of Law, and appendices of supporting evidence, and states as follows:

1. This Court has already decided that New York law governs CPH's claim for negligent misrepresentation. *See* Aug. 11, 2004 Order at 11. Under settled New York law, a plaintiff cannot establish liability for negligent misrepresentation without establishing, among other things, that the challenged information was imparted in the context of a "special relationship of confidence or trust" with the defendant. There is no record evidence that Morgan Stanley imparted the challenged information in the context of a "special relationship of confidence or trust" with CPH, which sat across the negotiating table from CPH as the financial advisor to CPH's counterparty Sunbeam. Accordingly, Morgan Stanley is entitled to summary judgment on this claim.

2. This Court has already decided that New York law governs CPH's claim for fraudulent misrepresentation. *See* Aug. 11, 2004 Order at 11. Under settled New York law, a sophisticated plaintiff cannot establish liability for fraudulent misrepresentation with respect to the purchase of securities without establishing, among other things, that it conducted its own due diligence into the company whose securities were being purchased. Here, it is undisputed that CPH is a sophisticated plaintiff, and there is no record evidence that CPH availed itself of its contractual right to inspect Sunbeam's books and records. To the contrary, the undisputed evidence shows that CPH was so eager to close the deal to unload the debt-ridden Coleman on

Sunbeam that it conducted ***no*** investigation into Sunbeam despite express warnings. Accordingly, Morgan Stanley is entitled to summary judgment on this claim.

3. This Court has not decided whether New York or Florida law governs CPH's claim for aiding and abetting fraud. *See* Aug. 11, 2004 Order at 12. Under either New York or Florida law, however, a plaintiff cannot establish liability for aiding and abetting fraud without establishing, among other things, that the defendant (1) had actual knowledge of the underlying fraud, and (2) provided assistance in the commission of that fraud. Here, there is no record evidence that Morgan Stanley had actual knowledge of any underlying alleged fraud by Sunbeam (which involved Sunbeam's accounting), or provided substantial assistance in the commission of that fraud. To the contrary, Morgan Stanley itself was a victim of that fraud. Morgan Stanley loaned Sunbeam $680 million, which later became the largest claim in Sunbeam's bankruptcy. Accordingly, Morgan Stanley is entitled to summary judgment on this claim.

4. This Court has not decided whether New York or Florida law governs CPH's claim for conspiracy to defraud. *See* Aug. 11, 2004 Order at 12. Under either New York or Florida law, however, a plaintiff cannot establish liability for conspiracy to defraud without establishing, among other things, that the defendant actually entered into an agreement with another to commit fraud. Here, there is no record evidence that Morgan Stanley entered into an actual agreement with Sunbeam to commit fraud. Indeed, the record evidence is to the contrary. Accordingly, Morgan Stanley is entitled to summary judgment on this claim.

For the foregoing reasons, explained at greater length in the accompanying Findings of Fact and Conclusions of Law and Memorandum of Law in support of this motion, this Court should grant Morgan Stanley summary judgment on all four claims in the complaint.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 10th day of December, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Christopher Landau
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th St. N.W., Suite 1200
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Telephone: (202) 326-7900
Facsimile: (202) 326-7999

Counsel for:
Defendant Morgan Stanley & Co., Incorporated

CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368
E-mail: jianno@carltonfields.com

BY: _____
Joseph Ianno, Jr.
Florida Bar # 655351

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2139 Palm Beach Lakes Blvd.
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Jerold S. Solovy
Michael Brody
JENNER & BLOCK, LLC
One IBM Plaza, Suite 400
Chicago, IL 60611

2004 WL 4979331 (Fla.Cir.Ct.) (Trial Motion, Memorandum and Affidavit)
Circuit Court of Florida,
Fifteenth Judicial Circuit.
Palm Beach County

COLEMAN (PARENT) HOLDINGS INC., Plaintiff,
v.
MORGAN STANLEY & CO. INCORPORATED, Defendant.

Case No: CA 03-5045 AI.
December 10, 2004.

Morgan Stanley & Co. Incorporated's Motion for Summary Judgment

Thomas D. Yannucci, P.C., Lawrence P. Bemis (FL Bar #618349), Christopher Landau, Thomas A. Clare, Zhonette M. Brown, Kirkland & Ellis LLP, 655 15th St. N.W. Suite 1200, Washington, DC 20005., Telephone: (202) 879-5000, Facsimile: (202) 879-5200.

Mark C. Hansen, James M. Webster, III, Rebecca A. Beynon, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., 1615 M St. N.W., Suite 400, Washington, DC 20036, Telephone: (202) 326-7900, Facsimile: (202) 326-7999.

Joseph Ianno, Jr. (FL Bar #655351), Carlton Fields, P.A., 222 Lakeview Ave., Suite 1400, West Palm Beach, FL 33401, Telephone: (561) 659-7070, Facsimile: (561) 659-7368, Counsel for: Defendant Morgan Stanley & Co. Incorporated.

Defendant Morgan Stanley & Co. Incorporated respectfully moves for summary judgment on all four claims advanced by plaintiff Coleman (Parent) Holdings Inc. ("CPH") in the Complaint filed on May 8, 2003. In support of this motion, Morgan Stanley submits its Proposed Findings of Fact and Conclusions of Law, a Memorandum of Law, and appendices of supporting evidence, and states as follows:

1. This Court has already decided that New York law governs CPH's claim for negligent misrepresentation. *See* Aug. 11, 2004 Order at 11. Under settled New York law, a plaintiff cannot establish liability for negligent misrepresentation without establishing, among other things, that the challenged information was imparted in the context of a "special relationship of confidence or trust" with the defendant. There is no record evidence that Morgan Stanley imparted the challenged information in the context of a "special relationship of confidence or trust" with CPH, which sat across the negotiating table from CPH as the financial advisor to CPH's counterparty Sunbeam. Accordingly, Morgan Stanley is entitled to summary judgment on this claim.

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for aiding and abetting fraud without establishing, among other things, that the defendant (1) had actual knowledge of the underlying fraud, and (2) provided assistance in the commission of that fraud. Here, there is no record evidence that Morgan Stanley had actual knowledge of any underlying alleged fraud by Sunbeam (which involved Sunbeam's accounting), or provided substantial assistance in the commission of that fraud. To the contrary, Morgan Stanley itself was a victim of that fraud. Morgan Stanley loaned Sunbeam $680 million, which later became the largest claim in Sunbeam's bankruptcy. Accordingly, Morgan Stanley is entitled to summary judgment on this claim.

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For the foregoing reasons, explained at greater length in the accompanying Findings of Fact and Conclusions of Law and Memorandum of Law in support of this motion, this Court should grant Morgan Stanley summary judgment on all four claims in the complaint.

End of Document

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

CASE NO. 2003 CA 005045 AI

COLEMAN (PARENT) HOLDINGS, INC.

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

AGREED ORDER ON NON-PARTY SUNBEAM'S MOTION TO REMOVE SEALED DOCUMENTS FROM COURT FILING AND HOLD IN ESCROW

THIS CAUSE having come before the Court on the Motion of Non-Party, Sunbeam Corporation n/k/a American Household, Inc. ("Sunbeam") to Remove Sealed Documents from Court Filing and Hold in Escrow, and the Court having reviewed the Motion, applicable law, and being advised that the parties are in agreement as to the entry of this Order, it is hereby:

ORDERED AND ADJUDGED as follows:

The Motion of American Household, Inc. is GRANTED. The Clerk of this Court is directed to release the documents filed by this Court under seal on October 12, 2004, as reflected in Docket Entry No. 628 into the custody of Greenberg Traurig, P.A. and shall permit either Mark F. Bideau, Esquire or Kelly Craft of Greenberg Traurig to retrieve and take physical custody of the documents filed under Docket Entry 628.

2. Greenberg Traurig, P.A. shall retain custody of the Skadden Arps Report, together with its exhibits in the same form as they are contained within the sealed envelope filed by this Court in Docket Entry No. 628. In the event that this Court orders that the Skadden Report be returned to the Court file, Greenberg Traurig, P.A. shall return the documents to the Court under seal and they shall remain under seal until further Order of this Court. Greenberg Traurig, P.A.

shall maintain these documents until the earlier of: (1) final resolution of this action and the expiration of all potential appellate periods; or (2) written notice by counsel for both parties that Greenberg Traurig is released from the requirements of this Order.

DONE AND ORDERED in Chambers in West Palm Beach, Palm Beach County, Florida on this _____ day of December, 2004.

SIGNED & DATED
DEC 13 2004
JUDGE ELIZABETH T. MAASS

HONORABLE ELIZABETH T. MAASS
CIRCUIT COURT JUDGE

Copies furnished to:

Mark F. Bideau, Esq.
Greenberg Traurig, P.A.
777 South Flagler Drive, Suite 300 East
West Palm Beach, FL 33401

Jack Scarola, Esq.
Searcy Denney Scarola Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33401

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza, Suite 4400
Chicago, IL 60611

Joseph Ianno, Esq.
Carlton Fields
222 Lakeview Avenue, Suite 1400
West Palm Beach, FL 33401

Larry Bemis, Esq.
Kirkland and Ellis
655 15 Street, NW, Suite 1200
Washington, DC 20005

WPB-FS1\522661v01\16560.071300

CARLTON FIELDS, P.A.

ATTORNEYS AT LAW

ESPERANTÉ
222 LAKEVIEW AVENUE, SUITE 1400
WEST PALM BEACH, FLORIDA 33401-6149

MAILING ADDRESS
P.O. BOX 150, WEST PALM BEACH, FL 33402-0150
TEL (561) 659-7070 FAX (561) 659-7368

FAX COVER SHEET

		Phone Number	Fax Number
Date:	December 13, 2004		
To:	Jack Scarola	(561) 686-6300	(561) 684-5816
	Jerold Solovy/Michael Brody	(312) 222-9350	(312) 840-7711
	Thomas Clare	(202) 879-5993	(202) 879-5200
	Rebecca Beynon/Mark Hansen	(202) 326-7900	(202) 326-7999
From:	Joyce Dillard, CLA	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 4

Message:

Coleman v. Morgan Stanley & Co., Inc.

To follow please find a copy of Morgan Stanley's Notice of Selection of Mediator.

☐ ***Original to follow Via Regular Mail*** ☐ ***Original will Not be Sent*** ☐ ***Original will follow via Overnight Courier***

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (if long distance, please call collect) and return the original message to us at the above address via the U.S. Postal Service. Thank you.

IF THERE ARE ANY PROBLEMS OR COMPLICATIONS, PLEASE NOTIFY US IMMEDIATELY AT:
(561) 659-7070

TELECOPIER OPERATOR: _____

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

NOTICE OF SELECTION OF MEDIATOR

Defendant, Morgan Stanley & Co, Incorporated, hereby gives notice that the parties have agreed to the appointment of Jonathan B. Marks as mediator in this case. Mr. Marks is with the firm of Marks ADR, LLC, 4833 Rugby Avenue, Suite 301, Bethesda, MD 20814, Telephone (301) 907-4712, Facsimile (301) 907-4719, and e-mail jmarks@marksadr.com.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to

all counsel of record on the attached service list by facsimile and Federal Express on this 13th day of December, 2004.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE IN OPPOSITION TO MORGAN STANLEY'S MOTION FOR LEAVE TO TAKE DEPOSITION OF CPH REPRESENTATIVE

Morgan Stanley, as an adjunct to its motion for leave to take the deposition of E&Y, also seeks leave to take the deposition of a CPH corporate representative to testify "on any steps that may have been taken by Ernst & Young LLP . . . relating to due diligence efforts on behalf of CPH" in connection with Sunbeam's acquisition of Coleman. For the reasons stated below, which apply equally to Morgan Stanley's motion directed at E&Y, the grounds for Morgan Stanley's motion are baseless.

First, Morgan Stanley seeks to justify its request for a CPH deposition weeks after the discovery cut-off by asserting that "[o]n December 2, 2004, Morgan Stanley learned, for the first time, that at some point in early 1998, E&Y may have conducted due diligence on behalf of Coleman by reviewing Sunbeam's financial records." *See* MS Motion ¶ 1. That assertion, as shown in CPH's response to Morgan Stanley's motion directed at E&Y, is incorrect. Morgan Stanley long has known of E&Y's role in the due diligence process. For example, at the November 3, 2004, deposition of James Maher, Mr. Bemis questioned the witness about E&Y's role in the due diligence process and referred to E&Y as a member of "the group" designated to conduct due diligence. *See* Ex. A at 328:18-329:2. In addition, in the expert report that was

served on December 7, Morgan Stanley's expert details E&Y's supposed involvement in due diligence and cites a number of documents in the process. *See* Ex. B at 28-30.

Second, Morgan Stanley's assertion that CPH failed to identify E&Y as having a role in the underlying events also is baseless. *See* MS Motion ¶ 3. In the very first answer to the very first set of interrogatories served by Morgan Stanley, an answer that CPH served on September 2, 2003, CPH identified E&Y as an entity that "may have discoverable information related to the allegations" in CPH's complaint. *See* Ex. C. Morgan Stanley offers no excuse for its determination to wait more than 16 months after that disclosure before attempting to obtain discovery concerning E&Y.

Third, the discovery Morgan Stanley seeks also is improper because the information is protected by Florida's accountant-client privilege. Specifically, as shown in CPH's response to Morgan Stanley's motion directed at E&Y, Fla. Stat. § 90.5055 protects all communications between an accountant and its client that are not intended to be disclosed to third parties.

Morgan Stanley asserts that CPH has waived the privilege by filing its claims, asserting that "[b]y bringing this suit, CPH made any due diligence efforts it undertook with respect to Sunbeam a matter that is central to this case." *See* MS Motion ¶ 6. But the very case on which Morgan Stanley relies for this proposition squarely rejects Morgan Stanley's assertion that merely bringing a lawsuit waives the privilege (*Choice Restaurant Acquisition Ltd. v. Whitley, Inc.*, 816 So. 2d 1165, 1167 (Fla. 4th DCA 2002), citation omitted):

> "Although it is the rule in Florida that a party who bases a claim on matters which would be privileged, the proof of which will necessitate the introduction of privileged matter into evidence, and then attempts to raise the privilege so as to thwart discovery, may be deemed to have waived that privileged, *see Savino v. Luciano*, 92 So.2d 817, 819 (Fla. 1957), the general and we think controlling rule is that the attorney-client privilege is not 'waived by bringing or defending a suit.' *Burlington Industries v. Exxon Corporation*, 65 F.R.D. 26, 35 (D.Md. 1974). The attorney-client privilege is of course 'designed precisely to enable people to bring and defend lawsuit. Consequently, if the mere bringing of a

> lawsuit waived the privilege, it would have little meaningful existence.' *Connell v. Bernstein-Macaulay, Inc.*, 407 F.Supp. 420, 422 (S.D.N.Y. 1976)."

As *Choice Restaurant* establishes, CPH did not waive the privilege merely by bringing this lawsuit, and none of the claims made by CPH depends on or places in issue any of CPH's communications with E&Y. Thus, contrary to Morgan Stanley's contention, the accountant-client privilege protects the communications that Morgan Stanley seeks to explore.

In sum, Morgan Stanley has no excuse for failing to seek the E&Y-related discovery it now is requesting before the November 24 discovery cut-off. In addition, Morgan Stanley has not shown a real need for this late discovery. Finally, the requested discovery is improper because it would result in disclosure of privileged communications. Morgan Stanley's motion to take the deposition of a CPH corporate representative therefore should be denied.

Dated: December 14, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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

---x

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. Case No. CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendants.

---x

JAMES ROBERT MAHER

New York, New York

Wednesday, November 3, 2004

Reported by: Steven Neil Cohen, RPR

Job No. 166520

EXHIBIT
A

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accounting firm -- did you give Coleman's accounting firm, Ernst & Young, any instructions as to the accounting due diligence they should?
A. No. I am sure Page did. I wouldn't have.
Q. With regard to -- with regard to MacAndrews & Forbes internally now excluding your outside advisers was there any person inside MacAndrews & Forbes who was tasked with doing any form of due diligence?
A. I think Will was doing due diligence working with all of the parties, I believe, Will Nesbitt.
Q. Right. I knew who you were talking about.
To your knowledge did any of the group that you have described as conducting the due diligence, CSFB, Wachtell, Lipton, Mr. Nesbitt and the accounting firm of Ernst & Young, did they during this period of due diligence, February 24 through February 27, did they conduct any interviews of any Sunbeam employees about

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Sunbeam's financial performance in the first quarter of 1998?
A. I don't know.
Q. Again, this same group of people?
A. Other than the interviews that occurred at the meeting that took place at Morgan Stanley on the 23rd, there was a pretty thorough vetting of Sunbeam's performance at that meeting with the management of Sunbeam.
Q. Anything other than the February 23 meeting that you are aware of?
A. No.
Q. Are you aware of any of the -- your due diligence team interviewing Sunbeam middle management during the due diligence period?
A. I believe that Levin and Page, Shapiro made a number of visitis to different locations.
I can't tell you where they went or what they did but I would imagine in the course of that they talked to a number of middle managers.
Q. Recognizing --

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A. At Sunbeam.
Q. You weren't on these trips, correct?
A. No.
Q. As you sit here today while you believe they interviewed certain Sunbeam facilities you don't know such that you could tell the jury that they actually did interview middle management people, is that fair?
A. That's fair.
Q. Did anyone on the MacAndrews & Forbes' due diligence team interview Sunbeam customers, for example, like a Wal-Mart or a Sears or whatever their largest customers were?
A. If that were done that would have been Jerry.
Q. You are not aware of it being done as you sit here?
A. I have a vague recollection that somebody talked to some of their customers.
The big customers of Sunbeam were big customers of Coleman and in some cases Revlon so my recollection is there were

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some discussions. I just don't know.
Q. You didn't conduct any discussions?
A. I didn't, no.
Q. Did anyone on behalf of the MacAndrews & Forbes' due diligence team interview analysts about Sunbeam?
A. I would be surprised. No.
MR. MARKOWSKI: You are focusing on this February 24 to 27 time period?
MR. BEMIS: Yes, sir. I am focusing on the period February 24 through February 27 as set forth in MS 75.
THE WITNESS: The only one I would think that would have been involved, it would be highly unusual to involve an analyst since this was a public company.
BY MR. BEMIS:
Q. Did anyone on the MacAndrews & Forbes' due diligence team interview Arthur Andersen during this period of due diligence, February 24 through the 27th?
A. You are talking about the broad

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

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MORGAN STANLEY & CO., INC.,

Defendant.

CASE NO: CA 03-5045 AI

EXPERT REPORT OF GEORGE P. FRITZ

I. Purpose of This Report

The purpose of this report is to express my opinion as to the several ways by which Coleman (Parent) Holdings Inc. ("CPH") could have obtained, prior to the sale of its interest in The Coleman Company, Inc. ("Coleman") to Sunbeam Corporation ("Sunbeam"), information relating to first quarter 1998 sales and earnings of Sunbeam. In two letters issued on March 19 and March 25, 1998,[1] Arthur Andersen LLP ("Andersen"), then the independent auditors of Sunbeam, informed Morgan Stanley & Co. Incorporated ("Morgan Stanley") that Sunbeam's sales and earnings for specified periods in the first quarter of 1998 had declined from the corresponding periods in 1997. Those two letters are commonly referred to as "comfort letters."

I will address whether CPH should have known (i) that the Andersen comfort letters existed and (ii) that the letters would have addressed declines, if any, in interim sales and earnings. I will discuss whether authoritative auditing standards in the United States would

[1] *See* March 19, 1998 Letter from Arthur Andersen LLP to Morgan Stanley, MS 9 ("March 19 Andersen Comfort Letter"); March 25, 1998 Letter from Arthur Andersen LLP to Morgan Stanley, MS 10 ("March 25 Andersen Comfort Letter").

EXHIBIT B

First, CPH was familiar with the comfort letter process.[69] Senior CPH officials have testified that CPH and its affiliates had participated in the issuance of billions of dollars of debt securities.[70] Accordingly, CPH's auditors would have, in prior transactions, provided underwriters with comfort letters regarding CPH's financial condition.

Second, CPH would have been familiar with the debenture offering, not only because it was integral to Sunbeam's funding the Coleman acquisition, but also because summary descriptions of Coleman's business and three years of Coleman's financial statements were included in the offering memorandum. The Coleman disclosures in the offering memorandum were more than a mere "paste and patch" from Coleman's SEC filings.[71] For example, Coleman's financial statement disclosures were modified from those in its 1997 Annual Report on Form 10-K to add a footnote about the potential technological impact of the year 2000[72] and to make conforming changes to company names. It is my opinion that Sunbeam would not have altered Coleman's public disclosures without Coleman's participation or at least its consent.

Similarly, the report of Ernst & Young LLP ("E&Y"), Coleman's auditors, that was contained in the offering memorandum was modified from E&Y's report in Coleman's 1997 Form 10-K to reflect that it was reporting on less financial statement data in the offering memorandum than they had in the Form 10-K. Again, in my opinion, Sunbeam

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[69] *See* Nov. 19, 2004 Gittis Dep. at 54:24-56:25, 112:1-5; June 25, 2004 Schwartz Dep. at 161:2-9, 195:23-196:8.

[70] *See* Gittis Dep. at 18:11-23; Nov. 17, 2004 Perelman Dep. at 49:15-20.

[71] The offering memorandum stated that information in the document with respect to Coleman and the other companies to be acquired had been derived from their SEC filings "or from information supplied by them for inclusion herein." *See* March 19, 1998 Offering Mem. at 3, MS 166.

[72] *See id.* at F-53 to F-54.

would not have modified the information in E&Y's report without the participation of E&Y.

Third, the materials I have reviewed make clear that both Coleman officials and E&Y actively participated in aspects of Sunbeam's debenture offering. On March 12, 1998, Morgan Stanley held a due diligence meeting about Coleman that included presentations by Coleman's chief executive and finance officers and a plant tour of the Coleman facilities.[73] On the same day, E&Y participated in an accounting due diligence conference call organized by Morgan Stanley.[74] Morgan Stanley requested that E&Y and the auditors of each of the other three companies whose financial statements were to be included in the offering memorandum answer eighteen questions about their clients' accounting and control environments.[75] In my opinion, E&Y could not have done so without the knowledge and consent of CPH/Coleman.

Fourth, E&Y supplied comfort letters to Morgan Stanley.[76] *The letters were also addressed to Coleman's parent, CLN Holdings Inc.*[77] As part of its comfort letter procedures, and as required by SAS 72, E&Y made certain inquiries of management of CLN Holdings Inc. and, as explained in the preceding section, was required pursuant to applicable auditing standards to obtain written representations from management to support the results of the inquiries. In my opinion, as sophisticated business entities that had themselves participated in transactions involving substantial debt offerings and that had prior experience with the comfort letter process, CPH and CLN Holdings Inc. should have

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[73] *See* March 10, 1998 Memorandum, CPH 302.

[74] *See* March 10, 1998 Fax, MS 56.

[75] *See id.* at 3-4.

[76] *See* March 20 E&Y Comfort Letter, MS 243; March 25 E&Y Comfort Letter, MS 0000462-464.

[77] *See supra* note 29.

been aware that Morgan Stanley would obtain a parallel comfort letter from Andersen, the auditor of the entity selling the securities (*i.e.*, Sunbeam).

As a result of this participation of Coleman and its auditors in the debenture offering, it is my opinion that the management of CPH would have or should have known that Andersen would issue comfort letters to Morgan Stanley in connection with Sunbeam's acquisition of Coleman and that those letters could include significant, specific information about recent sales and earnings trends.

2. ***CPH Could Have Requested and Received a Copy of the Representation Letters Supplied by Sunbeam***

Pursuant to its contractual rights of access,[78] CPH could have requested copies of the representation letters supplied by Sunbeam's senior executives to Andersen to support Sunbeam's responses to Andersen's comfort letter inquiries about interim financial statement changes, including any declines in sales and earnings.

CPH would or should have known that Sunbeam's management would be furnishing similar written representations to Andersen that would be (and were) a primary source of any current trend information reported by Andersen in its comfort letter to Morgan Stanley, since Coleman's management at that time was responding to comfort letter inquiries from E&Y. Although I have not been provided a copy of letters from Coleman's management to E&Y regarding the statements made in the E&Y comfort letters, it is clear that Coleman provided such representations to E&Y. The E&Y comfort letters *specifically reference* such representations and state that E&Y made the same standard comfort letter inquiries about subsequent changes at Coleman that Andersen made of Sunbeam: "*We have inquired of Company officials* who have responsibility for financial

[78] Feb. 27, 1998 Merger Agreement § 6.7, MS 93.

Fourth, CPH had contractual rights of access to Sunbeam records, personnel, accountants and other advisers and could have requested information directly from Sunbeam or its representatives, including Andersen.

Fifth, instead of a comfort letter, CPH could have requested, and the authoritative auditing standards would have sanctioned, that an accountant perform specified or "agreed upon" procedures with respect to Sunbeam financial statement accounts directed at determining, *e.g.*, if declines in interim sales and earnings had occurred.

Respectfully submitted

George P. Fritz

December 7, 2004

George P. Fritz

3. CPH objects to the definition of "CPH," "MAFCO," and "You" to the extent it includes CPH's counsel in this litigation. CPH interprets these definitions to exclude Jenner & Block, LLC and Searcy Denney Scarola Barnhart & Shipley P.A.

4. CPH's response to any interrogatory is not intended and should not be construed as an acknowledgment that the requested information is relevant or that any persons identified actually possess knowledge or information relevant to the subject matter of this action.

5. CPH's objections and responses are based on a good-faith investigation. CPH expressly reserves the right to amend and/or modify its objections and responses.

6. CPH responds to Morgan Stanley's interrogatories without waiving the Initial Objections. CPH incorporates, as though fully set forth therein, these Initial Objections into each of the Responses and Objections set forth below.

RESPONSES AND FURTHER OBJECTIONS

INTERROGATORY NO. 1: Identify all individuals who may have discoverable information relating to the allegations in your Complaint and state, with respect to each, the subjects of the information the [sic] possess.

RESPONSE: CPH objects to Interrogatory No. 1 as vague and overbroad to the extent that it requires CPH to identify "all individuals" with "discoverable information" relating to CPH's complaint, including all individuals who have some knowledge of matters that are not or should not be in dispute. CPH further objects to Interrogatory No. 1 as overbroad and unduly burdensome because it requests that CPH state all information in the possession of each person identified. CPH also notes that Defendant's Interrogatory No. 1 constitutes multiple separate interrogatories. Subject to and without waiving this objection or the foregoing Initial Objections, Plaintiff believes that, based upon its investigation to date, the following individuals may have knowledge of the facts alleged in Plaintiff's Complaint:

Steve Thibault
Kenneth Thompson
Christina Tsang
Thomas Williamson

Ernst & Young LLP
Keith Chalfaut
Gerald D. Cohen
Michael J. Fitzpatrick
James M. Havel
Ken Marshall
Michael F. Mullen
Kevin Reilly
Mitchell Rosendorf

First Union
Barbara Adams
M. Walker Duvall
Andrew J. Gamble
Tom Molitor
Kimberly A. Quinn

Franklin Mutual Advisors
Peter Langerman
Michael Price

Global Financial Press
Ken McLure

Goldman Sachs
Elizabeth Fontinelli

Hill & Knowlton
Mauri Hope

Llama Company
Kerry L. Hairston
B. Scott Hollingsworth
Alice L. Walton

MacAndrews & Forbes Holdings Inc.
Lenny Ajzenman
Glenn Dickes
Donald Drapkin
Irwin Engelman
Norman Ginstling

Dated: September 2, 2003

As to Objections:

By: _____

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ATTORNEYS FOR COLEMAN (PARENT) HOLDINGS INC.

I, Steven L. Fasman, being duly sworn, depose and say that I am authorized on behalf of Coleman (Parent) Holdings Inc. and, on behalf of Coleman (Parent) Holdings Inc., I have read the foregoing COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE TO MORGAN STANLEY & CO. INCORPORATED'S FIRST SET OF INTERROGATORIES, and to the best of my knowledge and belief the responses contained therein are true and correct.

STEVEN L. FASMAN

Subscribed and sworn to before me
this 2nd day of September, 2003.

Notary Public

DEBBIE HERNANDEZ
Notary Public, State of New York
No. 01HE5021256
Qualified in Queens County
Certificate Filed in New York County
Commission Expires December 13, 20 2005

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE IN OPPOSITION TO MORGAN STANLEY'S MOTION FOR LEAVE TO TAKE DEPOSITION OF NON-PARTY E&Y

Morgan Stanley seeks leave to take the deposition of E&Y, a third party, on the following two issues: (1) E&Y's valuation of warrants to purchase shares of Sunbeam; and (2) any due diligence efforts undertaken by E&Y on behalf of Coleman or CPH. Morgan Stanley asserts that it should be allowed to take this deposition notwithstanding the passage of the November 24 discovery cut-off because it served a deposition subpoena on E&Y on the warrants issue on November 23 and because Morgan Stanley supposedly did not discover E&Y's role in due diligence until the deposition of Jerry Levin on December 2. Those assertions are wrong and otherwise insufficient to justify the relief Morgan Stanley is seeking.

First, Morgan Stanley has known about the warrants since 1998 and has had ample opportunity to take discovery on their value, including during the Rule 1.310 deposition of Laurence Winoker. Morgan Stanley requested a witness to testify about "the value of the warrants and other consideration" received by CPH, and contrary to Morgan Stanley's assertion, Mr. Winoker did exactly that. Mr. Winoker testified that CPH's management viewed the warrants as "worthless." See Ex. A at 80:7-8. Mr. Winoker also testified that the value of the warrants was recorded on MAFCO's books in December 1998 as $41.7 million and that the value was reduced on the books in 2000 to zero. *Id.* at 70:13-22. That testimony exposes as

incorrect Morgan Stanley's assertion in Paragraph 8 of its motion that Mr. Winoker stated that he was "unqualified to answer questions regarding warrant valuation."

Moreover, Morgan Stanley's request for an E&Y deposition on warrants is untimely because Morgan Stanley served E&Y with a subpoena after the November 24 discovery cutoff, contrary to Morgan Stanley's representation in Paragraph 1 of its motion that "[o]n November 23, 2004, Morgan Stanley served a subpoena deuces tecum upon E&Y . . . in Florida, seeking to obtain basic information regarding the valuation of warrants. . . ." The Return of Service from the process server, Blackhawk Legal Service, states that the subpoena was served on an E&Y partner at his office at One Clearlake Center in West Palm Beach "on the 29th day of November, 2004 at 10:00 am." *See* MS Motion Ex. A. Indeed, the same Return of Service confirms that Morgan Stanley did not even deliver the subpoena to the process server until November 29, five days after the November 24 discovery cut-off. The Return of Service states that the subpoena was "[r]eceived by BLACKHAWK LEGAL SERVICE INC. on the 29th day of November, 2004 at 9:00 am to be served on Ernst & Young L.L.P." *See id.* Thus, Morgan Stanley did not even try to have the subpoena served on E&Y until November 29.

Second, on the issue of E&Y's role in due diligence, Morgan Stanley attempts in Paragraph 2 of its motion to justify its untimely subpoena by asserting that "[o]n December 2, 2004, Morgan Stanley learned, for the first time, that, at some point in early 1998, E&Y may have conducted due diligence on behalf of Coleman." This representation, like the one just discussed, also is incorrect. E&Y was identified as an entity with knowledge of relevant events in CPH's September 2, 2003 response to Morgan Stanley's first set of interrogatories (*see* Ex. B), and in addition, Morgan Stanley long has known of E&Y's role in the due diligence process in particular. To take one example, at the November 3, 2004 deposition of James Maher, Mr.

Bemis questioned the witness about E&Y's role in due diligence and referred to E&Y as a member of "the group" designated to conduct due diligence (Ex. C at 328:18-329:2):

> Q: . . . To your knowledge did any of the group that you have described as conducting the due diligence, CSFB, Wachtell, Lipton, Mr. Nesbitt and the accounting firm of Ernst & Young, did they during this period of due diligence, February 24 through February 27, did they conduct any interviews of any Sunbeam employees about Sunbeam's financial performance in the first quarter of 1998?
>
> A: I don't know.

In addition, in the expert report that it served on December 7, Morgan Stanley's expert details E&Y's involvement in due diligence and cites a number of documents in the process. *See* Ex. D at 28-30. Thus, because Morgan Stanley long has known about E&Y's role in due diligence and already has obtained discovery about that role, Morgan Stanley's subpoena is untimely — as well as unnecessary because the subpoena seeks a deposition about topics that Morgan Stanley already has explored.

Third, even if the discovery requested by Morgan Stanley were timely and necessary, the Florida's accountant-client privilege would bar Morgan Stanley from obtaining it. *See Restatement (Second) of Conflict of Laws* § 127 comment a (1971) ("The local law of the forum governs, among other things, . . . discovery. . ."); *see also Merkle v. Robinson*, 737 So. 2d 540, 544 (Fla. 1999) (the Supreme Court of Florida "has consistently followed the *Restatement* in addressing conflict of law issues"). Specifically under Fla. Stat. § 90.5055, all communications between an accountant and its client that are not intended to be disclosed to third parties are privileged:

> (c) A communication between an accountant and the accountant's client is "confidential" if it is not intended to be disclosed to third persons other than:
>
> 1. Those to whom disclosure is in furtherance of the rendition of accounting services to the client.,
>
> 2. Those reasonably necessary for the transmission of the communication.

> (2) A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, the contents of confidential communications with an accountant when such other person learned of the communications because they were made in rendition of accounting services to the client. This privilege includes other confidential information obtained by the accountant from the client for the purpose of rendering accounting advice.

Thus, insofar as Morgan Stanley seeks to inquire about communications by E&Y that were not disseminated to any party other than its client, those communications are privileged — an independent reason to deny Morgan Stanley the tardy discovery it is requesting.

In sum, as to both of the topics on which Morgan Stanley seeks to depose E&Y, Morgan Stanley has no credible excuse for failing to serve E&Y with a subpoena in a timely fashion and for failing to take the deposition before the November 24 discovery cut-off. In addition, Morgan Stanley has not shown a real need for this late discovery. Finally, the discovery that Morgan Stanley is requesting would require disclosure of privileged communications. Morgan Stanley's motion to take the deposition of E&Y therefore should be denied.

Dated: December 14, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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Washington, DC 20036-3206

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

----------x

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. Case No. CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendants.

----------x

JAMES ROBERT MAHER

New York, New York

Wednesday, November 3, 2004

Reported by: Steven Neil Cohen, RPR

Job No. 166520

EXHIBIT
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accounting firm -- did you give Coleman's accounting firm, Ernst & Young, any instructions as to the accounting due diligence they should?
A. No. I am sure Page did. I wouldn't have.
Q. With regard to -- with regard to MacAndrews & Forbes internally now excluding your outside advisers was there any person inside MacAndrews & Forbes who was tasked with doing any form of due diligence?
A. I think Will was doing due diligence working with all of the parties, I believe. Will Nesbitt.
Q. Right. I knew who you were talking about.
To your knowledge did any of the group that you have described as conducting the due diligence, CSFB, Wachtell, Lipton, Mr. Nesbitt and the accounting firm of Ernst & Young, did they during this period of due diligence, February 24 through February 27, did they conduct any interviews of any Sunbeam employees about

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Sunbeam's financial performance in the first quarter of 1998?
A. I don't know.
Q. Again, this same group of people?
A. Other than the interviews that occurred at the meeting that took place at Morgan Stanley on the 23rd, there was a pretty thorough vetting of Sunbeam's performance at that meeting with the management of Sunbeam.
Q. Anything other than the February 23 meeting that you are aware of?
A. No.
Q. Are you aware of any of the -- your due diligence team interviewing Sunbeam middle management during the due diligence period?
A. I believe that Levin and Page, Shapiro made a number of visits to different locations.
I can't tell you where they went or what they did but I would imagine in the course of that they talked to a number of middle managers.
Q. Recognizing --

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A. At Sunbeam.
Q. You weren't on these trips, correct?
A. No.
Q. As you sit here today while you believe they interviewed certain Sunbeam facilities you don't know such that you could tell the jury that they actually did interview middle management people, is that fair?
A. That's fair.
Q. Did anyone on the MacAndrews & Forbes' due diligence team interview Sunbeam customers, for example, like a Wal-Mart or a Sears or whatever their largest customers were?
A. If that were done that would have been Jerry.
Q. You are not aware of it being done as you sit here?
A. I have a vague recollection that somebody talked to some of their customers.
The big customers of Sunbeam were big customers of Coleman and in some cases Revlon so my recollection is there were

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some discussions. I just don't know.
Q. You didn't conduct any discussions?
A. I didn't, no.
Q. Did anyone on behalf of the MacAndrews & Forbes' due diligence team interview analysts about Sunbeam?
A. I would be surprised. No.
MR. MARKOWSKI: You are focusing on this February 24 to 27 time period?
MR. BEMIS: Yes, sir. I am focusing on the period February 24 through February 27 as set forth in MS 75.
THE WITNESS: The only one I would think that would have been involved, it would be highly unusual to involve an analyst since this was a public company.
BY MR. BEMIS:
Q. Did anyone on the MacAndrews & Forbes' due diligence team interview Arthur Andersen during this period of due diligence, February 24 through the 27th?
A. You are talking about the broad

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

CASE NO: CA 03-5045 AI

EXPERT REPORT OF GEORGE P. FRITZ

I. Purpose of This Report

The purpose of this report is to express my opinion as to the several ways by which Coleman (Parent) Holdings Inc. ("CPH") could have obtained, prior to the sale of its interest in The Coleman Company, Inc. ("Coleman") to Sunbeam Corporation ("Sunbeam"), information relating to first quarter 1998 sales and earnings of Sunbeam. In two letters issued on March 19 and March 25, 1998,[1] Arthur Andersen LLP ("Andersen"), then the independent auditors of Sunbeam, informed Morgan Stanley & Co. Incorporated ("Morgan Stanley") that Sunbeam's sales and earnings for specified periods in the first quarter of 1998 had declined from the corresponding periods in 1997. Those two letters are commonly referred to as "comfort letters."

I will address whether CPH should have known (i) that the Andersen comfort letters existed and (ii) that the letters would have addressed declines, if any, in interim sales and earnings. I will discuss whether authoritative auditing standards in the United States would

[1] *See* March 19, 1998 Letter from Arthur Andersen LLP to Morgan Stanley, MS 9 ("March 19 Andersen Comfort Letter"); March 25, 1998 Letter from Arthur Andersen LLP to Morgan Stanley, MS 10 ("March 25 Andersen Comfort Letter").

EXHIBIT D

First, CPH was familiar with the comfort letter process.[69] Senior CPH officials have testified that CPH and its affiliates had participated in the issuance of billions of dollars of debt securities.[70] Accordingly, CPH's auditors would have, in prior transactions, provided underwriters with comfort letters regarding CPH's financial condition.

Second, CPH would have been familiar with the debenture offering, not only because it was integral to Sunbeam's funding the Coleman acquisition, but also because summary descriptions of Coleman's business and three years of Coleman's financial statements were included in the offering memorandum. The Coleman disclosures in the offering memorandum were more than a mere "paste and patch" from Coleman's SEC filings.[71] For example, Coleman's financial statement disclosures were modified from those in its 1997 Annual Report on Form 10-K to add a footnote about the potential technological impact of the year 2000[72] and to make conforming changes to company names. It is my opinion that Sunbeam would not have altered Coleman's public disclosures without Coleman's participation or at least its consent.

Similarly, the report of Ernst & Young LLP ("E&Y"), Coleman's auditors, that was contained in the offering memorandum was modified from E&Y's report in Coleman's 1997 Form 10-K to reflect that it was reporting on less financial statement data in the offering memorandum than they had in the Form 10-K. Again, in my opinion, Sunbeam

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[69] *See* Nov. 19, 2004 Gittis Dep. at 54:24-56:25, 112:1-5; June 25, 2004 Schwartz Dep. at 161:2-9, 195:23-196:8.

[70] *See* Gittis Dep. at 18:11-23; Nov. 17, 2004 Perelman Dep. at 49:15-20.

[71] The offering memorandum stated that information in the document with respect to Coleman and the other companies to be acquired had been derived from their SEC filings "or from information supplied by them for inclusion herein." *See* March 19, 1998 Offering Mem. at 3, MS 166.

[72] *See id.* at F-53 to F-54.

would not have modified the information in E&Y's report without the participation of E&Y.

Third, the materials I have reviewed make clear that both Coleman officials and E&Y actively participated in aspects of Sunbeam's debenture offering. On March 12, 1998, Morgan Stanley held a due diligence meeting about Coleman that included presentations by Coleman's chief executive and finance officers and a plant tour of the Coleman facilities.[73] On the same day, E&Y participated in an accounting due diligence conference call organized by Morgan Stanley.[74] Morgan Stanley requested that E&Y and the auditors of each of the other three companies whose financial statements were to be included in the offering memorandum answer eighteen questions about their clients' accounting and control environments.[75] In my opinion, E&Y could not have done so without the knowledge and consent of CPH/Coleman.

Fourth, E&Y supplied comfort letters to Morgan Stanley.[76] *The letters were also addressed to Coleman's parent, CLN Holdings Inc.*[77] As part of its comfort letter procedures, and as required by SAS 72, E&Y made certain inquiries of management of CLN Holdings Inc. and, as explained in the preceding section, was required pursuant to applicable auditing standards to obtain written representations from management to support the results of the inquiries. In my opinion, as sophisticated business entities that had themselves participated in transactions involving substantial debt offerings and that had prior experience with the comfort letter process, CPH and CLN Holdings Inc. should have

[73] *See* March 10, 1998 Memorandum, CPH 302.

[74] *See* March 10, 1998 Fax, MS 56.

[75] *See id.* at 3-4.

[76] *See* March 20 E&Y Comfort Letter, MS 243; March 25 E&Y Comfort Letter, MS 0000462-464.

[77] *See supra* note 29.

been aware that Morgan Stanley would obtain a parallel comfort letter from Andersen, the auditor of the entity selling the securities (*i.e.*, Sunbeam).

As a result of this participation of Coleman and its auditors in the debenture offering, it is my opinion that the management of CPH would have or should have known that Andersen would issue comfort letters to Morgan Stanley in connection with Sunbeam's acquisition of Coleman and that those letters could include significant, specific information about recent sales and earnings trends.

2. ***CPH Could Have Requested and Received a Copy of the Representation Letters Supplied by Sunbeam***

Pursuant to its contractual rights of access,[78] CPH could have requested copies of the representation letters supplied by Sunbeam's senior executives to Andersen to support Sunbeam's responses to Andersen's comfort letter inquiries about interim financial statement changes, including any declines in sales and earnings.

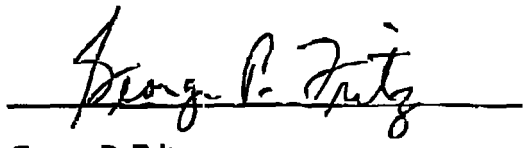
CPH would or should have known that Sunbeam's management would be furnishing similar written representations to Andersen that would be (and were) a primary source of any current trend information reported by Andersen in its comfort letter to Morgan Stanley, since Coleman's management at that time was responding to comfort letter inquiries from E&Y. Although I have not been provided a copy of letters from Coleman's management to E&Y regarding the statements made in the E&Y comfort letters, it is clear that Coleman provided such representations to E&Y. The E&Y comfort letters *specifically reference* such representations and state that E&Y made the same standard comfort letter inquiries about subsequent changes at Coleman that Andersen made of Sunbeam: "*We have inquired of Company officials* who have responsibility for financial

[78] Feb. 27, 1998 Merger Agreement § 6.7, MS 93.

Fourth, CPH had contractual rights of access to Sunbeam records, personnel, accountants and other advisers and could have requested information directly from Sunbeam or its representatives, including Andersen.

Fifth, instead of a comfort letter, CPH could have requested, and the authoritative auditing standards would have sanctioned, that an accountant perform specified or "agreed upon" procedures with respect to Sunbeam financial statement accounts directed at determining, *e.g.*, if declines in interim sales and earnings had occurred.

Respectfully submitted



December 7, 2004

George P. Fritz

16div-009142

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

CASE NO: CA 03-5045 AI

vs.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.
_____/

MOTION FOR LEAVE TO TAKE DEPOSITION OF DONALD R. UZZI

Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") respectfully requests that this Court enter an order permitting Morgan Stanley to take the deposition of Donald R. Uzzi, a former officer of Sunbeam whose deposition Morgan Stanley has sought for over six months.

In support of this motion, Morgan Stanley states as follows:

1. At the time of the Sunbeam transaction, Donald R. Uzzi was an executive vice president of Sunbeam. In this capacity, Mr. Uzzi possesses knowledge about Sunbeam's sales in March 1998. He also testified in prior litigation about his involvement in providing Sunbeam's first quarter 1998 sales and projections to Morgan Stanley in March 1998. This information is highly relevant to the issues and claims made by plaintiffs. (*See, e.g.*, May 8, 2003 Compl., ¶¶ 3, 57, 59, 62)

2. Morgan Stanley believes, based on the investigation described below, that Mr. Uzzi is a resident of Texas, is not subject to the subpoena power of this Court for trial, and is avoiding service of process.

3. Although Morgan Stanley obtained a commission for Mr. Uzzi in the beginning of 2004, Morgan Stanley first attempted to arrange Mr. Uzzi's deposition through voluntary methods. Morgan Stanley contacted Mr. Uzzi's counsel in the prior Sunbeam litigation and was informed that counsel no longer represented Mr. Uzzi nor possessed current contact information for him. Morgan Stanley then obtained Mr. Uzzi's phone number and placed multiple calls to his home residence. Mr. Uzzi did not answer the phone, nor did he return any of the messages left for him.

4. On July 30, 2004, Morgan Stanley issued its first subpoena for the deposition of Mr. Uzzi. (*See* July 30, 2004 Deposition Subpoena Duces Tecum of Donald R. Uzzi (Ex. 1).) This subpoena called for an August 19, 2004 deposition in Dallas, Texas, where Mr. Uzzi resides.

5. To effectuate service of this subpoena, Morgan Stanley hired Special Delivery Service, Inc. ("Special Delivery"), a Dallas-based process server, on July 30, 2004. Special Delivery, made several unsuccessful attempts to serve Mr. Uzzi between July 30, 2004, and August 19, 2004 (the expiration of the original subpoena). (*See* Aug. 20, 2004 Statement of Attempted Service (Ex. 2).)

6. Upon the expiration of the first subpoena, Morgan Stanley promptly issued an updated subpoena on August 20, 2004, seeking the deposition of Mr. Uzzi on September 17, 2004. (*See* Aug. 20, 2004 Deposition Subpoena Duces Tecum of Donald R. Uzzi (Ex. 3).) Special Delivery again made several unsuccessful attempts to serve Mr. Uzzi at an updated address in Dallas, Texas.

7. The August 20, 2004 subpoena expired on September 17, 2004, and Morgan Stanley promptly issued a third updated subpoena. (*See* Sept. 17, 2004 Deposition Subpoena

Duces Tecum of Donald R. Uzzi (Ex. 4).) In conjunction with the third updated subpoena, Morgan Stanley engaged the services of Verasys L.L.C. ("Verasys"), a Florida-based investigation service, to find and serve Mr. Uzzi. (*See* Dec. 15, 2004 Declaration and Chronology of Efforts to Serve Donald R. Uzzi ("Chronology") (Ex. 5).)

8. For the past several months, Verasys has undertaken an extensive investigation to locate and serve Mr. Uzzi, the details of which can be found in Exhibit 5 to this motion. As part of this process, Morgan Stanley has maintained a current subpoena for Mr. Uzzi's deposition throughout this time period, issuing two additional subpoenas on November 9, 2004, and November 29, 2004.[1] (*See* Nov. 9, 2004 Deposition Subpoena Duces Tecum of Donald R. Uzzi (Ex. 6); Nov. 29, 2004 Deposition Subpoena Duces Tecum of Donald R. Uzzi (Ex. 7).) Verasys was unsuccessful in serving any of the subpoenas and has reported that Mr. Uzzi is consciously avoiding service. (*See* Chronology at 4, 12)

9. Plaintiff will suffer no prejudice if this deposition is permitted to go forward. The burden associated with the deposition that Morgan Stanley is requesting is not great, yet the witness possesses information highly relevant to the events at issue in this case that is necessary for Morgan Stanley's defense.

CONCLUSION

Morgan Stanley diligently attempted to obtain Mr. Uzzi's deposition before the close of fact discovery. Morgan Stanley initially attempted to arrange amicably a deposition with Mr. Uzzi through available channels. Once Morgan Stanley's initial efforts proved fruitless, it issued and maintained a current subpoena for Mr. Uzzi. Through process servers and investigators,

[1] The Nov. 29, 2004 deposition subpoena expired on Dec. 14, 2004. Morgan Stanley intends to issue an updated subpoena to permit service, but will not proceed with Mr. Uzzi's deposition without this Court's approval.

Morgan Stanley has sought to serve Mr. Uzzi on a continuous basis for the last four months. For the foregoing reasons, Morgan Stanley respectfully requests the Court enter an order permitting Morgan Stanley to take the deposition of Donald R. Uzzi.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by e-mail and Federal Express, and a copy of the motion without exhibits has been furnished by facsimile this 15th day of December, 2004.

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Michael Brody
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Exhibit 1

THE STATE OF TEXAS

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.
MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO: CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

DEPOSITION SUBPOENA DUCES TECUM

TO: Any sheriff or constable of the State of Texas or other person authorized to serve and execute subpoenas as provided in Texas Rule of Civil Procedure 176.5.

You are commanded to summon **Donald R. Uzzi,** 4209 Beverly Drive, Dallas, Texas 75205, to appear at the principal offices of HAYNES AND BOONE, LLP, 901 Main Street Suite 3100, Dallas, Texas 75202, on **Thursday, August 19, 2004 at 9:30 a.m.** to give testimony at a videotaped oral deposition and to permit inspection and copying of documents or tangible things to be used as evidence in this case.

Donald R. Uzzi is commanded to attend the oral deposition and to produce and permit inspection and copying of the following documents or tangible things described in the attached Exhibit 1. These documents and materials shall be brought with the witness and produced prior to the deposition on August 19, 2004, at HAYNES AND BOONE, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202.

Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both. TEX. R. CIV. P. 176.8(a).

DO NOT FAIL to return this writ to the Circuit Court of the Fifteenth Judicial Circuit In and For Palm Beach County, Florida with either the attached officer's return showing the manner of execution or the witness's signed memorandum showing that the witness accepted the subpoena.

ISSUED on July 30, 2004.

By: _____

Sean Trende
Texas State Bar No. 24034176
KIRKLAND & ELLIS LLP,
655 15th Street, N.W., Suite 1200,
Washington, D.C. 20005

This subpoena was issued pursuant to Texas Rule of Civil Procedure 201.2, the Order of the Circuit Court of the Fifteenth Judicial Circuit In and For Palm Beach County, Florida entered on January 21, 2004 and attached hereto as Exhibit 2, and at the request of Defendants' attorneys of record Thomas D. Yannucci, P.C., Lawrence P. Bemis (FL Bar No. 618349), and Thomas A. Clare of KIRKLAND & ELLIS LLP, 655 15th Street, N.W., Suite 1200, Washington, D.C. 20005; Joseph Ianno, Jr. (FL Bar No. 655351), CARLTON FIELDS, P.A., 222 Lakeview Ave., Suite 1400, West Palm Beach, FL 33401; and Sean Trende of KIRKLAND & ELLIS LLP, 655 15th Street, N.W., Suite 1200, Washington, D.C. 20005.

EXHIBIT 1

DEPOSITION SUBPOENA DUCES TECUM

You are hereby requested to produced the following documents pursuant to the definitions and instructions contained herein:

DOCUMENTS REQUESTED

1. All documents concerning the Coleman Transaction.

2. All documents concerning the Subordinated Debenture Offering.

3. All documents concerning the Bank Facility, or the Credit Agreement.

4. All documents reflecting or concerning any communications between or among any of Sunbeam, CPH, MAFCO, CSFB, Arthur Andersen, MS & Co., MSSF, Davis Polk, Wachtell, or Skadden in 1997 or 1998.

5. All documents provided by you in any Litigation or SEC Administrative Proceeding.

6. All calendars, diaries, timekeeping sheets or records maintained by you concerning any activities related to Coleman Transaction, the Subordinated Debenture Offering, the Bank Facility, the Credit Agreement.

7. All documents related to Sunbeam's Financial Information for all or any portion of 1996, 1997, and 1998, including but not limited to Financial Statements and documents concerning Sunbeam's forecasts and plans for revenue or earnings.

8. All documents related or referring to any cost-reduction or sales program or policy in place at Sunbeam during 1997 and 1998, including but not limited to documents concerning the "early buy" program, "Initiatives for Success", and "bill and hold" sales and the "no returns" policy.

9. All documents concerning returns of Sunbeam goods or product in 1997 and 1998, including but not limited to documents regarding the "no returns" policy and conversations or communications regarding the deletion of return authorizations from the J.D. Edwards system.

10. All documents pertaining to negotiations concerning the acquisition of Coleman, Signature Brands, and First Alert, including but not limited to documents concerning conversations or communications of any kind between or among any of MS & Co., MSSF, CPH or MAFCO personnel or representatives.

11. All documents concerning Synergies that might be achieved from a business combination of Sunbeam, Coleman, Signature Brands, and First Alert, or any combination thereof.

12. All documents related to or supporting the March 16, 1998 Representation Letter provided to Arthur Anderson, including but not limited to any drafts of such letter and any Financial Information used or referenced in writing the letter or drafts.

13. All documents concerning any "comfort letter" pertaining to the Subordinated Debenture offering or the Credit Agreement, including but not limited to Arthur Andersen's letters dated March 19, 1998 and March 25, 1998 and any drafts of such letters.

14. All documents concerning any investigation, analysis, or due diligence conducted by Sunbeam or its Advisors pertaining to the Coleman Transaction, including but not limited to documents and Financial Information pertaining to March 18, 1998 and March 24, 1998 conference calls.

15. All documents related to Sunbeam's March 19, 1998 press release, including but not limited to documents pertaining to the contents or drafting of the press release, the decision to issue the press release, and the decision to include the press release in the Offering memorandum.

16. All documents concerning the March 19, 1998 drafting session and/or meeting that took place at Global Financial Press concerning the Offering Memorandum, including but not limited to documents concerning any conversations or communications of any kind involving MS & Co. or Arthur Andersen personnel.

17. All documents related to the sale of the Subordinated Debenture, including but not limited to documents pertaining to roadshows or other communications with investors or analysts.

DEFINITIONS

1. "Advisors" shall mean financial advisors, legal advisors, accountants, consultants and any other third-party advising or assisting Sunbeam in any way with the Coleman Transaction, including but not limited to Arthur Anderson, Coopers & Lybrand, Llama Company, MS& Co., MSSF, and Skadden.

2. "Arbitrations" shall mean *Albert J. Dunlap and Sunbeam Corporation*, No. 32 160 00088 99 (AAA); and *Russell A. Kersh and Sunbeam Corporation*, No. 32 160 00091 99 (AAA).

3. "Arthur Andersen" shall mean Arthur Andersen LLP and any of its former or present partners, officers, directors, employees, representatives and agents.

4. "Bank Facility" shall mean the Credit Agreement, including amendments, and all funds extended by Lenders to Sunbeam pursuant to the Credit Agreement, including but not limited to Tranche A, Tranche B, and the Revolving Credit Facility.

5. "Communication" shall mean any exchange or transmittal of information by any means of transmission, including, without limitation, face-to-face conversation, mail, overnight delivery, Internet, telephone, electronic mail, or facsimile.

6. The term "concerning" shall mean relating to, referring to, describing, evidencing, or constituting.

7. "Coleman" shall mean Coleman Company, Inc. and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

8. "Coleman Transaction" shall mean Sunbeam's acquisition of Coleman Company, Inc. from CPH and all related communications, agreements, and transactions, including the February 27, 1998 Agreements and the March 30, 1998 closing.

9. "Cooper & Lybrand" shall mean the former Coopers & Lybrand LLP, and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents.

10. "CPH" shall mean Coleman (Parent) Holdings Inc. and any of its former or present officers, dircctors, employees, representatives and agents.

11. "Credit Agreement" shall mean the agreement entered into by Sunbeam, as borrower with Lenders, dated March 30, 1998 and all amendments thereto.

12. "CSFB" shall mean Credit Suisse First Boston LLC and any of its former or present officers, directors, employees, representatives and agents.

13. "Davis Polk" shall mean Davis Polk & Wardwell and any of its former or present partners, officers, directors, employees, representatives and agents.

14. "Document" shall mean any recording in any tangible form of any information, whether handwritten, typed, printed, stored on computer disks, tapes, or databases, or otherwise reproduced. "Document" or "documents" also includes electronic documents whether stored on

servers or hard drives, e-mail, backup tapes, voicemail and video and audio recordings. A draft or non-identical copy is a separate document within the meaning of this term.

15. "Financial Information" shall mean information concerning the past or present financial condition of Sunbeam or Sunbeam securities.

16. "Financial Statements" shall mean documents reflecting Financial Information, including without limitation quarterly reports, yearly reports, balance sheets, statements of income, earnings, cash flow projections, and sources and applications of funds.

17. "First Alert" shall mean First Alert, Inc., and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

18. The term "identify" (with respect to documents) shall mean to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).

19. "Lenders" shall mean the entities listed on Schedule 2.01 of the Credit Agreement under the heading "Lenders" and any other person that shall have become a party to the Credit Agreement as a Lender pursuant to an assignment and acceptance.

20. "Litigations" shall mean *In re Sunbeam Securities Litigation*, 98-8258-Civ.-Middlebrooks (S.D. Fla); *Camden Asset Management L.P. v. Sunbeam Corporation*, 98-8773-Civ.-Middlebroks and 98-8275-Civ.-Middlebrooks (S.D. Fla); *Krim v. Dunlap*, No. CL 983168AD (15th Jud. Cir., Fla.); *Stapleton v. Sunbeam Corp.*, No. 98-1676-Civ.-King (S.D. Fla); *Sunbeam Corp. v. PricewaterhouseCoopers LLP*, No. CL 005444AN (15th Jud. Cir., Fla.); *In re Sunbeam Corp., Inc.*, No. 01-40291 (AJG) (Bankr. S.D.N.Y.) and any adversary proceedings therein; *SEC v. Dunlap*, No. 01-8437-Civ.-Middlebrooks (S.D. Fla.); *Oaktree Capital Management LLC v. Arthur Andersen LLP*,

No. BC257177 (L.A. Cty., CA); and *Coleman (Parent) Holdings Inc. v. Arthur Andersen LLP*, No. CA 01-06062AN (15th Jud. Cir., Fla.), or other litigation concerning the Coleman Transaction.

21. "Llama Company" shall mean Llama Company and any of its former or present partners, officers, directors, employees, representatives and agents.

22. "MAFCO" shall mean MacAndrews & Forbes Holdings, Inc. and any of its officers, directors, former or present employees, representatives and agents.

23. The "March 19, 1998 Press Release" shall mean the press release issued by Sunbeam on March 19, 1998 concerning the shortfall of first quarter 1998 sales numbers and the reasons for such shortfall.

24. "MS & Co." shall mean Morgan Stanley & Co. Inc. and any of its former or present officers, directors, employees, representatives and agents.

25. "MSSF" shall mean Morgan Stanley Senior Funding, Inc. and any of its former or present officers, directors, employees, representatives and agents.

26. The term "person" shall mean any natural person or any business, legal or governmental entity or association.

27. The term "relating to" shall mean concerning, evidencing, referring to, or constituting.

28. The "Relevant Period," unless otherwise indicated, shall be from January 1, 1996 through the date of service of this subpoena.

29. "SEC" shall mean the Securities and Exchange Commission.

30. "SEC Administrative Proceedings" shall mean *In the Matter of Sunbeam Corp.*, SEC Administrative Proceeding File No. 3-10481, and *In the Matter of David C. Fannin*, SEC Administrative Proceeding File No. 3-10482.

31. "Signature brands" shall mean Signature Brands USA, Inc. and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

32. "Skadden" shall mean Skadden, Arps, Slate, Meagher & Flom, LLP and any of its former or present partners, officers, directors, employees, representatives and agents.

33. "Subordinated Debentures" shall mean the Sunbeam's Zero Coupon Convertible Senior Subordinated Debentures Due 2018.

34. "Subordinated Debenture Offering" shall mean the offering of Sunbeam's Subordinated Debentures.

35. "Sunbeam" shall mean Sunbeam Corporation and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents.

36. "Synergies" shall mean post-acquisition gains through increased revenue and/or decreased cost.

37. "Wachtell" shall mean Wachtell Lipton Rosen & Katz and any of its former or present partners, officers, directors, employees, representatives and agents.

38. The terms "you" or "your" shall mean Donald R. Uzzi and any of Donald R. Uzzi's present and former representatives and agents.

INSTRUCTIONS

1. Documents shall be produced as they are kept in the usual course of business, or organized and labeled to correspond to the categories in this Request. Documents attached to each other should not be separated. Documents consisting of items previously produced in the Litigations, Arbitrations, and/or SEC Administrative Proceedings with Bates numbering shall be produced in Bates number order.

2. All documents shall be produced in the file folder, envelope or other container in which the documents are kept or maintained by you. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks.

3. The relevant period, unless otherwise indicated, shall be from January 1, 1996 through the date of service of this subpoena, and shall include all documents and information which relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received prior or subsequent to that period. Please supplement or correct your responses to these requests if, at any time, you become aware that your responses are incomplete or incorrect in any request.

4. If you claim the attorney-client privilege, or any other privilege or work-product protection for all or any portion of a document, you shall provide a privilege log that describes the withheld material sufficiently to allow Morgan Stanley to test the privilege or protection asserted.

5. The following rules of construction apply:

1. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be outside their scope;

2. The term "including" shall be construed to mean "without limitation"; and

3. The use of the singular form of any word include the plural and vice versa.

Exhibit 2

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

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

AGREED ORDER APPOINTING COMMISSIONERS AND COMMISSIONS

THIS CAUSE, having come before the Circuit Court in and for Palm Beach County, State of Florida, on the agreement of the parties, and

WHEREAS, it appears to the Court that:

1. Defendant Morgan Stanley & Co. Incorporated ("MS & Co.") desires to take the videotaped depositions of and obtain documents from the following witnesses who reside in California, Connecticut, Kansas, Minnesota, New York, Texas, and the District of Columbia and who have knowledge of facts relevant to this case:

Karen Kay Clark
1674 Amarelle Street
Newbury Park, CA 91320

Frank N. Gifford
126 Taconic Road
Greenwich, CT 06831-3139

Robert J. Duffy
16 Saint Nicholas Road
Darien, CT 06820-2823

Joseph P. Page
921 Sheridan Street, Apt. 119
Wichita, KS 67213-1363

William H. Spoor
622 West Ferndale Road
Wayzata, MN 55391

Adam Emmerich
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Steven Cohen
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Steven K. Geller
301 East 79th Street, Apt. 4H
New York, NY 10021-0932

Donald Uzzi
4209 Beverly Dr.
Dallas, TX 75205-3020

Ann Dibble Jordan
2940 Benton Place NW
Washington, DC 20008

2. You are hereby appointed as commissioners to take the videotaped testimony (and obtain the requested documentation) of the above witnesses and other witnesses whose discovery is sought in the commissions' jurisdiction under oath and on oral examination in accordance with the applicable Florida Statutes and Rules of Civil Procedure:

Esquire Santa Ana
2100 North Broadway, Second Floor
Santa Ana, CA 97206

Del Vecchio Reporting
117 Randi Drive
Madison, CT 06443

Harper Court Reporting
P.O. Box 3008
Wichita, KS 67201

Kirby Kennedy & Associates
5200 Wilson Road #219
Minneapolis, MN 55424

Esquire Deposition Services
216 E. 45th Street, 8th FL
New York, New York 10017-3304

Esquire Deposition Services
703 McKinney Avenue #320
Dallas, Texas 75202

Esquire Deposition Services
1020 19th Street NW, #621
Washington, DC 20036

or any person able to administer oaths pursuant to the laws of California, Connecticut, Kansas, Minnesota, New York, Texas, and the District of Columbia and duly authorized by him.

3. This order does not purport to grant the power of the commissioners appointed to subpoena witnesses or documents, but simply the power to administer oaths and transcribe deposition testimony.

DONE AND ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida this ____ day of January, 2004.

SIGNED AND DATED

ELIZABETH T. MAASS
Circuit Court Judge

ELIZABETH T. MAASS

Coleman (Parent) Holdings v. Morgan Stanley & Co. Inc.
2003 CA 005045AI
Agreed Order on Appointment of Commission

Copies furnished to:

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368

John Scarola, Esq.
SEARCY, DENNEY, SCAROLA, BARNHARDT
& SHIPLEY, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409
Telephone: (561) 686-3000
Facsimile: (561) 478-0754

Thomas D. Yannucci, P.C.
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th Street, N.W. – Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

Jerold S. Solovy
JENNER & BLOCK, LLC
One IBM Plaza
Suite 4400
Chicago, Illinois 60611
Telephone: (312) 222-9350
Facsimile: (312) 527-0484

16div-009163

Exhibit 2

SPECIAL DELIVERY®

Special Delivery Service, Inc. • 5470 L.B.J. Freeway • Dallas, Texas 75240

August 19, 2004

STATEMENT OF ATTEMPTED SERVICE

BEFORE ME, the undersigned authority, on this day personally appeared ADIL TADLI, who after being by me duly sworn on oath states:

"My name is ADIL TADLI. I am over eighteen (18) years of age and am competent to make this affidavit. On the 30th day of July 2004 I received a Subpoena out of Palm Beach County, Florida in Case Nos. CA 03-5165 AI and CA 03-5045 AI, to be served on Donald R. Uzzi. I have made several attempts at various times over the past three weeks without any success. I have left my business card on different occasions but have never received a call from Mr. Uzzi."

ADIL TADLI

SUBSCRIBED AND SWORN TO before me this 20TH day of August 2004.

DWIGHT MULLEN
Notary Public, State of Texas
My Commission Exp. 08-20-2005

Notary Public in and for
The State of Texas

Telephone: (214) 866-3200 • Fax Number: (214) 866-3201

Exhibit 3

THE STATE OF TEXAS

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.
MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO: CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

DEPOSITION SUBPOENA DUCES TECUM

TO: Any sheriff or constable of the State of Texas or other person authorized to serve and execute subpoenas as provided in Texas Rule of Civil Procedure 176.5.

You are commanded to summon **Donald R. Uzzi**, 4201 Lomo Alto Drive, Apt. 307, Dallas, TX 75219, to appear at the principal offices of HAYNES AND BOONE, LLP, 901 Main Street Suite 3100, Dallas, Texas 75202, on **Friday, September 17, 2004 at 9:30 a.m.** to give testimony at a videotaped oral deposition and to permit inspection and copying of documents or tangible things to be used as evidence in this case.

Donald R. Uzzi is commanded to attend the oral deposition and to produce and permit inspection and copying of the following documents or tangible things described in the attached Exhibit 1. These documents and materials shall be brought with the witness and produced prior to the deposition on September 17, 2004, at HAYNES AND BOONE, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202.

Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both. TEX. R. CIV. P. 176.8(a).

DO NOT FAIL to return this writ to the Circuit Court of the Fifteenth Judicial Circuit In and For Palm Beach County, Florida with either the attached officer's return showing the manner of execution or the witness's signed memorandum showing that the witness accepted the subpoena.

ISSUED on August 20, 2004.

By: _____

Sean Trende
Texas State Bar No. 24034176
KIRKLAND & ELLIS LLP,
655 15th Street, N.W., Suite 1200,
Washington, D.C. 20005

This subpoena was issued pursuant to Texas Rule of Civil Procedure 201.2, the Order of the Circuit Court of the Fifteenth Judicial Circuit In and For Palm Beach County, Florida entered on January 21, 2004 and attached hereto as Exhibit 2, and at the request of Defendants' attorneys of record Thomas D. Yannucci, P.C., Lawrence P. Bemis (FL Bar No. 618349), and Thomas A. Clare of KIRKLAND & ELLIS LLP, 655 15th Street, N.W., Suite 1200, Washington, D.C. 20005; Joseph Ianno, Jr. (FL Bar No. 655351), CARLTON FIELDS, P.A., 222 Lakeview Ave., Suite 1400, West Palm Beach, FL 33401.

EXHIBIT 1

DEPOSITION SUBPOENA DUCES TECUM

You are hereby requested to produced the following documents pursuant to the definitions and instructions contained herein:

DOCUMENTS REQUESTED

1. All documents concerning the Coleman Transaction.

2. All documents concerning the Subordinated Debenture Offering.

3. All documents concerning the Bank Facility, or the Credit Agreement.

4. All documents reflecting or concerning any communications between or among any of Sunbeam, CPH, MAFCO, CSFB, Arthur Andersen, MS & Co., MSSF, Davis Polk, Wachtell, or Skadden in 1997 or 1998.

5. All documents provided by you in any Litigation or SEC Administrative Proceeding.

6. All calendars, diaries, timekeeping sheets or records maintained by you concerning any activities related to Coleman Transaction, the Subordinated Debenture Offering, the Bank Facility, the Credit Agreement.

7. All documents related to Sunbeam's Financial Information for all or any portion of 1996, 1997, and 1998, including but not limited to Financial Statements and documents concerning Sunbeam's forecasts and plans for revenue or earnings.

8. All documents related or referring to any cost-reduction or sales program or policy in place at Sunbeam during 1997 and 1998, including but not limited to documents concerning the "early buy" program, "Initiatives for Success", and "bill and hold" sales and the "no returns" policy.

9. All documents concerning returns of Sunbeam goods or product in 1997 and 1998, including but not limited to documents regarding the "no returns" policy and conversations or communications regarding the deletion of return authorizations from the J.D. Edwards system.

10. All documents pertaining to negotiations concerning the acquisition of Coleman, Signature Brands, and First Alert, including but not limited to documents concerning conversations or communications of any kind between or among any of MS & Co., MSSF, CPH or MAFCO personnel or representatives.

11. All documents concerning Synergies that might be achieved from a business combination of Sunbeam, Coleman, Signature Brands, and First Alert, or any combination thereof.

12. All documents related to or supporting the March 16, 1998 Representation Letter provided to Arthur Anderson, including but not limited to any drafts of such letter and any Financial Information used or referenced in writing the letter or drafts.

13. All documents concerning any "comfort letter" pertaining to the Subordinated Debenture offering or the Credit Agreement, including but not limited to Arthur Andersen's letters dated March 19, 1998 and March 25, 1998 and any drafts of such letters.

14. All documents concerning any investigation, analysis, or due diligence conducted by Sunbeam or its Advisors pertaining to the Coleman Transaction, including but not limited to documents and Financial Information pertaining to March 18, 1998 and March 24, 1998 conference calls.

15. All documents related to Sunbeam's March 19, 1998 press release, including but not limited to documents pertaining to the contents or drafting of the press release, the decision to issue the press release, and the decision to include the press release in the Offering memorandum.

16. All documents concerning the March 19, 1998 drafting session and/or meeting that took place at Global Financial Press concerning the Offering Memorandum, including but not limited to documents concerning any conversations or communications of any kind involving MS & Co. or Arthur Andersen personnel.

17. All documents related to the sale of the Subordinated Debenture, including but not limited to documents pertaining to roadshows or other communications with investors or analysts.

DEFINITIONS

1. "Advisors" shall mean financial advisors, legal advisors, accountants, consultants and any other third-party advising or assisting Sunbeam in any way with the Coleman Transaction, including but not limited to Arthur Anderson, Coopers & Lybrand, Llama Company, MS& Co., MSSF, and Skadden.

2. "Arbitrations" shall mean *Albert J. Dunlap and Sunbeam Corporation*, No. 32 160 00088 99 (AAA); and *Russell A. Kersh and Sunbeam Corporation*, No. 32 160 00091 99 (AAA).

3. "Arthur Andersen" shall mean Arthur Andersen LLP and any of its former or present partners, officers, directors, employees, representatives and agents.

4. "Bank Facility" shall mean the Credit Agreement, including amendments, and all funds extended by Lenders to Sunbeam pursuant to the Credit Agreement, including but not limited to Tranche A, Tranche B, and the Revolving Credit Facility.

5. "Communication" shall mean any exchange or transmittal of information by any means of transmission, including, without limitation, face-to-face conversation, mail, overnight delivery, Internet, telephone, electronic mail, or facsimile.

6. The term "concerning" shall mean relating to, referring to, describing, evidencing, or constituting.

7. "Coleman" shall mean Coleman Company, Inc. and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

8. "Coleman Transaction" shall mean Sunbeam's acquisition of Coleman Company, Inc. from CPH and all related communications, agreements, and transactions, including the February 27, 1998 Agreements and the March 30, 1998 closing.

9. "Cooper & Lybrand" shall mean the former Coopers & Lybrand LLP, and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents.

10. "CPH" shall mean Coleman (Parent) Holdings Inc. and any of its former or present officers, directors, employees, representatives and agents.

11. "Credit Agreement" shall mean the agreement entered into by Sunbeam, as borrower with Lenders, dated March 30, 1998 and all amendments thereto.

12. "CSFB" shall mean Credit Suisse First Boston LLC and any of its former or present officers, directors, employees, representatives and agents.

13. "Davis Polk" shall mean Davis Polk & Wardwell and any of its former or present partners, officers, directors, employees, representatives and agents.

14. "Document" shall mean any recording in any tangible form of any information, whether handwritten, typed, printed, stored on computer disks, tapes, or databases, or otherwise reproduced. "Document" or "documents" also includes electronic documents whether stored on

servers or hard drives, e-mail, backup tapes, voicemail and video and audio recordings. A draft or non-identical copy is a separate document within the meaning of this term.

15. "Financial Information" shall mean information concerning the past or present financial condition of Sunbeam or Sunbeam securities.

16. "Financial Statements" shall mean documents reflecting Financial Information, including without limitation quarterly reports, yearly reports, balance sheets, statements of income, earnings, cash flow projections, and sources and applications of funds.

17. "First Alert" shall mean First Alert, Inc., and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

18. The term "identify" (with respect to documents) shall mean to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).

19. "Lenders" shall mean the entities listed on Schedule 2.01 of the Credit Agreement under the heading "Lenders" and any other person that shall have become a party to the Credit Agreement as a Lender pursuant to an assignment and acceptance.

20. "Litigations" shall mean *In re Sunbeam Securities Litigation*, 98-8258-Civ.-Middlebrooks (S.D. Fla); *Camden Asset Management L.P. v. Sunbeam Corporation*, 98-8773-Civ.-Middlebroks and 98-8275-Civ.-Middlebrooks (S.D. Fla); *Krim v. Dunlap*, No. CL 983168AD (15th Jud. Cir., Fla.); *Stapleton v. Sunbeam Corp.*, No. 98-1676-Civ.-King (S.D. Fla); *Sunbeam Corp. v. PricewaterhouseCoopers LLP*, No. CL 005444AN (15th Jud. Cir., Fla.); *In re Sunbeam Corp., Inc.*, No. 01-40291 (AJG) (Bankr. S.D.N.Y.) and any adversary proceedings therein; *SEC v. Dunlap*, No. 01-8437-Civ.-Middlebrooks (S.D. Fla.); *Oaktree Capital Management LLC v. Arthur Andersen LLP*,

No. BC257177 (L.A. Cty., CA); and *Coleman (Parent) Holdings Inc. v. Arthur Andersen LLP*, No. CA 01-06062AN (15th Jud. Cir., Fla.), or other litigation concerning the Coleman Transaction.

21. "Llama Company" shall mean Llama Company and any of its former or present partners, officers, directors, employees, representatives and agents.

22. "MAFCO" shall mean MacAndrews & Forbes Holdings, Inc. and any of its officers, directors, former or present employees, representatives and agents.

23. The "March 19, 1998 Press Release" shall mean the press release issued by Sunbeam on March 19, 1998 concerning the shortfall of first quarter 1998 sales numbers and the reasons for such shortfall.

24. "MS & Co." shall mean Morgan Stanley & Co. Inc. and any of its former or present officers, directors, employees, representatives and agents.

25. "MSSF" shall mean Morgan Stanley Senior Funding, Inc. and any of its former or present officers, directors, employees, representatives and agents.

26. The term "person" shall mean any natural person or any business, legal or governmental entity or association.

27. The term "relating to" shall mean concerning, evidencing, referring to, or constituting.

28. The "Relevant Period," unless otherwise indicated, shall be from January 1, 1996 through the date of service of this subpoena.

29. "SEC" shall mean the Securities and Exchange Commission.

30. "SEC Administrative Proceedings" shall mean *In the Matter of Sunbeam Corp.*, SEC Administrative Proceeding File No. 3-10481, and *In the Matter of David C. Fannin*, SEC Administrative Proceeding File No. 3-10482.

31. "Signature brands" shall mean Signature Brands USA, Inc. and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

32. "Skadden" shall mean Skadden, Arps, Slate, Meagher & Flom, LLP and any of its former or present partners, officers, directors, employees, representatives and agents.

33. "Subordinated Debentures" shall mean the Sunbeam's Zero Coupon Convertible Senior Subordinated Debentures Due 2018.

34. "Subordinated Debenture Offering" shall mean the offering of Sunbeam's Subordinated Debentures.

35. "Sunbeam" shall mean Sunbeam Corporation and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents.

36. "Synergies" shall mean post-acquisition gains through increased revenue and/or decreased cost.

37. "Wachtell" shall mean Wachtell Lipton Rosen & Katz and any of its former or present partners, officers, directors, employees, representatives and agents.

38. The terms "you" or "your" shall mean Donald R. Uzzi and any of Donald R. Uzzi's present and former representatives and agents.

INSTRUCTIONS

1. Documents shall be produced as they are kept in the usual course of business, or organized and labeled to correspond to the categories in this Request. Documents attached to each other should not be separated. Documents consisting of items previously produced in the Litigations, Arbitrations, and/or SEC Administrative Proceedings with Bates numbering shall be produced in Bates number order.

2. All documents shall be produced in the file folder, envelope or other container in which the documents are kept or maintained by you. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks.

3. The relevant period, unless otherwise indicated, shall be from January 1, 1996 through the date of service of this subpoena, and shall include all documents and information which relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received prior or subsequent to that period. Please supplement or correct your responses to these requests if, at any time, you become aware that your responses are incomplete or incorrect in any request.

4. If you claim the attorney-client privilege, or any other privilege or work-product protection for all or any portion of a document, you shall provide a privilege log that describes the withheld material sufficiently to allow Morgan Stanley to test the privilege or protection asserted.

5. The following rules of construction apply:

1. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be outside their scope;

2. The term "including" shall be construed to mean "without limitation"; and

3. The use of the singular form of any word include the plural and vice versa.

Exhibit 2

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

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

AGREED ORDER APPOINTING COMMISSIONERS AND COMMISSIONS

THIS CAUSE, having come before the Circuit Court in and for Palm Beach County, State of Florida, on the agreement of the parties, and

WHEREAS, it appears to the Court that:

1. Defendant Morgan Stanley & Co. Incorporated ("MS & Co.") desires to take the videotaped depositions of and obtain documents from the following witnesses who reside in California, Connecticut, Kansas, Minnesota, New York, Texas, and the District of Columbia and who have knowledge of facts relevant to this case:

Karen Kay Clark
1674 Amarelle Street
Newbury Park, CA 91320

Frank N. Gifford
126 Taconic Road
Greenwich, CT 06831-3139

Robert J. Duffy
16 Saint Nicholas Road
Darien, CT 06820-2823

16div-009178

Joseph P. Page
921 Sheridan Street, Apt. 119
Wichita, KS 67213-1363

William H. Spoor
622 West Ferndale Road
Wayzata, MN 55391

Adam Emmerich
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Steven Cohen
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Steven K. Geller
301 East 79th Street, Apt. 4H
New York, NY 10021-0932

Donald Uzzi
4209 Beverly Dr.
Dallas, TX 75205-3020

Ann Dibble Jordan
2940 Benton Place NW
Washington, DC 20008

2. You are hereby appointed as commissioners to take the videotaped testimony (and obtain the requested documentation) of the above witnesses and other witnesses whose discovery is sought in the commissions' jurisdiction under oath and on oral examination in accordance with the applicable Florida Statutes and Rules of Civil Procedure:

Esquire Santa Ana
2100 North Broadway, Second Floor
Santa Ana, CA 97206

Del Vecchio Reporting
117 Randi Drive
Madison, CT 06443

16div-009179

Harper Court Reporting
P.O. Box 3008
Wichita, KS 67201

Kirby Kennedy & Associates
5200 Wilson Road #219
Minneapolis, MN 55424

Esquire Deposition Services
216 E. 45th Street, 8th FL
New York, New York 10017-3304

Esquire Deposition Services
703 McKinney Avenue #320
Dallas, Texas 75202

Esquire Deposition Services
1020 19th Street NW, #621
Washington, DC 20036

or any person able to administer oaths pursuant to the laws of California, Connecticut, Kansas, Minnesota, New York, Texas, and the District of Columbia and duly authorized by him.

3. This order does not purport to grant the power of the commissioners appointed to subpoena witnesses or documents, but simply the power to administer oaths and transcribe deposition testimony.

DONE AND ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida this ____ day of January, 2004.

SIGNED AND DATED

ELIZABETH T. MAASS
Circuit Court Judge

ELIZABETH T. MAASS

Coleman (Parent) Holdings v. Morgan Stanley & Co. Inc.
2003 CA 005045AI
Agreed Order on Appointment of Commission

Copies furnished to:

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368

John Scarola, Esq.
SEARCY, DENNEY, SCAROLA, BARNHARDT
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Jerold S. Solovy
JENNER & BLOCK, LLC
One IBM Plaza
Suite 4400
Chicago, Illinois 60611
Telephone: (312) 222-9350
Facsimile: (312) 527-0484

16div-009181

Exhibit 4

THE STATE OF TEXAS

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.
MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO: CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

DEPOSITION SUBPOENA DUCES TECUM

TO: Any sheriff or constable of the State of Texas or other person authorized to serve and execute subpoenas as provided in Texas Rule of Civil Procedure 176.5.

You are commanded to summon **Donald R. Uzzi**, 4201 Lomo Alto Drive, Apt. 307, Dallas, TX 75219, to appear at the principal offices of HAYNES AND BOONE, LLP, 901 Main Street Suite 3100, Dallas, Texas 75202, on **Thursday, October 28, 2004 at 9:30 a.m.** to give testimony at a videotaped oral deposition and to permit inspection and copying of documents or tangible things to be used as evidence in this case.

Donald R. Uzzi is commanded to attend the oral deposition and to produce and permit inspection and copying of the following documents or tangible things described in the attached Exhibit 1. These documents and materials shall be brought with the witness and produced prior to the deposition on October 28, 2004, at HAYNES AND BOONE, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202.

Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both. TEX. R. CIV. P. 176.8(a).

DO NOT FAIL to return this writ to the Circuit Court of the Fifteenth Judicial Circuit In and For Palm Beach County, Florida with either the attached officer's return showing the manner of execution or the witness's signed memorandum showing that the witness accepted the subpoena.

ISSUED on September 17, 2004.

By: _____

Sean Trende
Texas State Bar No. 24034176
KIRKLAND & ELLIS LLP,
655 15th Street, N.W., Suite 1200,
Washington, D.C. 20005

This subpoena was issued pursuant to Texas Rule of Civil Procedure 201.2, the Order of the Circuit Court of the Fifteenth Judicial Circuit In and For Palm Beach County, Florida entered on January 21, 2004 and attached hereto as Exhibit 2, and at the request of Defendants' attorneys of record Thomas D. Yannucci, P.C., Lawrence P. Bemis (FL Bar No. 618349), and Thomas A. Clare of KIRKLAND & ELLIS LLP, 655 15th Street, N.W., Suite 1200, Washington, D.C. 20005; Joseph Ianno, Jr. (FL Bar No. 655351), CARLTON FIELDS, P.A., 222 Lakeview Ave., Suite 1400, West Palm Beach, FL 33401.

EXHIBIT 1

DEPOSITION SUBPOENA DUCES TECUM

You are hereby requested to produced the following documents pursuant to the definitions and instructions contained herein:

DOCUMENTS REQUESTED

1. All documents concerning the Coleman Transaction.

2. All documents concerning the Subordinated Debenture Offering.

3. All documents concerning the Bank Facility, or the Credit Agreement.

4. All documents reflecting or concerning any communications between or among any of Sunbeam, CPH, MAFCO, CSFB, Arthur Andersen, MS & Co., MSSF, Davis Polk, Wachtell, or Skadden in 1997 or 1998.

5. All documents provided by you in any Litigation or SEC Administrative Proceeding.

6. All calendars, diaries, timekeeping sheets or records maintained by you concerning any activities related to Coleman Transaction, the Subordinated Debenture Offering, the Bank Facility, the Credit Agreement.

7. All documents related to Sunbeam's Financial Information for all or any portion of 1996, 1997, and 1998, including but not limited to Financial Statements and documents concerning Sunbeam's forecasts and plans for revenue or earnings.

8. All documents related or referring to any cost-reduction or sales program or policy in place at Sunbeam during 1997 and 1998, including but not limited to documents concerning the "early buy" program, "Initiatives for Success", and "bill and hold" sales and the "no returns" policy.

9. All documents concerning returns of Sunbeam goods or product in 1997 and 1998, including but not limited to documents regarding the "no returns" policy and conversations or communications regarding the deletion of return authorizations from the J.D. Edwards system.

10. All documents pertaining to negotiations concerning the acquisition of Coleman, Signature Brands, and First Alert, including but not limited to documents concerning conversations or communications of any kind between or among any of MS & Co., MSSF, CPH or MAFCO personnel or representatives.

11. All documents concerning Synergies that might be achieved from a business combination of Sunbeam, Coleman, Signature Brands, and First Alert, or any combination thereof.

12. All documents related to or supporting the March 16, 1998 Representation Letter provided to Arthur Anderson, including but not limited to any drafts of such letter and any Financial Information used or referenced in writing the letter or drafts.

13. All documents concerning any "comfort letter" pertaining to the Subordinated Debenture offering or the Credit Agreement, including but not limited to Arthur Andersen's letters dated March 19, 1998 and March 25, 1998 and any drafts of such letters.

14. All documents concerning any investigation, analysis, or due diligence conducted by Sunbeam or its Advisors pertaining to the Coleman Transaction, including but not limited to documents and Financial Information pertaining to March 18, 1998 and March 24, 1998 conference calls.

15. All documents related to Sunbeam's March 19, 1998 press release, including but not limited to documents pertaining to the contents or drafting of the press release, the decision to issue the press release, and the decision to include the press release in the Offering memorandum.

16. All documents concerning the March 19, 1998 drafting session and/or meeting that took place at Global Financial Press concerning the Offering Memorandum, including but not limited to documents concerning any conversations or communications of any kind involving MS & Co. or Arthur Andersen personnel.

17. All documents related to the sale of the Subordinated Debenture, including but not limited to documents pertaining to roadshows or other communications with investors or analysts.

DEFINITIONS

1. "Advisors" shall mean financial advisors, legal advisors, accountants, consultants and any other third-party advising or assisting Sunbeam in any way with the Coleman Transaction, including but not limited to Arthur Anderson, Coopers & Lybrand, Llama Company, MS& Co., MSSF, and Skadden.

2. "Arbitrations" shall mean *Albert J. Dunlap and Sunbeam Corporation*, No. 32 160 00088 99 (AAA); and *Russell A. Kersh and Sunbeam Corporation*, No. 32 160 00091 99 (AAA).

3. "Arthur Andersen" shall mean Arthur Andersen LLP and any of its former or present partners, officers, directors, employees, representatives and agents.

4. "Bank Facility" shall mean the Credit Agreement, including amendments, and all funds extended by Lenders to Sunbeam pursuant to the Credit Agreement, including but not limited to Tranche A, Tranche B, and the Revolving Credit Facility.

5. "Communication" shall mean any exchange or transmittal of information by any means of transmission, including, without limitation, face-to-face conversation, mail, overnight delivery, Internet, telephone, electronic mail, or facsimile.

6. The term "concerning" shall mean relating to, referring to, describing, evidencing, or constituting.

7. "Coleman" shall mean Coleman Company, Inc. and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

8. "Coleman Transaction" shall mean Sunbeam's acquisition of Coleman Company, Inc. from CPH and all related communications, agreements, and transactions, including the February 27, 1998 Agreements and the March 30, 1998 closing.

9. "Cooper & Lybrand" shall mean the former Coopers & Lybrand LLP, and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents.

10. "CPH" shall mean Coleman (Parent) Holdings Inc. and any of its former or present officers, directors, employees, representatives and agents.

11. "Credit Agreement" shall mean the agreement entered into by Sunbeam, as borrower with Lenders, dated March 30, 1998 and all amendments thereto.

12. "CSFB" shall mean Credit Suisse First Boston LLC and any of its former or present officers, directors, employees, representatives and agents.

13. "Davis Polk" shall mean Davis Polk & Wardwell and any of its former or present partners, officers, directors, employees, representatives and agents.

14. "Document" shall mean any recording in any tangible form of any information, whether handwritten, typed, printed, stored on computer disks, tapes, or databases, or otherwise reproduced. "Document" or "documents" also includes electronic documents whether stored on

servers or hard drives, e-mail, backup tapes, voicemail and video and audio recordings. A draft or non-identical copy is a separate document within the meaning of this term.

15. "Financial Information" shall mean information concerning the past or present financial condition of Sunbeam or Sunbeam securities.

16. "Financial Statements" shall mean documents reflecting Financial Information, including without limitation quarterly reports, yearly reports, balance sheets, statements of income, earnings, cash flow projections, and sources and applications of funds.

17. "First Alert" shall mean First Alert, Inc., and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

18. The term "identify" (with respect to documents) shall mean to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).

19. "Lenders" shall mean the entities listed on Schedule 2.01 of the Credit Agreement under the heading "Lenders" and any other person that shall have become a party to the Credit Agreement as a Lender pursuant to an assignment and acceptance.

20. "Litigations" shall mean *In re Sunbeam Securities Litigation*, 98-8258-Civ.-Middlebrooks (S.D. Fla); *Camden Asset Management L.P. v. Sunbeam Corporation*, 98-8773-Civ.-Middlebroks and 98-8275-Civ.-Middlebrooks (S.D. Fla); *Krim v. Dunlap*, No. CL 983168AD (15th Jud. Cir., Fla.); *Stapleton v. Sunbeam Corp.*, No. 98-1676-Civ.-King (S.D. Fla); *Sunbeam Corp. v. PricewaterhouseCoopers LLP*, No. CL 005444AN (15th Jud. Cir., Fla.); *In re Sunbeam Corp., Inc.*, No. 01-40291 (AJG) (Bankr. S.D.N.Y.) and any adversary proceedings therein; *SEC v. Dunlap*, No. 01-8437-Civ.-Middlebrooks (S.D. Fla.); *Oaktree Capital Management LLC v. Arthur Andersen LLP*,

No. BC257177 (L.A. Cty., CA); and *Coleman (Parent) Holdings Inc. v. Arthur Andersen LLP*, No. CA 01-06062AN (15th Jud. Cir., Fla.), or other litigation concerning the Coleman Transaction.

21. "Llama Company" shall mean Llama Company and any of its former or present partners, officers, directors, employees, representatives and agents.

22. "MAFCO" shall mean MacAndrews & Forbes Holdings, Inc. and any of its officers, directors, former or present employees, representatives and agents.

23. The "March 19, 1998 Press Release" shall mean the press release issued by Sunbeam on March 19, 1998 concerning the shortfall of first quarter 1998 sales numbers and the reasons for such shortfall.

24. "MS & Co." shall mean Morgan Stanley & Co. Inc. and any of its former or present officers, directors, employees, representatives and agents.

25. "MSSF" shall mean Morgan Stanley Senior Funding, Inc. and any of its former or present officers, directors, employees, representatives and agents.

26. The term "person" shall mean any natural person or any business, legal or governmental entity or association.

27. The term "relating to" shall mean concerning, evidencing, referring to, or constituting.

28. The "Relevant Period," unless otherwise indicated, shall be from January 1, 1996 through the date of service of this subpoena.

29. "SEC" shall mean the Securities and Exchange Commission.

30. "SEC Administrative Proceedings" shall mean *In the Matter of Sunbeam Corp.*, SEC Administrative Proceeding File No. 3-10481, and *In the Matter of David C. Fannin*, SEC Administrative Proceeding File No. 3-10482.

31. "Signature brands" shall mean Signature Brands USA, Inc. and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

32. "Skadden" shall mean Skadden, Arps, Slate, Meagher & Flom, LLP and any of its former or present partners, officers, directors, employees, representatives and agents.

33. "Subordinated Debentures" shall mean the Sunbeam's Zero Coupon Convertible Senior Subordinated Debentures Due 2018.

34. "Subordinated Debenture Offering" shall mean the offering of Sunbeam's Subordinated Debentures.

35. "Sunbeam" shall mean Sunbeam Corporation and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents.

36. "Synergies" shall mean post-acquisition gains through increased revenue and/or decreased cost.

37. "Wachtell" shall mean Wachtell Lipton Rosen & Katz and any of its former or present partners, officers, directors, employees, representatives and agents.

38. The terms "you" or "your" shall mean Donald R. Uzzi and any of Donald R. Uzzi's present and former representatives and agents.

INSTRUCTIONS

1. Documents shall be produced as they are kept in the usual course of business, or organized and labeled to correspond to the categories in this Request. Documents attached to each other should not be separated. Documents consisting of items previously produced in the Litigations, Arbitrations, and/or SEC Administrative Proceedings with Bates numbering shall be produced in Bates number order.

2. All documents shall be produced in the file folder, envelope or other container in which the documents are kept or maintained by you. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks.

3. The relevant period, unless otherwise indicated, shall be from January 1, 1996 through the date of service of this subpoena, and shall include all documents and information which relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received prior or subsequent to that period. Please supplement or correct your responses to these requests if, at any time, you become aware that your responses are incomplete or incorrect in any request.

4. If you claim the attorney-client privilege, or any other privilege or work-product protection for all or any portion of a document, you shall provide a privilege log that describes the withheld material sufficiently to allow Morgan Stanley to test the privilege or protection asserted.

5. The following rules of construction apply:

1. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be outside their scope;

2. The term "including" shall be construed to mean "without limitation"; and

3. The use of the singular form of any word include the plural and vice versa.

Exhibit 2

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

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

AGREED ORDER APPOINTING COMMISSIONERS AND COMMISSIONS

THIS CAUSE, having come before the Circuit Court in and for Palm Beach County, State of Florida, on the agreement of the parties, and

WHEREAS, it appears to the Court that:

1. Defendant Morgan Stanley & Co. Incorporated ("MS & Co.") desires to take the videotaped depositions of and obtain documents from the following witnesses who reside in California, Connecticut, Kansas, Minnesota, New York, Texas, and the District of Columbia and who have knowledge of facts relevant to this case:

Karen Kay Clark
1674 Amarelle Street
Newbury Park, CA 91320

Frank N. Gifford
126 Taconic Road
Greenwich, CT 06831-3139

Robert J. Duffy
16 Saint Nicholas Road
Darien, CT 06820-2823

16div-009194

Joseph P. Page
921 Sheridan Street, Apt. 119
Wichita, KS 67213-1363

William H. Spoor
622 West Ferndale Road
Wayzata, MN 55391

Adam Emmerich
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Steven Cohen
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Steven K. Geller
301 East 79th Street, Apt. 4H
New York, NY 10021-0932

Donald Uzzi
4209 Beverly Dr.
Dallas, TX 75205-3020

Ann Dibble Jordan
2940 Benton Place NW
Washington, DC 20008

2. You are hereby appointed as commissioners to take the videotaped testimony (and obtain the requested documentation) of the above witnesses and other witnesses whose discovery is sought in the commissions' jurisdiction under oath and on oral examination in accordance with the applicable Florida Statutes and Rules of Civil Procedure:

Esquire Santa Ana
2100 North Broadway, Second Floor
Santa Ana, CA 97206

Del Vecchio Reporting
117 Randi Drive
Madison, CT 06443

16div-009195

Harper Court Reporting
P.O. Box 3008
Wichita, KS 67201

Kirby Kennedy & Associates
5200 Wilson Road #219
Minneapolis, MN 55424

Esquire Deposition Services
216 E. 45th Street, 8th FL
New York, New York 10017-3304

Esquire Deposition Services
703 McKinney Avenue #320
Dallas, Texas 75202

Esquire Deposition Services
1020 19th Street NW, #621
Washington, DC 20036

or any person able to administer oaths pursuant to the laws of California, Connecticut, Kansas, Minnesota, New York, Texas, and the District of Columbia and duly authorized by him.

3. This order does not purport to grant the power of the commissioners appointed to subpoena witnesses or documents, but simply the power to administer oaths and transcribe deposition testimony.

DONE AND ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida this ____ day of January, 2004.

SIGNED AND DATED

ELIZABETH T. MAASS
Circuit Court Judge

ELIZABETH T. MAASS

Coleman (Parent) Holdings v. Morgan Stanley & Co. Inc.
2003 CA 005045AI
Agreed Order on Appointment of Commission

Copies furnished to:

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West Palm Beach, Florida 33409
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Thomas A. Clare
Zhonette M. Brown
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Jerold S. Solovy
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One IBM Plaza
Suite 4400
Chicago, Illinois 60611
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Facsimile: (312) 527-0484

16div-009197

Exhibit 5

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO. INCORPORATED,
Defendant.
_____/

CASE NO: CA 03-5045 AI

DECLARATION OF D.C. PAGE

Pursuant to section 92.525(1)(b), Florida Statutes (2002), I declare as follows:

1. My name is D.C. Page. I am over eighteen years of age, am employed by Verasys L.L.C., and am not a party to this action.

2. I have personal knowledge of the efforts undertaken by Verasys L.L.C. in its attempts to serve Donald R. Uzzi with a subpoena in the above-captioned case.

3. The memorandum entitled 'Chronology of Efforts to Serve Donald R. Uzzi' attached as Exhibit A to this declaration was prepared at my request and is a true and correct log of the efforts undertaken by Verasys L.L.C.

Under penalty of perjury, I declare that the foregoing is true and correct. Executed this 15 day of December, 2004.

D.C. Page

D.C. Page

Exhibit A

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MEMORANDUM

TO: **MICHAEL C. OCCHUIZZO, ESQ.**
KIRKLAND & ELLIS, LLP

FROM: **VERASYS LLC**

DATE: **DECEMBER 15, 2004**

RE: **CHRONOLGY OF EFFORTS TO SERVE DONALD R. UZZI**

INTRODUCTION

Verasys LLC was retained to locate and serve Donald R. Uzzi with a subpoena. Research and inquiries identified his residence in Texas, and subsequent information identified a summer home in Nantucket, Massachusetts. Extensive efforts were undertaken to serve Mr. Uzzi, however, to date, it appears that Mr. Uzzi is purposefully attempting to evade service of the subpoena. Following is a chronology of efforts undertaken to serve Mr. Uzzi.

CHRONOLOGY

The following reflects a chronology of the investigative activity conducted to locate and serve a subpoena upon Donald R. Uzzi:

9/22/2004 Through Internet records and a pretext call to the management of the Gables Apartments, Investigator Perez was able to confirm the address of 4201 Lomo Alto Drive, Unit 307, Highland Park, TX, for Donald Uzzi, through the management company at the apartment complex.

Research was conducted of the local phone directory and found his last name spelled as Donald R. **UZZIE** at the former address (4209 Beverly Drive, Dallas, TX) as it was listed in Autotrack.

Information obtained through Autotrack indicated that Uzzi had a previous address of 5400 Legacy Drive, H3, Plano, TX. This address was listed as the corporate headquarters for Electronic Data System (EDS). A check with the Security Department at EDS determined that Uzzi was no longer employed there.

Knight Ridder/Tribune Business News, dated November 16, 2002, reported, "Don Uzzi, who Plano-based EDS hired as senior vice president three years ago to make its brand name more recognizable, said Friday that he's leaving the company to start his own marketing and consulting firm."

"(Uzzi) said he already has some potential clients but declined to name them. He said his firm will be in Dallas."

9/27/2004 4201 Lomo Alto Drive is an apartment complex located at the southern tip of Highland Park, an exclusive city located adjacent to Dallas, TX. The apartment complex is a large three story building that covers the entire city block. The main entrance is through the Leasing Office lobby which is controlled by a receptionist. Other entrances to the property grounds are located along the fence line that surrounds the building. Each entry gate is controlled by a cipher lock which requires a numerical combination. Access to the underground parking lot located under the building is through an electronically controlled gate, which also requires a numerical combination. There are Visitor's Call Boxes, located at the main entrance and at the garage entrance, which can be used to contact the residents.

An attempt was made to serve subpoena at subject's residence. No one at the residence answered the Visitor's Call Box.

9/28/2004 An attempt made to locate subject at his residence and serve the subpoena was unsuccessful.

9/30/2004 Investigator Perez conducted additional Internet research to identify possible leads for locating the subject.

Through KnowX.com, it was learned that Donald R. Uzzi is listed as a Corporate Officer and Registered Agent for Atheneum Associates, Inc, a domestic business corporation, with a date of incorporation of 11/19/2002. This coincides with the news report (cited above) which indicated that Uzzi was leaving EDS in November 2002 to start his own management consulting company.

Texas Comptroller of Public Accounts records identified Atheneum Associates, 4201 Lomo Alto Drive, Apartment 307, Dallas, TX, as being "IN GOOD STANDING NOT FOR DISSOLUTION OR WITHDRAWAL through May 16, 2005." Donald R. Uzzi was listed as the Director for the company.

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SHARP THINKING

Through this same source, Donald R. Uzzi was listed as the Director and Sally Ann Hummel (his wife), of 4209 Beverly Drive, Dallas, TX, as the Manager for the Over Dew View Management Company LLC, 9400 NCX, Suite 420, 9400 N. Central Expressway, Dallas, TX. Kirby H. Jackson, at this same address, was listed as the Registered Agent. Over Dew View was also listed as "IN GOOD STANDING NOT FOR DISSOLUTION OR WITHDRAWAL through November 15, 2004." Charter date for this company was listed as December 28, 2000.

Numerous efforts to locate an actual physical place of business for either company in the North Texas area were unsuccessful.

WhitePages.com confirmed a telephone number of 214-526-0612 for Uzzi at 4209 Beverly Drive. When called, a fax machine tone answered.

Dallas Central Appraisal District records indicated that Donald R. Uzzi and Sally Ann Hummel-Uzzi were the owners of the property at 4209 Beverly Drive in 2003. The property was now owned by James A and Susan E. Rolfe. According to the Taxing Jurisdiction, the property was valued at $1,231,448.00 in 2003.

Investigator Perez conducted a residence drive-by at the Loma Alto residence and was unable to locate the subject, however a message for Uzzi was left with the apartment building receptionist, Sabrina (Last Name Unknown).

Investigator Perez met with Kirby H. Jackson the registered agent for Over Dew View Management Company LLC (see above). Jackson advised that he had not spoken with Uzzi for some time and that he had just recently learned that Uzzi had moved from his Beverly Drive address. He did not recall the business Over Dew View until he was reminded that he was listed as the Registered Agent.

Investigator Perez conducted a residence drive-by mid-afternoon but did not spot the subject or his vehicles.

10/1/2004 Early morning surveillance at the residence was unsuccessful at spotting either of the family vehicles.

10/2/2004 Residence spot checks in the late morning and mid-afternoon located both vehicles in the garage. No one answered the Visitor's Call Box.

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10/4/2004 Early morning surveillance at the residence was unsuccessful in spotting the vehicles or the subject. Internet research was conducted to identify additional leads. A late afternoon surveillance at the residence was unfruitful.

10/5/2004 Early morning surveillance at the residence spotted both vehicles leaving the garage. The 2003 Volkswagen Jetta, TX license V89YDW, was being driven by the daughter, Meaghan. She left the building and drove to Highland Park High School. Believing the driver to be Uzzi, Investigator Perez approached the vehicle and initiated dialog with Meaghan, which lasted a few minutes. Investigator Perez explained to her that he was trying to locate her father to deliver some papers. She explained that her father has been out of town at their summer home, but she did not know what he was doing there, perhaps fixing it up. She was not receptive to identifying the location of the summer home. She further explained that she really didn't know what this was all about and that her parents purposely tied to keep her in the dark. Somehow she figured it all out on her own. She admitted that she knew someone was looking for her father. Her mother told her to not answer the phone. Investigator Perez apologized for "spooking" her and gave her a business card. Investigator Perez asked her if she would contact her father and have him call him so that Investigator Perez could explain the situation to him. She said she would.

Thereafter, Investigator Perez returned to the apartment building. Within a few minutes, he spotted the wife leaving in the family's 2001 Land Rover Discovery II, TX license ACKACK. He followed the vehicle for a few blocks until she stopped for gas. When he approached her, she sped off. Investigator Perez continued to follow her as she pulled into a vacant lot and she sped off again when he approached again. He followed her onto southbound Central Expressway heading towards downtown Dallas. Because of the large volume of traffic, surveillance was discontinued.

Additional research was conducted to identify more leads regarding Mr. Uzzi. Following up on the information provided by Uzzi's daughter concerning him being at their summer home, research was conducted regarding previously owned properties and some out-of-area phone numbers. One of the numbers surfaced (508-228-4998) came back as a current number for S. HUMMEL at 7 Maxie Pond Road, Nantucket, MA 02554-2675. Further inquiries revealed that the address was associated with DON R. UZZI as currently as May 2004. The telephone number also came back from the National Telephone Directory Service as being current as of July 2004. The property is listed in the name of SALLY A. HUMMEL-UZZI, with a purchase date of 6/12/1997.

10/15-16/2004 Based upon the information developed to date, extensive surveillance was conducted at the residence and other locations on Nantucket Island, Massachusetts. Surveillance indicated a good probability of recent occupancy of the #7 Maxey Pond Road residence by person or persons unknown. Donald R. UZZI was not located and no specific indication of his current location or of his recent presence on Nantucket was confirmed. Investigator Timothy Kelly conducted the surveillance and investigation efforts in Massachusetts.

Details of Investigation

Legal procedural issues between the State of Florida and the State of Massachusetts necessitated the redrafting and reissue of the existing subpoena for Mr. UZZI's presence to comply with Massachusetts statutory requirements.

Information obtained from investigators in Dallas, Texas indicated that, according to his daughter, Donald R. UZZI was residing at the family's "summer home." Records checks indicated that the "summer home" was believed to be located at #7 Maxey Pond Road, Nantucket Island, Massachusetts 02554.

Various attempts to locate Mr. UZZI by pretext telephone calls to the "summer home" telephone (508-228-4998) registered in the name of S. Hummel were unsuccessful. Sally A. HUMMEL-UZZI is the wife of Donald R. UZZI.

On October 14, 2004, pending the issuance of the new subpoena, authorization was granted to conduct investigation and surveillance of the UZZI /HUMMEL summer home at # 7 Maxey Pond Road, Nantucket Island, Massachusetts in an attempt to locate Donald R. UZZI for future service of the new subpoena.

Nantucket, Massachusetts is an island in the north Atlantic Ocean approximately fifty (50) miles southeast of Hyannis, Massachusetts on Cape Cod. It is similar in size to the island of Bermuda being about fifteen miles in length and three to four miles wide. Nantucket is a popular tourist location, heavily populated during the summer months by both summer residents and transient tourists alike. The population diminishes substantially after the Labor Day holiday and plummets after late October to a base population of about 7000 persons. Mainland/ Island travel is serviced by two scheduled ferry companies with approximately fourteen (14) high speed and traditional roundtrips daily. Purchase of tickets is anonymous unless done so by credit card. Cash transactions are untraceable. The island is also serviced by scheduled aircraft at the local airport several times daily from Boston, Mass. Chartered vessels and aircraft regularly bring and take passengers to and from the island at the whim of the tourists that can afford private service.

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SHARP THINKING

Surveillance of the UZZI/ HUMMEL residence at #7 Maxey Pond Road, Nantucket Island began at about 1500 hours on Friday, October 15, 2004.

The house is a single family, two story, brown colored wood shingled residence located approximately 3.1 miles west from Nantucket center on Madaket Road. The cost at the time of sale to Sally HUMMEL /UZZI was $800,000.00 in mid-2001. Records indicate that a mortgage of $600,000.00 was taken out on the property at that time.

The GPS mapping coordinates for the property are 41degrees 17.08 minutes North and 070 degrees 07.75 minutes West. There are several other houses on the street which dead ends in a small traffic circle northwards from Madaket Road. All are set back from the road and with substantial landscaping trees and foliage defeating a clear view of the UZZI residence from neighboring properties. The UZZI property is fronted and lined on the driveway leading to the house by trimmed yew hedges approximately six feet in height obstructing a clear view of the property from Maxey Pond Road. All but two houses on this dead end street are closed for the winter.

The residence is definitely the UZZI property as it bears the legend "OVER DEW VIEW" in gold lettering arced above the main windows on the second floor of the house. Donald R UZZI is listed as the president of the Over Dew View Management Company LLC of Dallas, Texas.

Windows of the residence were covered from the inside, a practice common in such seasonal areas, to obscure interior views of properties from potential burglars However, interior lighting and light leakage would clearly be visible if lighting was engaged after darkness has fallen. No such lighting was observed.

A local newspaper was found at the end of the driveway -- though in place on the afternoon of October 15, it was still in place on October 16, unmoved at about 0730 hours.

Two local weekly newspapers service Nantucket Island. The Mirror is delivered on Wednesdays and the Independent on Thursdays. The instant newspaper was, in all probability, in place from either the prior day or two days in the driveway of the UZZI house. No similar newspapers were present in any other driveways of any other houses on the street.

Surveillance was continued intermittently from both vehicle and foot vantage points until approximately 2330 hours. No automobiles were observed entering or leaving the property and no lighting of any kind was observed either in the

house or on the property throughout that period. Surveillance was terminated at 2400 hours.

Surveillance was reinstated at 0700 on Saturday, October 16, 2004 and continued until approximately 1200 hours. No automobiles were observed entering or leaving the property during that entire time.

At about 1030 hours on Saturday, October 16, 2004, using the ruse of distributing circulars from the local SPCA, the house was approached, the door bell rung and then a circular regarding a lost dog was left in the front door handle. No answer or sounds came from the house and it was apparent no one was in residence from the general appearance of the house. The house has no garage and no vehicles of any kind were observed on the property. The area is what could be regarded as a wealthy semi-rural neighborhood. There are no stores or other businesses within three miles of the house. Hence a motor vehicle of some kind, absent a passion for bicycling or walking, is necessary for the normal supply and provisioning of any residence in that area. No signs of any bicycles or similar transport were observed on the property.

Observed in the side yard of the residence was an expensive gas cooking grill unsecured and apparently ready for immediate use. None of the other houses in the area which were closed for the winter had any lawn furniture or movable grills remaining unsecured (and hence an easy target for theft) as was found at #7 Maxey Pond Road.

The parking lots of the two major ferry lines and the parking lots at the Nantucket Airport were canvassed in an attempt to locate any of the vehicles associated with Donald R. UZZI in the National Comprehensive Report. None were found in any of those parking facilities.

No information to definitively prove or disprove that Donald R. UZZI was or had recently been in residence or in fact had recently been on Nantucket Island was uncovered by this surveillance. His whereabouts remain unknown to this investigator at this time.

In an effort to leave no investigative footprints and hence alert Mr. UZZI and preclude his future use of this address as sanctuary while being sought for service of process none of the remaining neighbors on Maxey Pond Road were approached and/or questioned. In any case, it is unlikely that if UZZI was in hiding at the residence the neighbors would have been aware of his presence given the foliage surrounding the building and yard. Similarly the rental car used

for the surveillance bore no markings as a rental vehicle and appeared, for all intents and purposes, to be a local vehicle with no unusual out of area characteristics.

10/15/2004 Investigator Perez conducted a residence spot check; no one answered the Visitor's Call Box. Inquiries were made with the building receptionist (Sabrina) with whom Investigator Perez had spoken on his previous visit. Sabrina recalled the previous visit and said that she had not seen Uzzi to pass along the business card. She further stated that she has never actually seen Uzzi. All of her business dealings with the family regarding the apartment lease have been through his wife, Sally Hummel-Uzzi and, according to Sabrina, Sally did not like her. Sabrina again tried to reach Uzzi through his home phone and cellular phone with no luck.

10/18/2004 Inquiries with the Police Chief in Highland Park, TX, where Uzzi resides, revealed that Uzzi had recently sold a vehicle. However, research could only find current records for the Land Rover and the Volkswagen Jetta. It is noted that, based upon the findings of research, everything seems to be listed in his wife's name except for the home telephone. Since the wife and daughter are usually gone during the day, it was planned to keep trying to reach someone by telephone in the evenings. Over the next several days, numerous calls from various telephones went unanswered.

Research and investigation identified Uzzi's residence (214-526-0611) and cellular (214-557-3537) telephone numbers. Investigator Perez tried to call him in the morning and only got an answering machine with what is assumed to be Uzzi's wife's voice. From the previous conversation with Uzzi's daughter, a couple of weeks earlier, it came as no surprise that no one would answer since, according to Meaghan, her mother has told her to not answer the telephone(s).

10/21/2004 Investigator Perez conducted an early morning surveillance at the residence. He followed the wife for a brief period until he lost her on Central Expressway.

10/22/2004 Investigator Perez continued to attempt to contact someone at Uzzi's telephone and cell phone from various numbers with no luck. In every instance, the calls were answered by an answering machine. The same also went for the apartment building's Visitor's Call Box. No one answered the call box when both vehicles were known to be in the garage. There are not many locations within walking distance of the residence, giving the impression that the Uzzi's were purposefully avoiding answering the telephone.

From the surveillances Investigator Perez conducted, it appeared the wife and daughter keep the same morning departure schedules. Both depart the residence

between 5:45 AM and 6:05 AM. The daughter goes to an early morning swim practice at the local high school where she is a member of the swim team (according to the Highland Park Police Chief). The wife travels into downtown Dallas, possibly to go to work.

Research surfaced an interesting side note regarding Uzzi. The license number for their Range Rover is "ACKACK". He also has an oval bumper sticker on the Rover which reads "ACK." Research revealed that, "ACK" is the FAA abbreviation for the Nantucket Airport. During 1991 through 1993, Uzzi had a license plate which read "NANTKT." While living in Florida, Uzzi had two vehicles with Florida License plates "ACKACK" and "ACKN0W" (correct spelling) in 2000-2001. Obviously, he is really big on the area.

As mentioned previously, Investigator Perez had found a corporate record for a company where Uzzi is the President – Atheneum Associates, Inc - registered at their present address. There is also a Nantucket Atheneum in Nantucket. The following is from the local web-site:

"The Nantucket Atheneum"
The Nantucket Atheneum, a private, non-profit organization, provides public library service to the island's year-round and seasonal residents. Housed in a historic 1847 building and the Weezie Library for Children, the Atheneum collects, organizes, and disseminates books, literature, and other materials in a variety of formats to help users of all ages meet their recreational, personal and professional and intellectual needs. In keeping with its heritage, the Atheneum also serves as a cultural center for the Nantucket community by sponsoring educational programming and maintaining special collections related to the history and culture of the island. The Nantucket Atheneum is located at 1 India Street, 508-228-1110." The website is listed as www.nantucketatheneum.org.

11/17/2004 An early morning surveillance of Uzzi's wife was conducted by Investigators Robert L. Jackson and Troy Essink determined that she worked at Wilmer Elementary School in Wilmer, TX, just south of Dallas. Research confirmed that Sally Ann Hummel-Uzzi is certified by the Texas State Board for Educator Certification as an Elementary/Secondary English Teacher, valid through 5/31/2007.

11/18/2004 As Meaghan Uzzi is on the high school swim team, investigators took a chance that her father may attend her meets if he in town. An Internet search on local swim meets identified one to take place on November 19, 2004.

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11/19/2004 Investigators Jackson and Essink surveilled the swim meet to locate the subject. It was learned that Meaghan was not scheduled to participate, and Donald Uzzi was not spotted.

11/22/2004 A mid-day surveillance by Investigators Jackson and Essink at the residence failed to locate the subject.

11/23/2004 Mid-day and late afternoon and evening surveillances by Jackson and Essink at the residences was unable to spot either of the family vehicles or the subject.

11/30/2004 A random search of the Internet produced the following articles in Yahoo! Finance:

"Merisel Announces Appointment of New CEO"
Monday November 22, 8:36 am ET "

> EL SEGUNDO, Calif.--(BUSINESS WIRE)--Nov. 22, 2004--Merisel, Inc. (Nasdaq:MSEL - News) today announced the appointment of **Mr. Donald Uzzi** as its new President and Chief Executive Officer. From July 1999 to December 2002, Mr. Uzzi was Senior Vice President, Senior Leader Operating Team at EDS Corporation, the computer services company. His responsibilities at EDS included advertising, marketing, communications, government affairs, strategic alliance planning and alliance sales on a global basis. Since December 2002, Mr. Uzzi has provided private consulting services to various companies on marketing, corporate strategy and communications.
>
> "Mr. Uzzi replaces Timothy N. Jenson, who, as announced by the Company on November 15, tendered his resignation from all offices and directorships of the Company and its subsidiaries effective today. Except for Mr. Jenson's resignation and Mr. Uzzi's appointment, the remainder of Merisel's Board of Directors and officers remain the same. Mr. Jenson's resignation followed a decision by the Audit Committee of the Company to investigate the sale of certain assets and liabilities that had principally comprised the Company's software licensing business, including notes and real property assets, to D&H Services, LLC. Among other things, the investigation has focused on Mr. Jenson's relationships with D&H Services, LLC and its principals, and whether the financial and other terms of the transaction were fair to the Company. The investigation of the D&H transaction and of Mr. Jenson's activities is continuing, and the

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SHARP THINKING

Company is considering available legal options, including possible rescission of the D&H transaction, and other remedies to recover any damages suffered by the Company."

Corporate headquarters for Uzzi's new employer is listed as: **Merisel, Inc**. 200 Continental Blvd. El Segundo, CA 90245. Their website is www.merisel.com.

Investigator Perez placed a call to the Highland Park Police chief who arranged through the apartment manager for him to gain access to the interior of the building. The building manager granted him access to the building to try to serve the on Uzzi. No one answered the apartment door, but it was noted that sounds could be heard from someone (and a big dog) inside the residence. Investigator Perez left a note on the door for Uzzi indicating that he needed to meet with him to serve the subpoena (of which he was already aware). The note also mentioned that if Investigator Perez could not serve him now, someone would probably end up serving him at his new employment. Again, a business card was left requesting Mr. Uzzi to call back. As Investigator Perez was leaving, he entered the underground garage and saw the Volkswagen Jetta parked in the garage. This is the car that the daughter usually drives. At the time of my visit, Meaghan would have been in school.

Before Investigator Perez left, he again stopped by the manager's office and indicated that he would probably have to come back around and the manager agreed to cooperate. Investigator Perez also asked if the manager had received any kind of notice from the Uzzi's about their moving out soon, to which he replied no. It is speculated that that Uzzi may move out to El Segundo by himself until the school year is over when his family will join him, as the wife is a school teacher and the daughter still attends school.

12/1- 9/2004 Investigator Perez made contact with Constable Rick Richardson, Precinct 3, Dallas County, to have a uniformed Constable to attempt to serve the subpoena.

Over the week since Deputy Constable Bill Turner was assigned the ticket on this subpoena, he advised that he made 5 attempts during varying times of the day to serve the subpoena at Uzzi's residence with no one ever answering the apartment door. Deputy Constable Bill Turner asked for information regarding Uzzi's wife's employment, so he may try to contact her and obtain information directly from her. He was provided with relevant information.

Further, during that time, Investigator Perez and others also made attempts to serve Uzzi at his residence.

Verasys
SHARP THINKING

Several pretext calls were made to Marisel, the company where Uzzi has reportedly begun his CEO position. The phones are answered by voicemail and several messages were left for him. Additional attempts to contact a human being by surfing the voicemail system were unsuccessful.

12/6/2004 Investigator Perez had a conversation with the Property Manager and the Maintenance man. The Property Manager state that he has never personally seen Uzzi and last week, after a Constable had attempted to serve the subpoena, Uzzi's daughter told the receptionist (Sabrina) that her father was in hiding. Perez showed a photograph of Uzzi to both individuals and the Maintenance Man recognized Uzzi from the previous weekend (Dec. 3-5).

12/9/2004 Investigator John Hernandez (California) was contacted to assist in determining if subject Uzzi is at the Merisel building location in El Segundo, CA. A visit to Marisel's reported address, 200 Continental Blvd., El Segundo, CA 90245-0984. Investigator Hernandez drove around the building, and determined it is currently being remodeled. He spoke to construction workers at the site who've been there for two weeks. He described Uzzi and none of the workers claimed to have seen anyone fitting that description at the premises while they have been working there.

12/10-13/2004 Deputy Turner continued his efforts to serve Uzzi, advising that he would try again on Monday evening, when he works late. To date, efforts to serve Uzzi have not been able to serve the subpoena on him.

Exhibit 6

THE STATE OF TEXAS

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.
MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

DEPOSITION SUBPOENA DUCES TECUM

TO: Any sheriff or constable of the State of Texas or other person authorized to serve and execute subpoenas as provided in Texas Rule of Civil Procedure 176.5.

You are commanded to summon **Donald R. Uzzi**, 4201 Lomo Alto Drive, Apt. 307, Dallas, TX 75219, to appear at the principal offices of HAYNES AND BOONE, LLP, 901 Main Street Suite 3100, Dallas, Texas 75202, on **Wednesday, November 24, 2004 at 9:30 a.m.** to give testimony at a videotaped oral deposition and to permit inspection and copying of documents or tangible things to be used as evidence in this case.

Donald R. Uzzi is commanded to attend the oral deposition and to produce and permit inspection and copying of the following documents or tangible things described in the attached Exhibit 1. These documents and materials shall be brought with the witness and produced prior to the deposition on November 24, 2004, at HAYNES AND BOONE, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202.

Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both. TEX. R. CIV. P. 176.8(a).

DO NOT FAIL to return this writ to the Circuit Court of the Fifteenth Judicial Circuit In and For Palm Beach County, Florida with either the attached officer's return showing the manner of execution or the witness's signed memorandum showing that the witness accepted the subpoena.

ISSUED on November 9, 2004.

By: _____

Sean Trende
Texas State Bar No. 24034176
KIRKLAND & ELLIS LLP,
655 15th Street, N.W., Suite 1200,
Washington, D.C. 20005

This subpoena was issued pursuant to Texas Rule of Civil Procedure 201.2, the Order of the Circuit Court of the Fifteenth Judicial Circuit In and For Palm Beach County, Florida entered on January 21, 2004 and attached hereto as Exhibit 2, and at the request of Defendants' attorneys of record Thomas D. Yannucci, P.C., Lawrence P. Bemis (FL Bar No. 618349), and Thomas A. Clare of KIRKLAND & ELLIS LLP, 655 15th Street, N.W., Suite 1200, Washington, D.C. 20005; Mark C. Hansen, James M. Webster, III, Rebecca A. Beynon of KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C., Sumner Square, 1615 M Street, N.W., Suite 400, Washington, D.C. 20036; Joseph Ianno, Jr. (FL Bar No. 655351), CARLTON FIELDS, P.A., 222 Lakeview Ave., Suite 1400, West Palm Beach, FL 33401.

EXHIBIT 1

DEPOSITION SUBPOENA DUCES TECUM

You are hereby requested to produced the following documents pursuant to the definitions and instructions contained herein:

DOCUMENTS REQUESTED

1. All documents concerning the Coleman Transaction.

2. All documents concerning the Subordinated Debenture Offering.

3. All documents concerning the Bank Facility, or the Credit Agreement.

4. All documents reflecting or concerning any communications between or among any of Sunbeam, CPH, MAFCO, CSFB, Arthur Andersen, MS & Co., MSSF, Davis Polk, Wachtell, or Skadden in 1997 or 1998.

5. All documents provided by you in any Litigation or SEC Administrative Proceeding.

6. All calendars, diaries, timekeeping sheets or records maintained by you concerning any activities related to Coleman Transaction, the Subordinated Debenture Offering, the Bank Facility, the Credit Agreement.

7. All documents related to Sunbeam's Financial Information for all or any portion of 1996, 1997, and 1998, including but not limited to Financial Statements and documents concerning Sunbeam's forecasts and plans for revenue or earnings.

8. All documents related or referring to any cost-reduction or sales program or policy in place at Sunbeam during 1997 and 1998, including but not limited to documents concerning the "early buy" program, "Initiatives for Success", and "bill and hold" sales and the "no returns" policy.

9. All documents concerning returns of Sunbeam goods or product in 1997 and 1998, including but not limited to documents regarding the "no returns" policy and conversations or communications regarding the deletion of return authorizations from the J.D. Edwards system.

10. All documents pertaining to negotiations concerning the acquisition of Coleman, Signature Brands, and First Alert, including but not limited to documents concerning conversations or communications of any kind between or among any of MS & Co., MSSF, CPH or MAFCO personnel or representatives.

11. All documents concerning Synergies that might be achieved from a business combination of Sunbeam, Coleman, Signature Brands, and First Alert, or any combination thereof.

12. All documents related to or supporting the March 16, 1998 Representation Letter provided to Arthur Anderson, including but not limited to any drafts of such letter and any Financial Information used or referenced in writing the letter or drafts.

13. All documents concerning any "comfort letter" pertaining to the Subordinated Debenture offering or the Credit Agreement, including but not limited to Arthur Andersen's letters dated March 19, 1998 and March 25, 1998 and any drafts of such letters.

14. All documents concerning any investigation, analysis, or due diligence conducted by Sunbeam or its Advisors pertaining to the Coleman Transaction, including but not limited to documents and Financial Information pertaining to March 18, 1998 and March 24, 1998 conference calls.

15. All documents related to Sunbeam's March 19, 1998 press release, including but not limited to documents pertaining to the contents or drafting of the press release, the decision to issue the press release, and the decision to include the press release in the Offering memorandum.

16. All documents concerning the March 19, 1998 drafting session and/or meeting that took place at Global Financial Press concerning the Offering Memorandum, including but not limited to documents concerning any conversations or communications of any kind involving MS & Co. or Arthur Andersen personnel.

17. All documents related to the sale of the Subordinated Debenture, including but not limited to documents pertaining to roadshows or other communications with investors or analysts.

DEFINITIONS

1. "Advisors" shall mean financial advisors, legal advisors, accountants, consultants and any other third-party advising or assisting Sunbeam in any way with the Coleman Transaction, including but not limited to Arthur Anderson, Coopers & Lybrand, Llama Company, MS& Co., MSSF, and Skadden.

2. "Arbitrations" shall mean *Albert J. Dunlap and Sunbeam Corporation*, No. 32 160 00088 99 (AAA); and *Russell A. Kersh and Sunbeam Corporation*, No. 32 160 00091 99 (AAA).

3. "Arthur Andersen" shall mean Arthur Andersen LLP and any of its former or present partners, officers, directors, employees, representatives and agents.

4. "Bank Facility" shall mean the Credit Agreement, including amendments, and all funds extended by Lenders to Sunbeam pursuant to the Credit Agreement, including but not limited to Tranche A, Tranche B, and the Revolving Credit Facility.

5. "Communication" shall mean any exchange or transmittal of information by any means of transmission, including, without limitation, face-to-face conversation, mail, overnight delivery, Internet, telephone, electronic mail, or facsimile.

6. The term "concerning" shall mean relating to, referring to, describing, evidencing, or constituting.

7. "Coleman" shall mean Coleman Company, Inc. and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

8. "Coleman Transaction" shall mean Sunbeam's acquisition of Coleman Company, Inc. from CPH and all related communications, agreements, and transactions, including the February 27, 1998 Agreements and the March 30, 1998 closing.

9. "Cooper & Lybrand" shall mean the former Coopers & Lybrand LLP, and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents.

10. "CPH" shall mean Coleman (Parent) Holdings Inc. and any of its former or present officers, directors, employees, representatives and agents.

11. "Credit Agreement" shall mean the agreement entered into by Sunbeam, as borrower with Lenders, dated March 30, 1998 and all amendments thereto.

12. "CSFB" shall mean Credit Suisse First Boston LLC and any of its former or present officers, directors, employees, representatives and agents.

13. "Davis Polk" shall mean Davis Polk & Wardwell and any of its former or present partners, officers, directors, employees, representatives and agents.

14. "Document" shall mean any recording in any tangible form of any information, whether handwritten, typed, printed, stored on computer disks, tapes, or databases, or otherwise reproduced. "Document" or "documents" also includes electronic documents whether stored on

servers or hard drives, e-mail, backup tapes, voicemail and video and audio recordings. A draft or non-identical copy is a separate document within the meaning of this term.

15. "Financial Information" shall mean information concerning the past or present financial condition of Sunbeam or Sunbeam securities.

16. "Financial Statements" shall mean documents reflecting Financial Information, including without limitation quarterly reports, yearly reports, balance sheets, statements of income, earnings, cash flow projections, and sources and applications of funds.

17. "First Alert" shall mean First Alert, Inc., and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

18. The term "identify" (with respect to documents) shall mean to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).

19. "Lenders" shall mean the entities listed on Schedule 2.01 of the Credit Agreement under the heading "Lenders" and any other person that shall have become a party to the Credit Agreement as a Lender pursuant to an assignment and acceptance.

20. "Litigations" shall mean *In re Sunbeam Securities Litigation*, 98-8258-Civ.-Middlebrooks (S.D. Fla); *Camden Asset Management L.P. v. Sunbeam Corporation*, 98-8773-Civ.-Middlebroks and 98-8275-Civ.-Middlebrooks (S.D. Fla); *Krim v. Dunlap*, No. CL 983168AD (15th Jud. Cir., Fla.); *Stapleton v. Sunbeam Corp.*, No. 98-1676-Civ.-King (S.D. Fla); *Sunbeam Corp. v. PricewaterhouseCoopers LLP*, No. CL 005444AN (15th Jud. Cir., Fla.); *In re Sunbeam Corp., Inc.*, No. 01-40291 (AJG) (Bankr. S.D.N.Y.) and any adversary proceedings therein; *SEC v. Dunlap*, No. 01-8437-Civ.-Middlebrooks (S.D. Fla.); *Oaktree Capital Management LLC v. Arthur Andersen LLP*,

No. BC257177 (L.A. Cty., CA); and *Coleman (Parent) Holdings Inc. v. Arthur Andersen LLP*, No. CA 01-06062AN (15th Jud. Cir., Fla.), or other litigation concerning the Coleman Transaction.

21. "Llama Company" shall mean Llama Company and any of its former or present partners, officers, directors, employees, representatives and agents.

22. "MAFCO" shall mean MacAndrews & Forbes Holdings, Inc. and any of its officers, directors, former or present employees, representatives and agents.

23. The "March 19, 1998 Press Release" shall mean the press release issued by Sunbeam on March 19, 1998 concerning the shortfall of first quarter 1998 sales numbers and the reasons for such shortfall.

24. "MS & Co." shall mean Morgan Stanley & Co. Inc. and any of its former or present officers, directors, employees, representatives and agents.

25. "MSSF" shall mean Morgan Stanley Senior Funding, Inc. and any of its former or present officers, directors, employees, representatives and agents.

26. The term "person" shall mean any natural person or any business, legal or governmental entity or association.

27. The term "relating to" shall mean concerning, evidencing, referring to, or constituting.

28. The "Relevant Period," unless otherwise indicated, shall be from January 1, 1996 through the date of service of this subpoena.

29. "SEC" shall mean the Securities and Exchange Commission.

30. "SEC Administrative Proceedings" shall mean *In the Matter of Sunbeam Corp.*, SEC Administrative Proceeding File No. 3-10481, and *In the Matter of David C. Fannin*, SEC Administrative Proceeding File No. 3-10482.

31. "Signature brands" shall mean Signature Brands USA, Inc. and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

32. "Skadden" shall mean Skadden, Arps, Slate, Meagher & Flom, LLP and any of its former or present partners, officers, directors, employees, representatives and agents.

33. "Subordinated Debentures" shall mean the Sunbeam's Zero Coupon Convertible Senior Subordinated Debentures Due 2018.

34. "Subordinated Debenture Offering" shall mean the offering of Sunbeam's Subordinated Debentures.

35. "Sunbeam" shall mean Sunbeam Corporation and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents.

36. "Synergies" shall mean post-acquisition gains through increased revenue and/or decreased cost.

37. "Wachtell" shall mean Wachtell Lipton Rosen & Katz and any of its former or present partners, officers, directors, employees, representatives and agents.

38. The terms "you" or "your" shall mean Donald R. Uzzi and any of Donald R. Uzzi's present and former representatives and agents.

INSTRUCTIONS

1. Documents shall be produced as they are kept in the usual course of business, or organized and labeled to correspond to the categories in this Request. Documents attached to each other should not be separated. Documents consisting of items previously produced in the Litigations, Arbitrations, and/or SEC Administrative Proceedings with Bates numbering shall be produced in Bates number order.

2. All documents shall be produced in the file folder, envelope or other container in which the documents are kept or maintained by you. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks.

3. The relevant period, unless otherwise indicated, shall be from January 1, 1996 through the date of service of this subpoena, and shall include all documents and information which relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received prior or subsequent to that period. Please supplement or correct your responses to these requests if, at any time, you become aware that your responses are incomplete or incorrect in any request.

4. If you claim the attorney-client privilege, or any other privilege or work-product protection for all or any portion of a document, you shall provide a privilege log that describes the withheld material sufficiently to allow Morgan Stanley to test the privilege or protection asserted.

5. The following rules of construction apply:

1. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be outside their scope;

2. The term "including" shall be construed to mean "without limitation"; and

3. The use of the singular form of any word include the plural and vice versa.

Exhibit 2

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

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

AGREED ORDER APPOINTING COMMISSIONERS AND COMMISSIONS

THIS CAUSE, having come before the Circuit Court in and for Palm Beach County, State of Florida, on the agreement of the parties, and

WHEREAS, it appears to the Court that:

1. Defendant Morgan Stanley & Co. Incorporated ("MS & Co.") desires to take the videotaped depositions of and obtain documents from the following witnesses who reside in California, Connecticut, Kansas, Minnesota, New York, Texas, and the District of Columbia and who have knowledge of facts relevant to this case:

Karen Kay Clark
1674 Amarelle Street
Newbury Park, CA 91320

Frank N. Gifford
126 Taconic Road
Greenwich, CT 06831-3139

Robert J. Duffy
16 Saint Nicholas Road
Darien, CT 06820-2823

16div-009225

Joseph P. Page
921 Sheridan Street, Apt. 119
Wichita, KS 67213-1363

William H. Spoor
622 West Ferndale Road
Wayzata, MN 55391

Adam Emmerich
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Steven Cohen
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Steven K. Geller
301 East 79th Street, Apt. 4H
New York, NY 10021-0932

Donald Uzzi
4209 Beverly Dr.
Dallas, TX 75205-3020

Ann Dibble Jordan
2940 Benton Place NW
Washington, DC 20008

2. You are hereby appointed as commissioners to take the videotaped testimony (and obtain the requested documentation) of the above witnesses and other witnesses whose discovery is sought in the commissions' jurisdiction under oath and on oral examination in accordance with the applicable Florida Statutes and Rules of Civil Procedure:

Esquire Santa Ana
2100 North Broadway, Second Floor
Santa Ana, CA 97206

Del Vecchio Reporting
117 Randi Drive
Madison, CT 06443

Harper Court Reporting
P.O. Box 3008
Wichita, KS 67201

Kirby Kennedy & Associates
5200 Wilson Road #219
Minneapolis, MN 55424

Esquire Deposition Services
216 E. 45th Street, 8th FL
New York, New York 10017-3304

Esquire Deposition Services
703 McKinney Avenue #320
Dallas, Texas 75202

Esquire Deposition Services
1020 19th Street NW, #621
Washington, DC 20036

or any person able to administer oaths pursuant to the laws of California, Connecticut, Kansas, Minnesota, New York, Texas, and the District of Columbia and duly authorized by him.

3. This order does not purport to grant the power of the commissioners appointed to subpoena witnesses or documents, but simply the power to administer oaths and transcribe deposition testimony.

DONE AND ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida this ____ day of January, 2004.

SIGNED AND DATED

ELIZABETH T. MAASS
Circuit Court Judge

E.T. MAASS

Copies furnished to:

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368

John Scarola, Esq.
SEARCY, DENNEY, SCAROLA, BARNHARDT
& SHIPLEY, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409
Telephone: (561) 686-3000
Facsimile: (561) 478-0754

Thomas D. Yannucci, P.C.
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th Street, N.W. – Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

Jerold S. Solovy
JENNER & BLOCK, LLC
One IBM Plaza
Suite 4400
Chicago, Illinois 60611
Telephone: (312) 222-9350
Facsimile: (312) 527-0484

16div-009228

Exhibit 7

THE STATE OF TEXAS

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.
MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

DEPOSITION SUBPOENA DUCES TECUM

TO: Any sheriff or constable of the State of Texas or other person authorized to serve and execute subpoenas as provided in Texas Rule of Civil Procedure 176.5.

You are commanded to summon **Donald R. Uzzi**, 4201 Lomo Alto Drive, Apt. 307, Dallas, TX 75219, to appear at the principal offices of HAYNES AND BOONE, LLP, 901 Main Street Suite 3100, Dallas, Texas 75202, on **Tuesday, December 14, 2004 at 9:30 a.m.** to give testimony at a videotaped oral deposition and to permit inspection and copying of documents or tangible things to be used as evidence in this case.

Donald R. Uzzi is commanded to attend the oral deposition and to produce and permit inspection and copying of the following documents or tangible things described in the attached Exhibit 1. These documents and materials shall be brought with the witness and produced prior to the deposition on December 14, 2004, at HAYNES AND BOONE, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202.

Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both. TEX. R. CIV. P. 176.8(a).

DO NOT FAIL to return this writ to the Circuit Court of the Fifteenth Judicial Circuit In and For Palm Beach County, Florida with either the attached officer's return showing the manner of execution or the witness's signed memorandum showing that the witness accepted the subpoena.

ISSUED on November 29, 2004.

By: _____

Sean Tremde
Texas State Bar No. 24034176
KIRKLAND & ELLIS LLP,
655 15th Street, N.W., Suite 1200,
Washington, D.C. 20005

This subpoena was issued pursuant to Texas Rule of Civil Procedure 201.2, the Order of the Circuit Court of the Fifteenth Judicial Circuit In and For Palm Beach County, Florida entered on January 21, 2004 and attached hereto as Exhibit 2, and at the request of Defendants' attorneys of record Thomas D. Yannucci, P.C., Lawrence P. Bemis (FL Bar No. 618349), and Thomas A. Clare of KIRKLAND & ELLIS LLP, 655 15th Street, N.W., Suite 1200, Washington, D.C. 20005; Mark C. Hansen, James M. Webster, III, Rebecca A. Beynon of KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C., Sumner Square, 1615 M Street, N.W., Suite 400, Washington, D.C. 20036; Joseph Ianno, Jr. (FL Bar No. 655351), CARLTON FIELDS, P.A., 222 Lakeview Ave., Suite 1400, West Palm Beach, FL 33401.

EXHIBIT 1

DEPOSITION SUBPOENA DUCES TECUM

You are hereby requested to produced the following documents pursuant to the definitions and instructions contained herein:

DOCUMENTS REQUESTED

1. All documents concerning the Coleman Transaction.

2. All documents concerning the Subordinated Debenture Offering.

3. All documents concerning the Bank Facility, or the Credit Agreement.

4. All documents reflecting or concerning any communications between or among any of Sunbeam, CPH, MAFCO, CSFB, Arthur Andersen, MS & Co., MSSF, Davis Polk, Wachtell, or Skadden in 1997 or 1998.

5. All documents provided by you in any Litigation or SEC Administrative Proceeding.

6. All calendars, diaries, timekeeping sheets or records maintained by you concerning any activities related to Coleman Transaction, the Subordinated Debenture Offering, the Bank Facility, the Credit Agreement.

7. All documents related to Sunbeam's Financial Information for all or any portion of 1996, 1997, and 1998, including but not limited to Financial Statements and documents concerning Sunbeam's forecasts and plans for revenue or earnings.

8. All documents related or referring to any cost-reduction or sales program or policy in place at Sunbeam during 1997 and 1998, including but not limited to documents concerning the "early buy" program, "Initiatives for Success", and "bill and hold" sales and the "no returns" policy.

9. All documents concerning returns of Sunbeam goods or product in 1997 and 1998, including but not limited to documents regarding the "no returns" policy and conversations or communications regarding the deletion of return authorizations from the J.D. Edwards system.

10. All documents pertaining to negotiations concerning the acquisition of Coleman, Signature Brands, and First Alert, including but not limited to documents concerning conversations or communications of any kind between or among any of MS & Co., MSSF, CPH or MAFCO personnel or representatives.

11. All documents concerning Synergies that might be achieved from a business combination of Sunbeam, Coleman, Signature Brands, and First Alert, or any combination thereof.

12. All documents related to or supporting the March 16, 1998 Representation Letter provided to Arthur Anderson, including but not limited to any drafts of such letter and any Financial Information used or referenced in writing the letter or drafts.

13. All documents concerning any "comfort letter" pertaining to the Subordinated Debenture offering or the Credit Agreement, including but not limited to Arthur Andersen's letters dated March 19, 1998 and March 25, 1998 and any drafts of such letters.

14. All documents concerning any investigation, analysis, or due diligence conducted by Sunbeam or its Advisors pertaining to the Coleman Transaction, including but not limited to documents and Financial Information pertaining to March 18, 1998 and March 24, 1998 conference calls.

15. All documents related to Sunbeam's March 19, 1998 press release, including but not limited to documents pertaining to the contents or drafting of the press release, the decision to issue the press release, and the decision to include the press release in the Offering memorandum.

16. All documents concerning the March 19, 1998 drafting session and/or meeting that took place at Global Financial Press concerning the Offering Memorandum, including but not limited to documents concerning any conversations or communications of any kind involving MS & Co. or Arthur Andersen personnel.

17. All documents related to the sale of the Subordinated Debenture, including but not limited to documents pertaining to roadshows or other communications with investors or analysts.

DEFINITIONS

1. "Advisors" shall mean financial advisors, legal advisors, accountants, consultants and any other third-party advising or assisting Sunbeam in any way with the Coleman Transaction, including but not limited to Arthur Anderson, Coopers & Lybrand, Llama Company, MS& Co., MSSF, and Skadden.

2. "Arbitrations" shall mean *Albert J. Dunlap and Sunbeam Corporation*, No. 32 160 00088 99 (AAA); and *Russell A. Kersh and Sunbeam Corporation*, No. 32 160 00091 99 (AAA).

3. "Arthur Andersen" shall mean Arthur Andersen LLP and any of its former or present partners, officers, directors, employees, representatives and agents.

4. "Bank Facility" shall mean the Credit Agreement, including amendments, and all funds extended by Lenders to Sunbeam pursuant to the Credit Agreement, including but not limited to Tranche A, Tranche B, and the Revolving Credit Facility.

5. "Communication" shall mean any exchange or transmittal of information by any means of transmission, including, without limitation, face-to-face conversation, mail, overnight delivery, Internet, telephone, electronic mail, or facsimile.

6. The term "concerning" shall mean relating to, referring to, describing, evidencing, or constituting.

7. "Coleman" shall mean Coleman Company, Inc. and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

8. "Coleman Transaction" shall mean Sunbeam's acquisition of Coleman Company, Inc. from CPH and all related communications, agreements, and transactions, including the February 27, 1998 Agreements and the March 30, 1998 closing.

9. "Cooper & Lybrand" shall mean the former Coopers & Lybrand LLP, and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents.

10. "CPH" shall mean Coleman (Parent) Holdings Inc. and any of its former or present officers, directors, employees, representatives and agents.

11. "Credit Agreement" shall mean the agreement entered into by Sunbeam, as borrower with Lenders, dated March 30, 1998 and all amendments thereto.

12. "CSFB" shall mean Credit Suisse First Boston LLC and any of its former or present officers, directors, employees, representatives and agents.

13. "Davis Polk" shall mean Davis Polk & Wardwell and any of its former or present partners, officers, directors, employees, representatives and agents.

14. "Document" shall mean any recording in any tangible form of any information, whether handwritten, typed, printed, stored on computer disks, tapes, or databases, or otherwise reproduced. "Document" or "documents" also includes electronic documents whether stored on

servers or hard drives, e-mail, backup tapes, voicemail and video and audio recordings. A draft or non-identical copy is a separate document within the meaning of this term.

15. "Financial Information" shall mean information concerning the past or present financial condition of Sunbeam or Sunbeam securities.

16. "Financial Statements" shall mean documents reflecting Financial Information, including without limitation quarterly reports, yearlyreports, balance sheets, statements of income, earnings, cash flow projections, and sources and applications of funds.

17. "First Alert" shall mean First Alert, Inc., and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

18. The term "identify" (with respect to documents) shall mean to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).

19. "Lenders" shall mean the entities listed on Schedule 2.01 of the Credit Agreement under the heading "Lenders" and any other person that shall have become a party to the Credit Agreement as a Lender pursuant to an assignment and acceptance.

20. "Litigations" shall mean *In re Sunbeam Securities Litigation*, 98-8258-Civ.-Middlcbrooks (S.D. Fla); *Camden Asset Management L.P. v. Sunbeam Corporation*, 98-8773-Civ.-Middlebroks and 98-8275-Civ.-Middlebrooks (S.D. Fla); *Krim v. Dunlap*, No. CL 983168AD (15th Jud. Cir., Fla.); *Stapleton v. Sunbeam Corp.*, No. 98-1676-Civ.-King (S.D. Fla); *Sunbeam Corp. v. PricewaterhouseCoopers LLP*, No. CL 005444AN (15th Jud. Cir., Fla.); *In re Sunbeam Corp., Inc.*, No. 01-40291 (AJG) (Bankr. S.D.N.Y.) and any adversary proceedings therein; *SEC v. Dunlap*, No. 01-8437-Civ.-Middlebrooks (S.D. Fla.); *Oaktree Capital Management LLC v. Arthur Andersen LLP*,

No. BC257177 (L.A. Cty., CA); and *Coleman (Parent) Holdings Inc. v. Arthur Andersen LLP*, No. CA 01-06062AN (15th Jud. Cir., Fla.), or other litigation concerning the Coleman Transaction.

21. "Llama Company" shall mean Llama Company and any of its former or present partners, officers, directors, employees, representatives and agents.

22. "MAFCO" shall mean MacAndrews & Forbes Holdings, Inc. and any of its officers, directors, former or present employees, representatives and agents.

23. The "March 19, 1998 Press Release" shall mean the press release issued by Sunbeam on March 19, 1998 concerning the shortfall of first quarter 1998 sales numbers and the reasons for such shortfall.

24. "MS & Co." shall mean Morgan Stanley & Co. Inc. and any of its former or present officers, directors, employees, representatives and agents.

25. "MSSF" shall mean Morgan Stanley Senior Funding, Inc. and any of its former or present officers, directors, employees, representatives and agents.

26. The term "person" shall mean any natural person or any business, legal or governmental entity or association.

27. The term "relating to" shall mean concerning, evidencing, referring to, or constituting.

28. The "Relevant Period," unless otherwise indicated, shall be from January 1, 1996 through the date of service of this subpoena.

29. "SEC" shall mean the Securities and Exchange Commission.

30. "SEC Administrative Proceedings" shall mean *In the Matter of Sunbeam Corp.*, SEC Administrative Proceeding File No. 3-10481, and *In the Matter of David C. Fannin*, SEC Administrative Proceeding File No. 3-10482.

31. "Signature brands" shall mean Signature Brands USA, Inc. and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

32. "Skadden" shall mean Skadden, Arps, Slate, Meagher & Flom, LLP and any of its former or present partners, officers, directors, employees, representatives and agents.

33. "Subordinated Debentures" shall mean the Sunbeam's Zero Coupon Convertible Senior Subordinated Debentures Due 2018.

34. "Subordinated Debenture Offering" shall mean the offering of Sunbeam's Subordinated Debentures.

35. "Sunbeam" shall mean Sunbeam Corporation and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents.

36. "Synergies" shall mean post-acquisition gains through increased revenue and/or decreased cost.

37. "Wachtell" shall mean Wachtell Lipton Rosen & Katz and any of its former or present partners, officers, directors, employees, representatives and agents.

38. The terms "you" or "your" shall mean Donald R. Uzzi and any of Donald R. Uzzi's present and former representatives and agents.

INSTRUCTIONS

1. Documents shall be produced as they are kept in the usual course of business, or organized and labeled to correspond to the categories in this Request. Documents attached to each other should not be separated. Documents consisting of items previously produced in the Litigations, Arbitrations, and/or SEC Administrative Proceedings with Bates numbering shall be produced in Bates number order.

2. All documents shall be produced in the file folder, envelope or other container in which the documents are kept or maintained by you. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks.

3. The relevant period, unless otherwise indicated, shall be from January 1, 1996 through the date of service of this subpoena, and shall include all documents and information which relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received prior or subsequent to that period. Please supplement or correct your responses to these requests if, at any time, you become aware that your responses are incomplete or incorrect in any request.

4. If you claim the attorney-client privilege, or any other privilege or work-product protection for all or any portion of a document, you shall provide a privilege log that describes the withheld material sufficiently to allow Morgan Stanley to test the privilege or protection asserted.

5. The following rules of construction apply:

1. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be outside their scope;

2. The term "including" shall be construed to mean "without limitation"; and

3. The use of the singular form of any word include the plural and vice versa.

Exhibit 2

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

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

AGREED ORDER APPOINTING COMMISSIONERS AND COMMISSIONS

THIS CAUSE, having come before the Circuit Court in and for Palm Beach County, State of Florida, on the agreement of the parties, and

WHEREAS, it appears to the Court that:

1. Defendant Morgan Stanley & Co. Incorporated ("MS & Co.") desires to take the videotaped depositions of and obtain documents from the following witnesses who reside in California, Connecticut, Kansas, Minnesota, New York, Texas, and the District of Columbia and who have knowledge of facts relevant to this case:

Karen Kay Clark
1674 Amarelle Street
Newbury Park, CA 91320

Frank N. Gifford
126 Taconic Road
Greenwich, CT 06831-3139

Robert J. Duffy
16 Saint Nicholas Road
Darien, CT 06820-2823

16div-009241

Joseph P. Page
921 Sheridan Street, Apt. 119
Wichita, KS 67213-1363

William H. Spoor
622 West Ferndale Road
Wayzata, MN 55391

Adam Emmerich
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Steven Cohen
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Steven K. Geller
301 East 79th Street, Apt. 4H
New York, NY 10021-0932

Donald Uzzi
4209 Beverly Dr.
Dallas, TX 75205-3020

Ann Dibble Jordan
2940 Benton Place NW
Washington, DC 20008

2. You are hereby appointed as commissioners to take the videotaped testimony (and obtain the requested documentation) of the above witnesses and other witnesses whose discovery is sought in the commissions' jurisdiction under oath and on oral examination in accordance with the applicable Florida Statutes and Rules of Civil Procedure:

Esquire Santa Ana
2100 North Broadway, Second Floor
Santa Ana, CA 97206

Del Vecchio Reporting
117 Randi Drive
Madison, CT 06443

Harper Court Reporting
P.O. Box 3008
Wichita, KS 67201

Kirby Kennedy & Associates
5200 Wilson Road #219
Minneapolis, MN 55424

Esquire Deposition Services
216 E. 45th Street, 8th FL
New York, New York 10017-3304

Esquire Deposition Services
703 McKinney Avenue #320
Dallas, Texas 75202

Esquire Deposition Services
1020 19th Street NW, #621
Washington, DC 20036

or any person able to administer oaths pursuant to the laws of California, Connecticut, Kansas, Minnesota, New York, Texas, and the District of Columbia and duly authorized by him.

3. This order does not purport to grant the power of the commissioners appointed to subpoena witnesses or documents, but simply the power to administer oaths and transcribe deposition testimony.

DONE AND ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida this ____ day of January, 2004.

SIGNED AND DATED

ELIZABETH T. MAASS
Circuit Court Judge

ELIZABETH T. MAASS

Coleman (Parent) Holdings v. Morgan Stanley & Co. Inc.
2003 CA 005045AI
Agreed Order on Appointment of Commission

Copies furnished to:

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CARLTON FIELDS, P.A.

ATTORNEYS AT LAW

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MAILING ADDRESS
P.O. BOX 150, WEST PALM BEACH, FL 33402-0150
TEL (561) 659-7070 FAX (561) 659-7368

FAX COVER SHEET

		Phone Number	Fax Number
Date:	December 15, 2004		
To:	Jack Scarola	(561) 686-6300	(561) 684-5816
	Jerold Solovy/Michael Brody	(312) 222-9350	(312) 840-7711
	Thomas Clare	(202) 879-5993	(202) 879-5200
	Rebecca Beynon/Mark Hansen	(202) 326-7900	(202) 326-7999
From:	Joyce Dillard, CLA	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 4

Message:

Coleman v. Morgan Stanley & Co., Inc.

To follow please find a copy of Morgan Stanley's Notice of Hearing for December 22, 2004.

☐ *Original to follow Via Regular Mail* ☒ *Original will Not be Sent* ☑ *Original will follow via Overnight Courier*

****

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (if long distance, please call collect) and return the original message to us at the above address via the U.S. Postal Service. Thank you.

****

IF THERE ARE ANY PROBLEMS OR COMPLICATIONS, PLEASE NOTIFY US IMMEDIATELY AT:
(561) 659-7070

TELECOPIER OPERATOR: _____

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a hearing has been set in the above-styled case as follows:

DATE:	December 22, 2004
TIME:	8:45 a.m.
PLACE:	Palm Beach County Courthouse, Courtroom 11A 205 North Dixie Highway West Palm Beach, Florida 33401
BEFORE:	Judge Elizabeth T. Maass
CONCERNING:	Morgan Stanley's Motion for Leave to Take Deposition of Donald R. Uzzi

KINDLY GOVERN YOURSELVES ACCORDINGLY.

The undersigned counsel hereby certifies that a good faith attempt to resolve the issues contained in the foregoing motions or matters will be made with opposing counsel prior to hearing on these matters on the Court's Motion Calendar.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no costs to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-2431 within two (2) working days of your receipt of this notice; if you are hearing or voice impaired, call 1-800-955-8771.

WPB#571076.26

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 15th day of December, 2004.

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BY: Joseph Ianno Jr.
Joseph Ianno, Jr.
Florida Bar No. 655351

Counsel for Morgan Stanley & Co. Incorporated

SERVICE LIST

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION FOR CLARIFICATION OF OBLIGATIONS TO DISCLOSE OPINION TESTIMONY OF FACT WITNESSES

THIS CAUSE came before the Court December 15, 2004 on Coleman (Parent) Holdings, Inc.'s Motion for Clarification of Obligations to Disclose Opinion Testimony of Fact Witnesses, with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Coleman (Parent) Holdings, Inc.'s Motion for Clarification of Obligations to Disclose Opinion Testimony of Fact Witnesses is Granted. The Court's March 19, 2004 Agreed Order Concerning Pretrial Schedule is clarified to provide that expert witness disclosures include disclosures for each witness who will be asked to give any expert opinion, whether or not he also will serve as a fact witness.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 15 day of December, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

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Rebecca Beynon, Esq.
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1615 M Street, NW, Suite 400
Washington, DC 20036

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON MORGAN STANLEY & CO. INC.'S MOTION TO COMPEL ANSWERS TO FIFTH SET OF INTERROGATORIES

THIS CAUSE came before the Court December 15, 2004 on Morgan Stanley & Co., Inc.'s Motion to Compel Answers to Fifth Set of Interrogatories, with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Morgan Stanley & Co., Inc.'s Motion to Compel Answers to Fifth Set of Interrogatories is Granted, in part. Coleman shall serve a more complete answer to Morgan Stanley's Fifth Set of Interrogatories, No. 2, within 5 business days. The more complete answer shall not use "and/or" or any similar indefinite denominations. This ruling is without prejudice to Defendant's right to serve a Motion in Limine, seeking to prevent presentation of the substance of the interrogatory answer to the jury.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 15 day of December, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON DEFENDANT'S MOTION FOR LEAVE TO TAKE DEPOSITION (COLEMAN)

THIS CAUSE came before the Court December 15, 2004 on Defendant's Motion for Leave to Take Deposition, with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Defendant's Motion for Leave to Take Deposition is Granted, in part. By 5:00 p.m. December 24, 2004, Plaintiff shall notify Defendant in writing if it has determined that Ernest & Young LLP did no due diligence on its behalf in connection with the transaction forming the subject matter of this litigation. If it fails to do so, it shall produce a corporate representative competent to testify on any steps that may have been taken by Ernest & Young relating to the due diligence efforts on behalf of Plaintiff in connection with the transaction, by December 31, 2004.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 15 day of December, 2004.

_____
ELIZABETH T. MAASS
Circuit Court Judge

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON DEFENDANT'S MOTION FOR LEAVE TO TAKE DEPOSITION (ERNEST & YOUNG)

THIS CAUSE came before the Court December 15, 2004 on Defendant's Motion for Leave to Take Deposition, with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Defendant's Motion for Leave to Take Deposition is Granted, in part, and Denied, in part. If Defendant is permitted to take the deposition of Plaintiff's corporate representative pursuant to the Court's December 15, 2004 Order on Defendant's Motion for Leave to Take Deposition (Coleman), then Defendant may depose an Ernest & Young representative competent to testify on any steps that may have been taken by Ernest & Young relating to the due diligence efforts on Plaintiff's behalf in connection with the transaction forming the subject matter of this litigation, by January 7, 2005. The Ernest & Young corporate representative shall not be required to produce a representative to testify as to the value of the warrants.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 15 day of December, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
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Washington, DC 20036

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MOTION TO LIMIT EXPERT TESTIMONY AND EXPEDITE EXPERT DISCOVERY

Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley"), by its attorneys, respectfully moves the Court to enter an order (1) limiting the number of expert witnesses to be called at trial in this case and (2) amending the October 14, 2004 Scheduling Order to require each party to produce documents on behalf of their respective testifying experts prior to the expert deposition period without the necessity of a commission or subpoena. *See* Fla. R. Civ. P. 1.200(b)(4) and 1.280(b)(4)(A). In support of this Motion, Morgan Stanley states as follows:

UNDISPUTED FACTS

1. On October 14, 2004, the Court entered an Order establishing the pretrial schedule for this case, including provisions for expert disclosures, expert depositions, and expert designations (the "Pretrial Schedule"). The Pretrial Schedule was subsequently amended by the November 23, 2004 Agreed Order.

2. The current Pretrial Schedule required the parties to serve their initial expert disclosures on December 7, 2004, with responsive and rebuttal expert disclosures due on December 17, 2004, and December 28, 2004, respectively. Expert depositions are scheduled to be conducted between December 28, 2004 and January 14, 2005. Expert deposition designations

are due on January 14, 2005, with expert counter-designations and objections to expert counter-designations due on January 21, 2005, and January 28, 2005, respectively. A 15-day jury trial is set for February 22, 2005.

3. On December 7, 2004, CPH served initial disclosures for ***six*** different experts, including ***three*** experts on damages issues alone. The sheer volume of paper associated with these initial disclosures is staggering, with a total page count swelling to well over 1,000 pages. Under the Pretrial Schedule, Morgan Stanley has less than 10 days to respond.

4. Despite the apparent size of its disclosures, CPH did not really "disclose" any damages expert at all. Instead, CPH served three ***different*** damages disclosures, each of which is inconsistent with the others, uses different methodologies, and arrives at wholly different damages figures altogether. In essence, CPH is playing a "shell game" with its expert disclosures, keeping its options open as long as possible and forcing Morgan Stanley to guess which of its three "damages" experts it will call at trial, and which of their damages methodologies it will actually use.

ARGUMENT

"[A] trial judge has the discretion to limit the number of witnesses who the parties may call to testify at trial...." *Gonazalez v. Martinez*, No. 3D03-918, 2004 WL 1336404, at *2 (Fla. 3rd DCA June 16, 2004); *see also Fogel v. Mirmelli,* 413 So. 2d 1204, 1207 (Fla. 3rd DCA 1982) ("Without question, the trial court has discretion to limit the number of witnesses which may be called by the parties.") (citation omitted). Florida trial courts have not hesitated to limit the number of expert witnesses where, as here, a party seeks to present a multitude of experts on the same subject. *See, e.g., Stager v. Florida East Coast Ry. Co.*, 163 So. 2d 15, 17 (Fla. 3rd DCA 1964), *cert. discharged,* 174 So. 2d 540 (Fla. 1965).

Accordingly, pursuant to Rule 1.200(b)(4), Morgan Stanley asks the Court to establish a "limitation of the number of expert witnesses" to be called at trial in this case. Fla. R. Civ. P. 1.200(b)(4)[1]. Morgan Stanley asks the Court limit CPH to a total of ***four*** expert witnesses at trial (a reasonable limitation for a 15-day trial) and no more than ***one*** expert witness on the issue of damages. *See Stager,* 163 So. 2d at 17 (affirming trial judge's pretrial decision to limit medical testimony to two doctors). Alternatively, Morgan Stanley asks the Court to require CPH to amend its disclosures to set forth its intended expert opinions in a clear and straightforward manner.

In addition, to expedite and streamline expert discovery prior to expert depositions, Morgan Stanley requests that the Court amend the October 14, 2004 Order pursuant to Rule 1.280(b)(4)(A) to require each party to produce documents on behalf of their respective testifying experts, particularly expert reports and depositions in prior cases, prior to the expert deposition period without the necessity of a commission or subpoena. See Fla. R. Civ. P. 1.280(b)(4)(A). The parties have already agreed to produce their respective testifying experts for deposition without the necessity of a commission and/or subpoena,[2] and Morgan Stanley suggests that a similar procedure for document discovery would help streamline expert discovery and make it easier to maintain the current pretrial and trial schedule.

WHEREFORE, Morgan Stanley requests that this Court enter an order (1) limiting CPH to a total of four expert witnesses at trial and no more than one expert witness on the issue of

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[1] If the Court determines that Florida Rule 1.200(c) applies, Morgan Stanley respectfully requests that the Court shorten the time required and set the matter for hearing on December 22, 2004 in order to allow the motion to be resolved prior to the beginning of the expert deposition period.

[2] *See* Dec. 14, 2004 Letter from L. Bemis to M. Brody (Ex. 1); Dec. 14, 2004 Letter from M. Brody to L. Bemis (Ex. 2).

damages; and (2) amending the October 14, 2004 Scheduling Order to require each party to produce documents on behalf of their respective testifying experts prior to the expert deposition period without the necessity of a commission or subpoena; and (3) award such other and further relief as is just and proper. If the Court determines that Florida Rule 1.200(c) applies, moreover, Morgan Stanley respectfully requests that the Court shorten the time required and set the matter for hearing on December 22, 2004.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 16th day of December, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
Zhonette M. Brown
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655 15th Street, N.W., Suite 1200
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1615 M Street, N.W., Suite 400
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Counsel for
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BY: _____
Joseph Ianno, Jr.
Florida Bar No. 655351

SERVICE LIST

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Jerold S. Solovy
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December 14, 2004

VIA FACSIMILE AND MAIL

Michael T. Brody, Esq.
Jenner & Block LLC
One IBM Plaza
330 N. Wabash
Suite 4400
Chicago, IL 60611

Re: Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co. Incorporated

Dear Mr. Brody:

I write to confirm that the Oct. 14, 2004 pretrial schedule (as amended by the Nov. 23, 2004 agreed order) entered in the above-referenced action contemplates both parties providing expert discovery, including depositions of testifying experts, without the necessity of issuing a subpoena. Please let me know if you disagree.

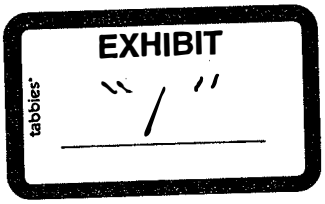
Very truly yours,

Lawrence P. Bemis

Lawrence P. Bemis

LPB/cmg

cc: Joseph Ianno, Esq.
Mark Hansen, Esq.
Jack Scarola, Esq.



JENNER&BLOCK

December 14, 2004

Jenner & Block LLP
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www.jenner.com

Chicago
Dallas
Washington, DC

Michael T. Brody
Tel 312 923-2711
Fax 312 840-7711
mbrody@jenner.com

By Telecopy

Lawrence P. Bemis, Esq.
Kirkland & Ellis LLP
777 South Figueroa Street
Los Angeles, CA 90017

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Larry:

We agree with you that subpoenas will not be necessary to obtain the depositions of testifying experts.

Very truly yours,

Michael T. Brody

MTB:cjg
cc: Thomas A. Clare, Esq. (by telecopy)
Joseph Ianno, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.

CHICAGO_1190729_1

EXHIBIT
tabbies
"2"

16div-009263

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MOTION TO LIMIT EXPERT TESTIMONY AND EXPEDITE EXPERT DISCOVERY

Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley"), by its attorneys, respectfully moves the Court to enter an order (1) limiting the number of expert witnesses to be called at trial in this case and (2) amending the October 14, 2004 Scheduling Order to require each party to produce documents on behalf of their respective testifying experts prior to the expert deposition period without the necessity of a commission or subpoena. *See* Fla. R. Civ. P. 1.200(b)(4) and 1.280(b)(4)(A). In support of this Motion, Morgan Stanley states as follows:

UNDISPUTED FACTS

1. On October 14, 2004, the Court entered an Order establishing the pretrial schedule for this case, including provisions for expert disclosures, expert depositions, and expert designations (the "Pretrial Schedule"). The Pretrial Schedule was subsequently amended by the November 23, 2004 Agreed Order.

2. The current Pretrial Schedule required the parties to serve their initial expert disclosures on December 7, 2004, with responsive and rebuttal expert disclosures due on December 17, 2004, and December 28, 2004, respectively. Expert depositions are scheduled to be conducted between December 28, 2004 and January 14, 2005. Expert deposition designations

are due on January 14, 2005, with expert counter-designations and objections to expert counter-designations due on January 21, 2005, and January 28, 2005, respectively. A 15-day jury trial is set for February 22, 2005.

3. On December 7, 2004, CPH served initial disclosures for *six* different experts, including ***three*** experts on damages issues alone. The sheer volume of paper associated with these initial disclosures is staggering, with a total page count swelling to well over 1,000 pages. Under the Pretrial Schedule, Morgan Stanley has less than 10 days to respond.

4. Despite the apparent size of its disclosures, CPH did not really "disclose" any damages expert at all. Instead, CPH served three ***different*** damages disclosures, each of which is inconsistent with the others, uses different methodologies, and arrives at wholly different damages figures altogether. In essence, CPH is playing a "shell game" with its expert disclosures, keeping its options open as long as possible and forcing Morgan Stanley to guess which of its three "damages" experts it will call at trial, and which of their damages methodologies it will actually use.

ARGUMENT

"[A] trial judge has the discretion to limit the number of witnesses who the parties may call to testify at trial...." *Gonazalez v. Martinez*, No. 3D03-918, 2004 WL 1336404, at *2 (Fla. 3rd DCA June 16, 2004); *see also Fogel v. Mirmelli*, 413 So. 2d 1204, 1207 (Fla. 3rd DCA 1982) ("Without question, the trial court has discretion to limit the number of witnesses which may be called by the parties.") (citation omitted). Florida trial courts have not hesitated to limit the number of expert witnesses where, as here, a party seeks to present a multitude of experts on the same subject. *See, e.g., Stager v. Florida East Coast Ry. Co.*, 163 So. 2d 15, 17 (Fla. 3rd DCA 1964), *cert. discharged*, 174 So. 2d 540 (Fla. 1965).

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Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
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BY: _____
Joseph Ianno, Jr.
Florida Bar No. 655351

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December 14, 2004

VIA FACSIMILE AND MAIL

Michael T. Brody, Esq.
Jenner & Block LLC
One IBM Plaza
330 N. Wabash
Suite 4400
Chicago, IL 60611

Re: Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co. Incorporated

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LPB/cmg

cc: Joseph Ianno, Esq.
Mark Hansen, Esq.
Jack Scarola, Esq.

JENNER&BLOCK

December 14, 2004

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By Telecopy

Lawrence P. Bemis, Esq.
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cc: Thomas A. Clare, Esq. (by telecopy)
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Mark C. Hansen, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.

CHICAGO_1190729_1

EXHIBIT
"2"

TOTAL P.02

Sherry, Bridget E.

From: DC Sharescan [DSharescan@kirkland.com]
Sent: Thursday, December 16, 2004 4:10 PM
To: #MS-Coleman - K&E
Subject: Scanned document <7 pages ~196 KB> -- 12/16/2004 4:09:53 PM

20041216 MS's Motion to Limit ...

(See attached file: 20041216 MS's Motion to Limit Expert Testimony and Expedite Expert Discovery.pdf)

****
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****

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a hearing has been set in the above-styled case as follows:

DATE:	December 22, 2004
TIME:	8:45 a.m.
PLACE:	Palm Beach County Courthouse, Courtroom 11A 205 North Dixie Highway West Palm Beach, Florida 33401
BEFORE:	Judge Elizabeth T. Maass
CONCERNING:	Morgan Stanley's Motion to Limit Expert Testimony and Expedite Expert Discovery

KINDLY GOVERN YOURSELVES ACCORDINGLY.

The undersigned counsel hereby certifies that a good faith attempt to resolve the issues contained in the foregoing motions or matters will be made with opposing counsel prior to hearing on these matters on the Court's Motion Calendar.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no costs to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-2431 within two (2) working days of your receipt of this notice; if you are hearing or voice impaired, call 1-800-955-8771.

WPB#571076.26

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 16th day of December, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
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BY: _____ 096105
Joseph Ianno, Jr.
Florida Bar No. 655351

Counsel for Morgan Stanley & Co. Incorporated

WPB#571076.26

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FAX TRANSMITTAL

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Chicago
Dallas
Washington, DC

Date: December 16, 2004

To:			
	Thomas A. Clare, Esq.	Fax:	(202) 879-5200
		Voice:	(202) 879-5993
	Joseph Ianno, Jr., Esq.	Fax:	(561) 659-7368
		Voice:	(561) 659-7070
	John Scarola, Esq.	Fax:	(561) 684-5816 (before 5 PM)
		Voice:	(561) 686-6350, Ext. 140
	Mark C. Hansen, Esq.	Fax:	(202) 326-7999
		Voice:	(202) 326-7900

From: Michael T. Brody
312 923-2711

Employee Number:

Client Number: 41198-10003

Important: This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is attorney work product, privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via postal service. Thank you.

Message:

Total number of pages including this cover sheet: 6

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Sent By:

Secretary: Caryn Jo Geisler

Extension: 6490

JENNER&BLOCK

December 16, 2004

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mbrody@jenner.com

By Telecopy

Thomas A. Clare, Esq.
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Tom:

I write to follow up on the issues left open from Mitch Petrick's depositions. You have indicated that Morgan Stanley continues to look for the information that we have requested. Based on that continuing search, you have indicated that you will supply us with the documents that Morgan Stanley has by the end of this week. You also have asked that the deposition we noticed for tomorrow be rescheduled for next week. We are willing to accommodate your request so as to ensure that the witness who testifies will be able to speak with the full knowledge of Morgan Stanley on the topics involved. Accordingly, I enclose an amended deposition notice for next Wednesday, December 22, 2004.

Very truly yours,

Michael T. Brody

MTB:cjg
cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

AMENDED NOTICE OF TAKING VIDEOTAPED DEPOSITION

To:
Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following party pursuant to Florida Rule of Civil Procedure 1.310 on the date and time set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co., Inc. on the topics identified on Exhibit A.	December 22, 2004 at 1:00 p.m.

The deposition will be conducted at Esquire Deposition Services, 216 East 45th Street, New York, NY 10017. The deposition will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The deposition will be taken before a person authorized to administer oaths and will continue day to day until completed.

Please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List this 16th day of December 2004.

Dated: December 16, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
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(561) 686-6300

Document Number: 1187906

SERVICE LIST

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Washington, D.C. 20036-3209

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Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Exhibit A

CORPORATE DEPOSITION TOPICS

1. The value of any interest of MS&Co., MSSF, or any affiliate of MS&Co. in American Household, Inc. on the following dates: (a) February 6, 2001; and (b) September 20, 2004.

2. Any mark-downs or write-offs taken by MS&Co., MSSF, or any affiliate of MS&Co. in connection with any debt owed by Sunbeam Corporation, including without limitation any mark-downs taken prior to April 30, 1999.

2004 WL 5740267 (Fla.Cir.Ct.) (Expert Report and Affidavit)
Circuit Court of Florida,
Fifteenth Judicial Circuit.
Palm Beach County

COLEMAN (PARENT) HOLDINGS INC.,
v.
MORGAN STANLEY & CO., INC.

No. 035045.
December 17, 2004.

Expert Report of Arthur H. Rosenbloom

Case Type: Fraud & Misrepresentation >> Business
Case Type: Fraud & Misrepresentation >> Fraud - Fraud & Misrepresentation
Case Type: Securities >> Securities Fraud
Jurisdiction: Palm Beach County, Florida
Name of Expert: Arthur H. Rosenbloom
Area of Expertise: Accounting & Finance >> Securities Accounting & Finance

Representing: Defendant

Arthur H. Rosenbloom CFC Capital LLC

December, 2004

I. INTRODUCTION

CFC Capital LLC ("CFC") by Arthur H. Rosenbloom, has been retained by counsel for Morgan Stanley & Company Incorporated ("Morgan Stanley") as a consulting expert and a possible trial expert on Morgan Stanley's behalf in the case of *Coleman (Parent) Holdings Inc. v Morgan Stanley & Co., Inc.* currently pending in the Circuit Court of the Fifteenth Judicial Circuit, Palm Beach County, Florida. The case arises from Morgan Stanley's role in an acquisition transaction that closed March 30, 1998 in which Coleman (Parent) Holdings Inc. sold its 82% interest in the Coleman Company Inc. to Sunbeam Corporation.

During the engagement I met with Morgan Stanley's counsel, reviewed documents, and read certain deposition testimony capable of adding to an understanding of Morgan Stanley's role in the overall transaction. No restrictions were placed on the scope of my investigation. In arriving at my conclusions, I assumed and relied upon the accuracy of all information received and reviewed by me. I am independent of the parties to this action and have no financial interest in its outcome. The fees paid herein are in no way influenced by the conclusions rendered in this matter. I reserve the right to update the opinions set forth in this report as additional information becomes available and I have had the opportunity to review and consider it.

My biography appears as Appendix A. Litigation in which I have testified within the past five years at deposition or trial appears as Appendix B. Documents examined by me produced during discovery appear as Appendix C.

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II. ISSUES DISCUSSED IN THIS REPORT

I have has been requested to provide a rebuttal report to the report of William A. Horton dated December 7, 2004 on behalf of Coleman (Parent) Holdings, Inc. In so doing, we undertake two activities: (i) to describe the necessity, custom and practice of sellers ("target companies") conducting their own due diligence on the buyer in merger and acquisition ("m&a") transactions in which a substantial portion of the purchase price consideration is paid in the buyer's shares; (ii) to comment on the conclusions reached by Mr. Horton in each of the sections of his report. The pages that follow set forth my opinions on these matters.

III. *IT IS PRUDENT FOR M&A TARGETS TO PERFORM DUE DILIGENCE ON THE BUYER WHEN A SIGNIFICANT PORTION OF THE PRICE IS PAID WITH THE BUYER'S COMMON STOCK.*

When the purchase price in a transaction consists, in significant part, of a buyer's stock it is prudent and customary for the target to perform due diligence [1] on the buyer, [2] particularly when that stock is not readily marketable because the buyer is a closely held company, or, where target shareholders are subject to "lock up" restrictions during which their ability to sell the buyer's publicly traded stock is limited by provisions in agreements between the parties or by operation of law. In such situations, the target's due diligence of the buyer is especially important because, by accepting the buyer's shares, the target effectively has become an investor in the buyer, subjecting itself to the risks and rewards associated with such ownership. To determine those risks and rewards, it makes sense for the target company to perform due diligence on the buyer. Such due diligence should not be abdicated to external professionals, one's own, and especially not the professionals engaged by the other side. Rather, the target's owners and management should retain control of the project. They should not allow the buyer or its investment bankers ("IBs") to dictate the extent or the time lines for the due diligence the target will perform or the terms and conditions of the deal. [3]

While, as a general matter, it behooves prudent target companies to perform a thorough due diligence investigation of the buyer any time the purchase price consists largely of the buyer's shares, it was, for several reasons, particularly important for Coleman (Parent) to have done so in the Coleman-Sunbeam deal: (i) Sunbeam, the buyer was in a turnaround mode. As pleaded by plaintiff, Sunbeam's 1995-1996 financial performance had been lackluster, with 1995 earnings per share less than half of those reported in 1994 and further declines reported in 1996. [4] In consequence of Sunbeam's financial disarray, its CEO and two directors resigned and, in July 1996, Albert Dunlap was brought on board to turn the company around. [5] In December of 1997, only 17 months later, Coleman (Parent) and Sunbeam met to discuss a possible acquisitions of Coleman by Sunbeam; [6] (ii) the consideration paid to the Coleman shareholders in the ensuing transaction was largely in Sunbeam's common stock that carried investment risks dramatically greater than would have been the case in all cash transaction; (iii) not only did the Coleman (Parent) shareholders accept Sunbeam shares, those shares were not freely marketable on the day they were received, [7] thereby subjecting Coleman (Parent) to the risk of market fluctuations in Sunbeam's share price during the lock up period; (iv) senior management of Coleman (Parent) and MacAndrews & Forbes Holdings, Inc.

("MAFCO") harbored their own reservations about the attainability by Sunbeam of its internal projections. [8]

In light of these circumstances, it is surprising that Coleman (Parent's) savvy, well-financed, operational and financial executives and their advisors involved in the Coleman sale appear not to have undertaken any material due diligence on Sunbeam, but rather chose to rely primarily on the sales pitch made to them by Sunbeam in the meeting of February 23, 1998.

Coleman (Parent) and its MAFCO affiliate had all the people and financial resources required to perform a thorough operational and financial due diligence on Sunbeam as MAFCO did in the generally contemporaneous Panavision transaction. [9] Because the parties exchanged confidentiality agreements, that task was made easier.

A confidentiality agreement dated February 23, 1998 permitted Coleman (Parent) to perform due diligence on Sunbeam. [10] Such agreements are customary in m&a transactions, and arise from the need of the parties, their IBs, commercial bankers, accountants, consultants, lawyers and others to obtain and use information regarded by a party as proprietary and confidential in nature. Before one party receives materials on the other, it will customarily be asked to sign a confidentiality agreement. [11] Among other elements, confidentiality agreements: (i) identify the protected information or provide means by which to do so; (ii) prohibit disclosure of confidential material to persons other than those having a need to know the information and who are signatories to the confidentiality agreement; (iii) limit the use of such information by those receiving it solely for the purposes of assisting them in negotiating the transaction; (iv) define what is deemed non-confidential in nature such as that which is already in the public domain, material known to the recipient at the time it is received, information lawfully obtained from a third party entitled to provide it, and data developed by the recipient's personnel who had no access to the confidential data; and (v) provide cutoff times representing the point at which recipients of the confidential data are freed from the restrictions of the confidentiality agreement. [12] Given the protection afforded by such agreements, parties who are the subject of due diligence can take a measure of comfort that confidential information disclosed by them will not be misappropriated by the other side or put in the public domain by such party. That comfort facilitates the due diligence efforts of the party seeking data from the party protected by the confidentiality agreement.

With the unfettered ability to perform due diligence, Coleman (Parent) was in a position to learn dramatically more about Sunbeam than could be obtained by reading its public filings or listening to presentations by its management. Conventional due diligence typically involves detailed inspections of the other party's physical facilities and operations. It also comprehends evaluations of the other party's intellectual property and analyses of its historical, current and projected financial picture. Where, as here, the question of a company's interim financial performance is a relevant concern (Sunbeam's performance in January and February of 1998), due diligence should comprehend it and a close review of such interim statements is customary and important. Good due diligence should also inquire into pending or threatened matters that could result in legal liability for the company under scrutiny.

The signing by the parties of the Agreement and Plan of Merger did not foreclose Coleman (Parent's) ability to pursue due diligence efforts on Sunbeam. Section 6.7 of that agreement afforded it, (and its financial advisors, legal counsel, accountants, consultants, and other representatives), in the period between contract and closing, full access to Sunbeam's books, records, properties, plants, personnel, and all other information it might reasonably request.

I am aware that Coleman (Parent) held the view that it was desirable to put Sunbeam in control of Coleman (Parent) as rapidly as possible in order to avoid disruptions in Coleman's (Parent) business. [13] The view was apparently not counterbalanced by a consideration of the risks to Coleman (Parent) described above from moving quickly and dispensing with a well-executed due diligence investigation.

IV. COMMENTS ON THE CONCLUSIONS REACHED BY MR. HORTON

The body of Mr. Horton's opinions appears in Sections A through F, pages 5-25 of his report. I respond seriatim.

A. *Morgan Stanley's responsibilities as Sunbeam's investment banker.*

Mr. Horton observes (pp. 5-6) that it is usual and customary for IBs to perform due diligence on their clients (and their clients' principals) before preparing offering materials on the company, a reasonable generalization, and one which Morgan Stanley executives assert they did. [14]

In addition to the final Sunbeam zero coupon convertible debt offering memorandum discussed later in this report, the offering materials for which Mr. Horton appears to take Morgan Stanley to task are principally a document titled "Discussion Materials" and one called the "Long Range Strategic Plan", the former purporting to describe why Sunbeam might be regarded an attractive investment opportunity; the latter, describing, with some particularity, how Sunbeam proposed to realize its corporate goals. These quite typical sorts of materials constitute efforts designed to induce the other party to be interested in engaging in a transaction with the party promulgating them by portraying the proponent's company in the most favorable light possible. While such documents may be examined by the parties for whose use they are intended, they are generally understood by such parties to be advocacy documents and no substitute for their own due diligence in which they seek to verify the bona fides of the statements set forth in the documents.

The Coleman (Parent) and MAFCO executives were sophisticated deal makers, easily capable of evaluating Sunbeam. MAFCO was a veteran acquiror of consumer products companies. Further, Coleman (Parent) operated in lines of business comparable with those of Sunbeam and, as Mr. Horton points out, could be characterized as a Sunbeam competitor. If Coleman (Parent) had questions Sunbeam (as it should have had given the risks inherent in accepting stock), the best people to answer them were not Morgan Stanley executives but the senior executives and operating managers of Sunbeam itself, since the documents purported to describe Sunbeam's current and projected business and financial performance. It appears that no effort was made to do so despite, at a minimum, Coleman (Parent's) reservations concerning Sunbeam's projections. [15]

As to the materials themselves, it is true that, in their capacity as m&a advisors, IBs like Morgan Stanley should not provide information to the other side known by them to be erroneous and should attempt to exercise reasonable care respecting the transmission of data on their clients to such parties. That said, IBs are neither fraud investigators nor auditors of their clients financial data and are entitled, without independent verification, to rely on the data received by them including their client's projections which they assume to constitute management's best currently available estimates and judgments. [16] In all such instances, the IB's client not the IB, is responsible for the correctness of the data. I deal with IB's obligations to *correct* information previously furnished to counterparties like Coleman (Parent) below.

Mr. Horton (p. 6) asserts that IBs:

"also understand that the public, including sophisticated investors and corporations, will be relying on the honesty and accuracy of their communications and disclosures."

I disagree with the broadness of Mr. Horton's contention which suggests that IBs are agents for just about everybody. Subject to the limitations of non-dissemination of information known to them to be false, and observing reasonable care respecting such dissemination, IBs are typically understood to be agents of their corporate clients and those clients' board of directors, not of the public let alone of the counterparty to the transaction.

B. *Coleman (Parent's) right to rely on Morgan Stanley*

Mr. Horton describes what he calls "Concerns About the Sunbeam Story" (pp. 11-14) and attempts to pin the tail on Morgan Stanley for failing to disclose negative data concerning Sunbeam to Coleman (Parent). For the following reasons, I disagree with his conclusion. It appears that Mr. Horton believes that Morgan Stanley should have advised Coleman (Parent) concerning data that was publicly available by reason of a Sunbeam SEC filing or was contained in analysts reports to which a sophisticated investor like MAFCO could have had ready access. Thus, the following

materials on Sunbeam were readily available to Coleman (Parent): (i) Sunbeam's publicly filed January 28, 1998 press release respecting its fourth quarter 1997 financial performance; (ii) the stock market's reaction to that release; (iii) the analysts reports, both those continuing to regard Sunbeam as a "buy" (CIBC Oppenheimer, PaineWebber's January 29, 1998 report, and Merrill Lynch, Prudential, Bear Steams and Goldman Sachs) and those containing cautionary advice (PaineWebber's February 6, 1998 report); (iv) Dunlap's interview with The Cavuto Business Report. Clearly, Ronald Perelman, Jerry Levin or any of several of the high powered MAFCO executives could have picked up the phone and called Dunlap to inquire respecting these data. Did they? I am unaware of any evidence stating that they did. Notably, such a phone call would *not* logically or customarily have been made to Morgan Stanley because, as stated above, it was *Sunbeam* and its executives that were the best source for the answers to any questions that might have been raised respecting Sunbeam's fourth quarter results.

Mr. Horton goes on to argue (pp. 14-15) that Morgan Stanley had an obligation to present bad news concerning Sunbeam's fourth quarter 1997 and first quarter 1998 financial performance to Coleman (Parent) in order to supplement the generally optimistic views presented in the Long Term Strategic Plan and the Discussion Materials and elsewhere. For the following reasons, I disagree: (i) some of the negative news concerning Sunbeam that Mr. Horton believes should have been disclosed to Coleman (Parent) by Morgan Stanley was already in the public domain, easily accessible to Coleman (Parent) and the rest could have been discovered if it had performed ordinary due diligence; (ii) Any sophisticated investor like Coleman (Parent) understands that the Sunbeam materials in questions were not doctoral dissertations, judicial opinions or SEC filed documents that take exquisite care to present all sides of the issues discussed but, as described earlier herein, are rather advocacy documents and that projections in long range plans are to be viewed skeptically; [17] (iii) Morgan Stanley was Sunbeam's agent not Coleman (Parent's) and aside from the general standards of care described earlier in this report, had no obligation to Coleman (Parent); (iv) Coleman (Parent) had ample opportunity at the February 23, 1998 meeting to ask all the questions it wanted of Russel Kersh, Sunbeam's CFO, who made the presentation. Indeed, as pointed out in Section III of this report, it could have pursued due diligence even after the signing of the Agreement and Plan of Merger. In light of the foregoing, for the reasons set for above, I cannot agree with Mr. Horton that disclosure of and/or discussion of these types of issues (presumably by Sunbeam) would be usual and customary in the negotiation of an acquisition for equity. These issues are ones that are appropriately raised by the party performing due diligence as a result of reading publicly available data or in consequence of its own due diligence.

As a further example of Coleman (Parent's) torpor, the financial consequences of Sunbeam's early buy and bill and hold practices were, as Mr. Horton acknowledges on page 23 of his report, disclosed by Sunbeam in its 10-K filing on March 6, 1998, prior to the Coleman (Parent) - Sunbeam closing. This fact notwithstanding, Coleman (Parent) elected to do nothing. An explanation concerning Sunbeam's fourth quarter 1997 or interim first quarter 1998 performance could have been a Kersh response to a Coleman (Parent) question that Coleman (Parent) apparently never bothered to ask.

C. *Morgan Stanley's disclosure obligations to Coleman (Parent)*

I understand Mr. Horton to be arguing (pp. 17-18) that because the Sunbeam - Coleman (Parent) transaction was a "fast track" merger and because the companies were competitors, it was justifiable to place more than usual reliance on materials supplied and statements offered by persons involved in the transaction. For the following reasons, I disagree: (i) As described earlier in this report, Sunbeam's was purported to be a turnaround story. Coleman (Parent's) election, for whatever reason, to proceed at a rapid pace came at a cost - its inability to perform thorough due diligence which experience and survey data describe as a leading cause of merger failure; (ii) It is counterintuitive to imagine that Coleman (Parent's) election to move fast created a greater obligation of disclosure on Morgan Stanley than would have been the case had Coleman (Parent) moved more cautiously, as Morgan Stanley was Sunbeam's agent not the agent of Coleman's (Parent). [18] Unlike Sunbeam, but typical for IBs, Morgan Stanley was not a party to the Sunbeam - Coleman (Parent) Agreement and Plan of Merger as of February 27, 1998, made no representations and warranties or otherwise bound itself by the terms of that agreement. Where then (save as I have described above) were its obligations to Coleman (Parent)?

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Mr. Horton next appears to argue (pp. 18-19) that Coleman (Parent) should be regarded as some kind of indirect beneficiary of disclosures made incident to the zero coupon convertible debenture offering underwritten by Morgan Stanley. He offers four arguments in support of his position. I disagree with all of the conclusions set forth in those arguments: (i) Mr. Horton argues that as underwriter of the bonds, Morgan Stanley had a disclosure obligation to Coleman (Parent) respecting any material adverse change ("MAC") in Sunbeam's affairs. I disagree because Morgan Stanley's obligations as an underwriter ran not to Coleman (Parent) but to the bondholders. Further, as indicated above, the MAC language in Section 8.1 (c) of Agreement and Plan of Merger bound *Sunbeam* not Morgan Stanley, who was not a party to that agreement; (ii) He further asserts that because Coleman (Parent) was to receive Sunbeam's equity, Morgan Stanley had a duty to supply it with a copy of the Final Offering Memorandum. This argument fails again because Morgan Stanley's duty as an underwriter was to its bondholders not Coleman (Parent) as its duty as an m&a advisor was to Sunbeam not to Coleman (Parent). Finally, I am unaware of any investment banking custom or use suggesting that Morgan Stanley should have voluntarily made the Final Offering Circular available to Coleman (Parent), even if it had no legal obligation to do so. In any event, Coleman (Parent) could have obtained the Final Offering Memorandum on its own by calling Morgan Stanley and requesting a copy; (iii) Mr. Horton urges that Morgan Stanley had an obligation to advise Coleman (Parent) of any MAC. This argument fails because, as set forth above, (assuming the existence of a MAC), it was *Sunbeam's* not Morgan Stanley's obligation to make disclosure; (iv) Finally, Mr. Horton contends that Morgan Stanley had an obligation to correct what he characterizes "as materially incorrect, false and misleading" data respecting materials previously presented to Coleman (Parent). I disagree. As discussed earlier, the materials were "pitch" documents and should have been and probably were regarded as such by Coleman (Parent). They are no substitute for due diligence. If the passage of time had revealed problems in Sunbeam to Coleman (Parent), it was a phone call away from the party best able to deal with them - Al Dunlap and other Sunbeam managers. Finally, as previously stated, Morgan Stanley's obligations as m&a advisor ran to Sunbeam not Coleman (Parent).

D. *Morgan Stanley's obligations to Coleman (Parent) arising from the Arthur Andersen Comfort letter*

In this section (pp. 19-21), I understand it to be Mr. Horton's view that some of the information set forth in Arthur Andersen comfort letter to Morgan Stanley of March 19, 1998 incident to Morgan Stanley's underwriting of Sunbeam's zero coupon convertibles gave rise to an obligation on Morgan Stanley's part to disclose such data to Coleman (Parent). I disagree: (i) At the February 23, 1998 meeting, Coleman (Parent) became aware that, at a minimum, Sunbeam's January 1998 sales were slow; [19] (ii) Coleman (Parent) had the right to receive Sunbeam's interim financial data from Arthur Andersen respecting Sunbeam's first quarter 1998 financial performance it claims was withheld from it by Morgan Stanley by requesting it from Sunbeam or Morgan Stanley, a fact likely to have been well-known by it given its familiarity with the comfort letter process and the impending zero coupon convertible offering. [20] It is perverse, in light of Sunbeam's January and possibly February 1998 sales decline, known to Coleman (Parent), that it elected not to avail itself of that opportunity; (iii) Morgan Stanley's obligation in the bond offering was to the bondholders not to Coleman (Parent); (iv) the reporting obligation of facts constituting a MAC was *Sunbeam 's,* not Morgan Stanley's.

E. *Morgan Stanley's power and obligation to cancel the zero coupon convertible bond offering*

Mr. Horton asserts (p. 21) that in light of Sunbeam's soft January and February sales disclosed in Arthur Andersen's comfort letter, it had the power and the obligation to cancel the bond offering, the consequence of which would have resulted in a postponement or termination of Sunbeam's acquisition of Coleman (Parent). It is certainly true that Morgan Stanley had the power to abort the offering. Instead, acting on the information available to it in consequence of its stepped up due diligence with Sunbeam described in greater detail in Section F hereof, Morgan Stanley (with the addition of the information in the press release summarized in the Final Offering Memorandum), [21] elected to go forward with the offering and a loan to Sunbeam. The decision to do so ultimately cost Morgan Stanley hundreds of millions of dollars, dwarfing the fees received by it as Sunbeam's m&a advisor and the zero coupon bond underwriter.

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In accordance with my understanding of IB trade custom, any obligation owed by Morgan Stanley as bond underwriter, was to the Sunbeam zero coupon convertible bondholders (who, as I understand it never sued Morgan Stanley) and not to Coleman (Parent) who had both the means and the motivation to learn everything that Morgan Stanley knew about Sunbeam but appears to have chosen not to.

F. *The character of Sunbeam's press release of March 19, 1998*

In the final operative section of his report (pp. 22-25), Mr. Horton characterizes Sunbeam's press release as materially misleading and amounting to securities fraud. I leave it to counsel for the parties to do battle on what constitutes securities fraud and by whom. More relevant, I suspect for purposes of Mr. Horton's analysis and my own, is: (i) what Morgan Stanley learned from Arthur Andersen's March 19, 1998 comfort letter concerning Sunbeam's January-February financial performance, and (ii) the extent to which that knowledge gave rise to any obligation on its part to Coleman (Parent). I address these separately.

Starting with the time Morgan Stanley learned of Sunbeam's early 1998 declining financial performance, it began to investigate the issue[22] through telephone conference call conversations with Sunbeam's management. In those conversations, Sunbeam expressed confidence that its first quarter sales would exceed those of the corresponding quarter in 1997 and that, at the top end of the range, such performance would be consistent with Wall Street estimates.[23] Sunbeam's Don Uzzi described volume levels from specific accounts and answered questions about them from Morgan Stanley.[24] Sunbeam executives also fielded other questions drawn from lists that had been prepared by Morgan Stanley.[25] At the conclusion of the process, armed with the belief that its due diligence and bring down due diligence efforts had been prudent and appropriate[26] and with the inclusion of Skadden's press release on Sunbeam's behalf it had requested of Sunbeam[27] summarized in its Final Offering Memorandum, Morgan Stanley went forward with the zero coupon convertible offering - to its detriment.

Mr. Horton asserts that, in a number of respects, Sunbeam's press release failed to capture the gravity of the red flags set forth in Arthur Andersen's March 19 comfort letter. Notably, however he fails to state that (i) Coleman (Parent) relied on the content of that press release in going forward with the Sunbeam deal; (ii) he overlooks the fact that Coleman (Parent) could have obtained the data in Andersen's comfort letter for itself and thereby known what Morgan Stanley knew; (iii) he ignores the fact that had it wanted to, Coleman (Parent) could have had access to the same people at Sunbeam as those to whom Morgan Stanley spoke; (iv) he avoids confronting the fact that the press release of which he complains was Sunbeam's, not Morgan Stanley's and; (v) he fails to recognize that the disclosures by Morgan Stanley in the zero coupon convertible offering were for the protection of the Sunbeam bondholders not for the benefit of Coleman (Parent).

Footnotes

1 The term “due diligence” is the investigation by an investor or its advisors of the accurate and complete character of the target company's legal matters, its historic, current and projected financial statements, business and operations. Rosenbloom, *Due Diligence For Global Deal Making,* Bloomberg Press, 2002, pp.3-12. See also Weston, Siu and Johnson, *Takeovers, Restructuring & Corporate Governance,* Prentice-Hall, Inc., 2001, (Third Edition), p. 638.

2 Rosenbloom, footnote 1, supra, p. 3.

3 Triantis, *Creating Successful Acquisition and Joint Venture Projects,* Quorum Books, 1999, pp. 140-141.

4 Complaint, paragraph 15.

5 Complaint, paragraphs 15 and 17.

6 Complaint, paragraph 37.

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7 See Section 7.1 of the Agreement and Plan of Merger dated as of February 27, 1998 among Sunbeam Corporation Laser Acquisition Corp., CL Holdings, Inc., and Coleman (Parent) Holdings, Inc. Section 7.1 provides that only 50% of the Sunbeam shares received by Coleman (Parent) could be sold in a period of six months from the closing date, with the full quotient of such shares saleable only after nine months from such date.

8 Jerry Levin, who attended the third meeting on February 23, 1998 did so because he was probably in the best position to evaluate Sunbeam's business plans for Coleman (Parent), Levin TR p. 182:6-8. Mr. Levin's noted that Sunbeam's earnings per share for 1998 would likely be $1.99, Wall Street's estimate, which was less than Sunbeam was projecting in the Long Range Plan, Levin TR p. 234: 9-23, and that the earnings projected in Sunbeam's long term business plan were a stretch and not achievable. Levin TR pp. 256:1-4.

9 See deposition transcript of Glenn F. Dickes, pp. 109:22-25, 110:13-15. I am aware that MAFCO believes that rigorous due diligence was appropriate in an m&a transaction like Panavision in which it sought control and that modest due diligence was acceptable in a transaction like Sunbeam in which a minority interest, for investment purposes was obtained. Dickes TR. pp. 110:13 - 111:4, 112:14 - 114:1. In that regard, three points should be observed: (i) the Sunbeam transaction, a $2.0 billion deal was dramatically larger than most acquisitions of control; (ii) the Panavision deal, in which MAFCO's due diligence efforts resulted in a purchase price reduction, was materially smaller than the Sunbeam transaction, and that; (iii) where, as here, Coleman (Parent) received close to $800 million in Sunbeam's restricted shares and only the limited rights and powers of a minority stockholder, unable to materially impact Sunbeam's strategy or operations, prudence would have argued for a due diligence inquiry of Sunbeam by Coleman (Parent) at least as rigorous as the one employed by MAFCO in the Panavision transaction.

10 I understand that there appear to be no executed copies of this agreement but that the parties do not deny its operative effect.

11 Shea, *Acquiring and Divesting Businesses,* The McGraw-Hill Companies, 1999, pp. 450-451.

12 Scharf, Shea and Beck, *Acquisitions, Sales, Buyouts & Takeovers,* Prentice-Hall, 1991, pp. 157-158. While many of these provisions are so standard as to be not negotiated at all, the parties will often negotiate the cutoff date depending on the anticipated life and value of the information furnished. Confidentiality agreements usually describe what happens to confidential material if the deal falls through, often by a requirement that the materials be returned by their recipients or destroyed. Reed & LaJoux, *The Art of M&A,* McGraw-Hill, 1999, (Third Edition), p. 352.

13 The Coleman Company Inc. Board of Directors Minutes, February 25, 1998, p. 2.

14 See depositions transcripts of Alexandre Fuchs pp. 38: 7-16, 95: 5-97:14 and John Tyree p. 558: 5-17.

15 Levin, footnote 8, supra.

16 See page 2 of the Credit Suisse, First Boston fairness opinion of February 27, 1998 provided incident to its work in the Sunbeam-Coleman transaction and, to the same effect, page 3 of Morgan Stanley's fairness opinion of the same date. See also the model form of fairness opinion in Scharf, Shea and Beck, footnote 12, supra, p. 98.

17 Levin, TR. p. 234:17-23.

18 See Morgan Stanley's engagement letter with Sunbeam dated September 5, 1997, p 3.

19 See Levin TR pp. 229: 10-19.

20 See the expert report of George P. Fritz, dated December 7, 2004, pp. 27-29.

21 See Final Offering Memorandum p. 8.

22 See deposition transcripts of Ruth Porat, February 6, 2001, pp. 17:7-15, 29: 19-22; 37:5-14, 49:8-15; 49:25-50:5, and John Tyree pp. 322:10-323:18, 342:8-22,402:8-403:2,412:6-22, 546:14-547:12-19, 549:14-550:3.

23 See SB 0018286 and deposition transcript of David Fannin, pp. 288:20-289:6.

24 Fannin TR. pp. 292:6-19,328:1-329:13.

25 See FUNB 016564-016567 and DPW000010, Fannin TR pp. 329:16 - 331:14.

26 Tyree TR. pp. 551:24- 552:12, 554:14-17.

27 Porat TR February 6, 2001, p. 38:14-22.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO STRIKE MORGAN STANLEY & CO. INCORPORATED'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

On December 10, 2004, Morgan Stanley & Co. Incorporated filed a 93-page, 332-paragraph document asking the Court to enter hundreds of pretrial findings of fact in lieu of the ordinary presentation of proofs to the jury. Because Morgan Stanley's 332 proposed findings are an abuse of Florida's summary-judgment rule, the Court should strike the document in its entirety or, in the alternative, should rule that Coleman (Parent) Holdings Inc.'s (CPH's) failure to controvert any specific proposed finding of fact will not constitute an admission of that fact.[1]

Rule 1.510(d) of the Florida Rules of Civil Procedure authorizes trial courts to enter findings of fact at the summary-judgment phase of a case only if five conditions are met:

- the court's decision on the summary-judgment motion must not end "the whole case," Fla. R. Civ. P. 1.510(d);
- the findings must involve "material" facts, *id.*;
- the material facts must "exist without substantial controversy," *id.*;

[1] Because the document has been filed under seal, it is not attached to this motion, but it is being provided to the Court separately.

- it must be "practicable" for the court to separate those material, uncontroverted facts from controverted ones, *id.*; and
- those material, uncontroverted facts must "be admissible in evidence" at trial, Fla. R. Civ. P. 1.510(e).

Not only do Morgan Stanley's 332 proposed findings of fact fail these tests, but Morgan Stanley's entire pleading ignores the very purpose for establishing this rule — to promote judicial economy.

Although the 93-page document that Morgan Stanley filed with its summary-judgment motion is captioned "Proposed Findings of Fact and Conclusions of Law *in Support of Its Motion for Summary Judgment*," the bulk of the proposed findings have little or nothing to do with the arguments in Morgan Stanley's motion. That much is clear from the fact that the motion's argument section barely refers to these proposed findings. Morgan Stanley is misusing the summary-judgment rule to justify filing what amounts to a "mass" motion in limine or an out-of-time, post-discovery request for admission — which attempts to bar CPH from offering at trial evidence on more than 300 discrete points.

The goal of Rule 1.510(d) is to promote judicial economy, so that some of the work necessary to resolve the summary-judgment motion can be put to use later in the proceedings. *See National Union Fire Ins. Co. of Pittsburgh v. Myers Co. Group*, 937 F. Supp. 276, 285 (S.D.N.Y. 1996) (highlighting the need "to save time and expense and to simplify the trial"). [2] Rule 1.510(d) "tries to extract some usefulness from the court's effort to discern whether factual

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[2] When interpreting Rule 1.510(d), Florida courts have relied on federal-court interpretations of Federal Rule 56(d), which contains almost verbatim language. *See, e.g.*, *West Am. Ins. Co. v. Rauch*, 412 So. 2d 956, 958 (Fla. 4th DCA 1982); *Fontainebleau Hotel Corp. v. Young*, 162 So. 2d 303, 305 (Fla. 3d DCA 1964).

disputes remain where a motion is denied, by capturing at least that portion of the issues that need not be tried, despite denial of the motion." Bruce J. Berman, *Rule 1.510 Summary Judgment*, in 4 Florida Practice: Civil Procedure ¶ 510.6 (West 2005 ed.). Rule 1.510(d) instructs the trial court to enter an order memorializing these findings of substantially uncontroverted facts and deeming them established. Thus, the trial can be streamlined to frame and narrow the triable issues of material fact that remain "actually and in good faith controverted." Fla. R. Civ. P. 1.510(d); *see Lovejoy Electronics, Inc. v. O'Berto*, 616 F. Supp. 1464, 1473 (N.D. Ill. 1985); *Felix v. Sun Microsystems, Inc.*, No. 03-1304, 2004 WL 911303, at *7 (D. Md. Apr. 12, 2004).

Morgan Stanley's proposed findings are contrary to the scheme established by Rule 1.510. Morgan Stanley is not simply asking the Court to enter findings of uncontroverted facts that the Court might reach as it decides (and denies) the summary-judgment motion. Rather, Morgan Stanley wants the Court to enter 332 discrete factual findings ranging across the entire subject matter of the case, and far beyond. Such an untethered fact-finding procedure bears no relationship to the purposes of the summary-judgment rule. *See Mendenhall v. Barber-Greene Co.*, 531 F. Supp. 947, 948 (N.D. Ill. 1981) (explaining that the rule "is not an independent provision permitting the singling out of limited issues on which the Court's advice may be obtained").

Indeed, even a cursory glance at the 332 paragraphs of fact findings that Morgan Stanley has proposed demonstrates the impracticability, indeed the futility, of trying to craft a Rule 1.510(d) order here. The Rule instructs courts to distinguish "material facts [that] exist without substantial controversy" from facts that are immaterial or that "are actually and in good faith controverted" — but only if making those distinctions at the summary-judgment phase is

"*practicable*." Fla. R. Civ. P. 1.510(d) (emphasis added). The "if practicable" exception protects courts from having to engage in the kind of "pretrial trial" that Morgan Stanley calls for here. From a practical point of view, CPH's opposition brief will set forth the facts that actually are in dispute, and this Court will need to look no further than the parties' summary judgment briefs to resolve the *material* issues raised by Morgan Stanley's motion.

CONCLUSION

The Court should strike Morgan Stanley's Proposed Findings of Fact and Conclusions of Law in Support of Its Motion for Summary Judgment. In the alternative, the Court should rule that CPH's failure to respond to any specific proposed finding of fact will not be deemed an admission of that fact for purposes of this case.

Dated: December 20, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

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One of Its Attorneys

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 20th day of Dec., 2004.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO STRIKE MORGAN STANLEY & CO. INCORPORATED'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

On December 10, 2004, Morgan Stanley & Co. Incorporated filed a 93-page, 332-paragraph document asking the Court to enter hundreds of pretrial findings of fact in lieu of the ordinary presentation of proofs to the jury. Because Morgan Stanley's 332 proposed findings are an abuse of Florida's summary-judgment rule, the Court should strike the document in its entirety or, in the alternative, should rule that Coleman (Parent) Holdings Inc.'s (CPH's) failure to controvert any specific proposed finding of fact will not constitute an admission of that fact.[1]

Rule 1.510(d) of the Florida Rules of Civil Procedure authorizes trial courts to enter findings of fact at the summary-judgment phase of a case only if five conditions are met:

- the court's decision on the summary-judgment motion must not end "the whole case," Fla. R. Civ. P. 1.510(d);
- the findings must involve "material" facts, *id.*;
- the material facts must "exist without substantial controversy," *id.*;

[1] Because the document has been filed under seal, it is not attached to this motion, but it is being provided to the Court separately.

- it must be "practicable" for the court to separate those material, uncontroverted facts from controverted ones, *id.*; and
- those material, uncontroverted facts must "be admissible in evidence" at trial, Fla. R. Civ. P. 1.510(e).

Not only do Morgan Stanley's 332 proposed findings of fact fail these tests, but Morgan Stanley's entire pleading ignores the very purpose for establishing this rule — to promote judicial economy.

Although the 93-page document that Morgan Stanley filed with its summary-judgment motion is captioned "Proposed Findings of Fact and Conclusions of Law *in Support of Its Motion for Summary Judgment*," the bulk of the proposed findings have little or nothing to do with the arguments in Morgan Stanley's motion. That much is clear from the fact that the motion's argument section barely refers to these proposed findings. Morgan Stanley is misusing the summary-judgment rule to justify filing what amounts to a "mass" motion in limine or an out-of-time, post-discovery request for admission — which attempts to bar CPH from offering at trial evidence on more than 300 discrete points.

The goal of Rule 1.510(d) is to promote judicial economy, so that some of the work necessary to resolve the summary-judgment motion can be put to use later in the proceedings. *See National Union Fire Ins. Co. of Pittsburgh v. Myers Co. Group*, 937 F. Supp. 276, 285 (S.D.N.Y. 1996) (highlighting the need "to save time and expense and to simplify the trial"). [2] Rule 1.510(d) "tries to extract some usefulness from the court's effort to discern whether factual

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disputes remain where a motion is denied, by capturing at least that portion of the issues that need not be tried, despite denial of the motion." Bruce J. Berman, *Rule 1.510 Summary Judgment*, in 4 Florida Practice: Civil Procedure ¶ 510.6 (West 2005 ed.). Rule 1.510(d) instructs the trial court to enter an order memorializing these findings of substantially uncontroverted facts and deeming them established. Thus, the trial can be streamlined to frame and narrow the triable issues of material fact that remain "actually and in good faith controverted." Fla. R. Civ. P. 1.510(d); *see Lovejoy Electronics, Inc. v. O'Berto*, 616 F. Supp. 1464, 1473 (N.D. Ill. 1985); *Felix v. Sun Microsystems, Inc.*, No. 03-1304, 2004 WL 911303, at *7 (D. Md. Apr. 12, 2004).

Morgan Stanley's proposed findings are contrary to the scheme established by Rule 1.510. Morgan Stanley is not simply asking the Court to enter findings of uncontroverted facts that the Court might reach as it decides (and denies) the summary-judgment motion. Rather, Morgan Stanley wants the Court to enter 332 discrete factual findings ranging across the entire subject matter of the case, and far beyond. Such an untethered fact-finding procedure bears no relationship to the purposes of the summary-judgment rule. *See Mendenhall v. Barber-Greene Co.*, 531 F. Supp. 947, 948 (N.D. Ill. 1981) (explaining that the rule "is not an independent provision permitting the singling out of limited issues on which the Court's advice may be obtained").

Indeed, even a cursory glance at the 332 paragraphs of fact findings that Morgan Stanley has proposed demonstrates the impracticability, indeed the futility, of trying to craft a Rule 1.510(d) order here. The Rule instructs courts to distinguish "material facts [that] exist without substantial controversy" from facts that are immaterial or that "are actually and in good faith controverted" — but only if making those distinctions at the summary-judgment phase is

"*practicable.*" Fla. R. Civ. P. 1.510(d) (emphasis added). The "if practicable" exception protects courts from having to engage in the kind of "pretrial trial" that Morgan Stanley calls for here. From a practical point of view, CPH's opposition brief will set forth the facts that actually are in dispute, and this Court will need to look no further than the parties' summary judgment briefs to resolve the *material* issues raised by Morgan Stanley's motion.

CONCLUSION

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Dated: December 20, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

Case No. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

Case No. CA 03-5165 AI

_____/

RE-NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: December 22, 2004

TIME: 8:45 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

Coleman (Parent) Holdings Inc.'s Motion to Strike Morgan Stanley & Co. Incorporated's Proposed Findings of Fact and Conclusions of Law in Support of Its Motion for Summary Judgment.

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 Al
Notice of Hearing

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all Counsel on the attached list, this 21st day of Dec., 2004.

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Attorney for CPH and MAFCO

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

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December 21, 2004

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PARALEGALS:

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KATHLEEN SIMON
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KEVIN J. WALSH
JUDSON WHITEHORN

Hon. Elizabeth T. Maass
Palm Beach County Courthouse
Room #11.1208
205 North Dixie Highway
West Palm Beach, FL 33401

Re: Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Matter No.: 029986-230580

Dear Judge Maass:

Enclosed please find a copy of the following pleadings in advance of the Uniform Motion Calendar hearings scheduled for December 22, 2004 in the above-styled matter:

CPH's Response to Morgan Stanley's Motion for Leave to Take Deposition of Donald R. Uzzi;

CPH's Response to Morgan Stanley's Motion to Limit Expert Testimony and Expedite Expert Discovery;

CPH's Motion to Strike MS' Proposed Findings of Fact and Conclusions of Law in Support of Its Motion for Summary Judgment and NOH.

Respectfully,
Dictated But Not Signed By
Jack Scarola To Expedite Delivery
JACK SCAROLA
JS/mep
Enc.
cc: Joseph Ianno, Esq.
Thomas Clare, Esq.
Mark Hansen, Esq.
Jenner & Block LLP

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE TO MORGAN STANLEY'S MOTION TO LIMIT EXPERT TESTIMONY AND EXPEDITE EXPERT DISCOVERY

Morgan Stanley has filed a motion asking this Court to enter an Order (1) limiting the number of expert witnesses to be called at trial in this case and (2) amending the October 14, 2004 Scheduling Order to require each party to produce documents before the expert depositions without the necessity of a commission or subpoena. CPH objects to the first request but does not object to the protocol suggested in Morgan Stanley's second request — without prejudice to CPH's right to seek appropriate relief depending on the documents requested by Morgan Stanley.

First, given that CPH has not even deposed Morgan Stanley's experts yet, it is premature to determine how many experts are appropriate. For example, Morgan Stanley complains that CPH has served three different expert disclosures based on different damages theories, but there are multiple legal theories of damages under the laws potentially applicable to this case. So CPH is not in a position now to advise Morgan Stanley of which theory or theories of damages it will seek to present at trial, nor can CPH determine prior to the issuance of relevant legal rulings which theory or theories of damages this Court will allow CPH to present at trial. Moreover, Morgan Stanley's expert advances objections to a theory of damages adopted by one of our experts, which is a further reason why we are in no position to settle on one expert and one theory at this time.

Because it is impossible at this time to determine how many experts will be needed at trial or which legal theories will be relevant, it is premature to limit the number of experts CPH may call at trial. Courts construing the federal rule that is substantially similar to the pertinent provision of Fla. R. Civ. P. 1.200 have held that "in no event at [the] pre-trial stage should witnesses be excluded because of mere numbers, without reference to the relevancy of their testimony." *Padovani v. Bruchhausen*, 293 F.2d 546, 550 (2d Cir. 1961); *see also Cole Resources, Inc. v. Gulf & Western Industries, Inc.*, 865 F.2d 761, 769 (6th Cir. 1989) (limiting experts "because of mere numbers, without reference to the relevancy of their testimony," is an abuse of discretion).

CPH questions whether it ever will be necessary for this Court to impose limitations on expert testimony. After all, this Court has limited this case to 15 trial days, and neither side is going to present unnecessary or cumulative expert testimony, given the limited amount of time available to present their evidence to the jury. CPH believes that this Court should allow the parties to utilize their allotments of the trial time as they see fit, but at a minimum, this Court should not impose limits on expert testimony without having a record on which to do so.

Second, CPH does not object to Morgan Stanley's request for modification of the October 14, 2004 Scheduling Order, to require each party to produce documents on behalf of their respective testifying experts without a subpoena. However, given that CPH does not have the specific document request Morgan Stanley is proposing, CPH takes no position on what documents need to be produced and requests that the Court make clear in its Order that only the protocol for producing documents presently is being addressed. The documents to be produced should be addressed first by the parties, subject to their respective rights to seek relief from the Court in the event any of the requests for production are objectionable.

Dated: December 21, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE TO MORGAN STANLEY'S MOTION FOR LEAVE TO TAKE DEPOSITION OF DONALD R. UZZI

Morgan Stanley has filed a motion seeking leave to take the deposition of Donald R. Uzzi, a former officer of Sunbeam, despite the expiration of the November 24, 2004 discovery cut-off. Given that this litigation has been pending since May 2003, and given that Morgan Stanley has known about Uzzi's role in the underlying events since the beginning, CPH questions whether Morgan Stanley could have sought Uzzi's deposition sooner. Nonetheless, CPH will not object to the Uzzi deposition, but CPH respectfully requests that the Court make its Order subject to the following conditions: (1) the deposition must take place within 10 days; and (2) the fact that the deposition will go forward will not preclude CPH from seeking to bar Uzzi's testimony — on the grounds of unfair surprise or prejudice in addition to the usual evidentiary grounds — if CPH determines that there is a well-founded basis for doing so.

Dated: December 21, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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Ronald L. Marmer
Jeffrey T. Shaw
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2004 WL 4979332 (Fla.Cir.Ct.) (Trial Motion, Memorandum and Affidavit)
Circuit Court of Florida,
Fifteenth Judicial Circuit.
Palm Beach County

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v.
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December 21, 2004.

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Rule 1.510(d) of the Florida Rules of Civil Procedure authorizes trial courts to enter findings of fact at the summary-judgment phase of a case only if five conditions are met:
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• those material, uncontroverted facts must "be admissible in evidence" at trial, Fla. R. Civ. P. 1.510(e).

Not only do Morgan Stanley's 332 proposed findings of fact fail these tests, but Morgan Stanley's entire pleading ignores the very purpose for establishing this rule - to promote judicial economy.

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Indeed, even a cursory glance at the 332 paragraphs of fact findings that Morgan Stanley has proposed demonstrates the impracticability, indeed the futility, of trying to craft a Rule 1.510(d) order here. The Rule instructs courts to distinguish "material facts [that] exist without substantial controversy" from facts that are immaterial or that "are actually and in good faith controverted" -- but only if making those distinctions at the summary-judgment phase is "F*practicable.*" Fla. R. Civ. P. 1.510(d) (emphasis added). The "if practicable" exception protects courts from having to engage in the kind of "pretrial trial" that Morgan Stanley calls for here. From a practical point of view, CPH's opposition brief will set forth the facts that actually are in dispute, and this Court will need to look no further than the parties' summary judgment briefs to resolve the *material* issues raised by Morgan Stanley's motion.

CONCLUSION

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Footnotes

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End of Document

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IN THE CIRCUIT COURT OF THE
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IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

ORDER GRANTING MORGAN STANLEY'S
MOTION FOR LEAVE TO TAKE DEPOSITION OF DONALD R. UZZI

THIS CAUSE having come before the Court on December 22, 2004 upon Morgan Stanley's Motion for Leave to Take Deposition of Donald R. Uzzi, and the Court having heard argument of counsel, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that:

1. Morgan Stanley's Motion for Leave to Take Deposition of Donald R. Uzzi is GRANTED, in part.

2. Morgan Stanley shall have until Jan. 19, 2005 to take Mr. Uzzi's deposition, which shall be without prejudice to Plaintiff's right to seek to bar the testimony on grounds of unfair surprise, or prejudice, as well as the usual evidentiary grounds.*

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 22 day of December, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

* Defendant shall serve on Plaintiff by mail a copy of each subpoena directed to Mr. Uzzi.

WPB#587529.6

Copies furnished to:

Joseph Ianno, Jr., Esq.
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Sherry, Bridget E.

om: Kimberly Chervenak [kchervenak@kirkland.com]
Sent: Thursday, December 23, 2004 4:05 PM
To: #MS-Coleman - K&E
Subject: Fw: Morgan/Coleman - 12/22 Orders

----- Forwarded by Kimberly Chervenak/Washington DC/Kirkland-Ellis on 12/23/2004 03:05 PM -----

"Dillard, Joyce" <JDillard@CarltonFields.com>

12/23/2004 12:19 PM

To: "Kimberly Chervenak" <kchervenak@kirkland.com>, "Lawrence Bemis" <LBemis@kirkland.com>, "Thomas Clare" <tclare@kirkland.com>, "Ianno, Joseph" <JIanno@CarltonFields.com>

cc:

Subject: Morgan/Coleman - 12/22 Orders

Attached please find Order Specially Setting Hearing for 1/21/05 on M/T/Limit Expert Testimony and Order Granting M/F/Leave to Take Depo of Uzzi, in part.

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER SPECIALLY SETTING HEARING

THIS CAUSE having come before the Court, it is hereby

ORDERED AND ADJUDGED that hearing on Defendant Morgan Stanley & Co., Incorporation's Motion to Limit Expert Testimony and Expedite Expert Discovery is specially set before the Honorable Elizabeth T. Maass on January 21, 2005, at 3:00 p.m., in Courtroom 11A, 205 N. Dixie Hwy, WPB, FL 33401. It is further

ORDERED AND ADJUDGED that the attorneys/parties must submit to the Court one (1) week before the hearing:

1. copies of all relevant pleadings;
2. a copy of any memorandum of law; and
3. copies of all case law authority.

This hearing shall not be canceled unless the issues of this motion have been settled, and an order entered, or the motion withdrawn.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 22 day of December, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
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1615 M Street, NW, Suite 400
Washington, DC 20036

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-4380 within two (2) working days of your receipt of this [describe notice]; if you are hearing or voice impaired, call 1-800-955-8771.

SPANISH

Si Ud. es una persona incapacitada que necesita de un servicio especial para participar en este proceso, Ud. tiene derecho a que le provean cierta ayuda sin costo alguno. Por favor pongase en contacto con el Coordinador de la Oficina Administrativa de la Corte ADA, situada en el 205 North Dixie Highway, Oficina 5.2500, West Palm Beach, Florida, 33401, teléfono (561) 355-4380, dentro de los dos (2) próximos días hábiles después de recibir esta [describa la notificación]; si tiene incapacidad de oir ó hablar llame al 1-800-955-8771.

CREOLE

Si ou sé yon moun ki Infim, ki bézwen ninpôt akomodasyon pou ka patisipé nan pwosè sa-a, ou gen dwa, san'l pa kouté'w anyin, pou yo ba'w kèk sèvis. Tanpri kontakté koôdinatè ADA ya nan Biro Administratif Tribinal nan cité Palm Beach la, ki nan 205 North Dixie Highway, Cham 5.2500, West Palm Beach, Florida 33401, niméro téléfonn-nan sé (561) 355-4380, rélé dé (2) jou dé lè ou résévwa [notis sa-a]; si ou bèbè ou byen soud rélé 1-800-955-8771.

FRENCH

Si vous êtes infirme, et en besoin de n'importe accommodation pour pouvoir participer á ces procédures, vous pouvez gratuitement recevoir, certains services. S'il-vous-plait contactez le coordinateur du Bureau Administratif du Tribunal de Palm Beach, située à 205 North Dixie Highway, Chambre 5.2500, West Palm Beach, Florida 33401, numéro de téléphone (561) 355-4380 durant deux (2) jours suivant la réception de [cette note]; si vous êtes muets ou sourds, appelez 1-800-955-8771.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S MOTION FOR TEMPORARY RELIEF FROM PROVISION IN SEPTEMBER 15, 2004 ORDER

Coleman (Parent) Holdings Inc. ("CPH") respectfully requests that this Court grant CPH temporary relief from the provision in the Court's September 15, 2004 Order requiring the parties to simultaneously file redacted and unredacted versions of pleadings. In support of this motion, CPH states as follows:

1. On December 23, 2004, CPH is filing a summary judgment response brief exceeding 80 pages, and the supporting materials for that brief are contained in a 12-volume appendix. Because those filings contain documents that have been designated as confidential, CPH is filing those documents under seal.

2. Under this Court's September 15 Order, a redacted version of these filings also is to be filed. But given the vast amount of materials involved, and the short amount of time in which CPH has had to prepare its summary judgment filings, CPH respectfully requests that this Court temporarily relieve it of that obligation. CPH also requests this relief because many of the documents that are designated as confidential probably need not be, and thus, it would be more efficient to file the redacted version after this Court resolves any confidentiality disputes to which the parties cannot reach agreement.

For the foregoing reasons, CPH respectfully requests temporary relief from the provision

of the Court's September 15 Order requiring the filing of a redacted version of CPH's summary judgment papers, until after any confidentiality disputes concerning those papers are resolved by this Court.

Dated: December 23, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
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#1193904

John Scarola
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Overnight Courier to all counsel on the attached list on this 23rd day of December, 2004.

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Fax: (561) 684-5816
Attorneys for Coleman(Parent)Holdings Inc.
and MacAndrews & Forbes Holdings, Inc.

COUNSEL LIST

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#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiffs,
vs.
MORGAN STANLEY & CO., INC.
Defendant.
/

CASE NO: 2003 CA 005045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,
vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant,
/

CASE NO. CA 03-5165 AI

NOTICE OF FILING PLEADING UNDER SEAL

COLEMAN (PARENT) HOLDINGS INC. hereby gives notice of the filing of COLEMAN (PARENT) HOLDINGS INC.'S Response in Opposition to Morgan Stanley's Motion for Summary Judgment, Filed under Seal on this date.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Overnight Courier to all counsel on the attached list on this 23rd day of Dec., 2004.

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Attorneys for Coleman (Parent) Holdings, Inc.
and MacAndrews & Forbes Holdings, Inc.

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Notice Of Filing Pleading Under Seal
Case No.: 2003 CA 005045 AI

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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

MORGAN STANLEY & CO. INC.,

Petitioner,

CASE NO: _____
L.T. CASE NO: 03 CA-005045 AI

v.

COLEMAN (PARENT) HOLDINGS, INC.,

Respondent.
_____/

PETITIONER'S MOTION TO EXPEDITE PROCEEDING

Petitioner, Morgan Stanley & Co., Incorporated ("Morgan Stanley"), by and through undersigned counsel, respectfully requests that this Court expedite the proceedings in this case for the following compelling reasons:

1. Morgan Stanley has brought a Petition for Writ of Certiorari to overturn an order of the trial court granting Respondent Coleman (Parent) Holdings, Inc.'s ("CPH") Motion to Amend Its Complaint to Seek Punitive Damages. The trial court's order improperly exposes Morgan Stanley to liability for punitive damages without a legal basis for such exposure. Morgan Stanley is therefore entitled to review by this court, prior to being subjected to this liability. *Globe Newspaper Co. v. King*, 658 So. 2d 518, 520 (Fla. 1995).

2. The complaint below alleges fraud, conspiracy, aiding and abetting fraud, and negligent misrepresentation and arises out of a two billion dollar New York commercial transaction: a merger agreement between two sophisticated New York domiciled corporations; entered into and closed in New York; and governed by New York law. It is based upon alleged misrepresentations made in New York; relied upon in New York; and in violation of New York law.

3. On August 11, 2004, the trial court issued an order holding that New York substantive law applies to CPH's fraud and negligence claims. *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.,* No. 03-5045 AI (Fla. 15th Cir. Ct. order filed Aug. 11, 2004).

4. CPH thereafter filed a motion to amend its complaint to seek punitive damages in the trial court. The trial court granted CPH's motion and in so doing, misinterpreted and failed to correctly apply New York law to test the sufficiency of CPH's pleadings and entitlement to punitive damages. *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*, No. 03-5045 AI (Fla. 15th Cir. Ct. order filed Nov. 19, 2004). As fully set forth in the petition for writ of certiorari, the trial court's order departs from the essential requirements of law and should be reversed because of the trial court's failure to correctly apply New York law.

5. A six-week jury trial is scheduled to begin in this case on February 18, 2004. As it presently stands, CPH will be permitted to present evidence and argue

the issue of Morgan Stanley's liability for punitive damages during this trial. *W.R. Grace & Co. v. Waters*, 638 So. 2d 502 (Fla. 1994). Prompt resolution of this petition for writ of certiorari will be necessary to prevent irreparable injury and prejudice that will be suffered by Morgan Stanley if the trial proceeds before this Court's determination of this petition. The Florida Supreme Court has recognized that a party has a right not to be subjected to a punitive damages claim or financial worth discovery until the plaintiff can prove a reasonable evidentiary basis exists for the imposition of such damages. *Globe Newspaper Co. v. King*, 658 So. 2d 518, 520 (Fla. 1995). CPH failed to make such a showing in this case and it is therefore imperative that certiorari review be granted prior to commencement of the trial.

6. If the normal appellate schedule is followed, this case will proceed to trial while the petition for writ of certiorari is pending. CPH will thus be permitted to present evidence and argument attempting to prove that punitive damages are appropriate in this case. If CPH is permitted to present such evidence and argument before the disposition of this petition, the jury inevitably will be confronted with evidence which is unnecessary and improper to prove Morgan Stanley's liability for the causes of actions alleged in the complaint and which is wholly prejudicial to Morgan Stanley. Such evidence will cause substantial and avoidable harm to the validity of the proceedings.

7. As set forth above, as a practical matter, the disposition of this petition for writ of certiorari will have a profound effect on the parties' preparation for trial and the evidence and argument presented in the underlying trial. An expedited proceeding in this case will eliminate this risk.

CONCLUSION

For the foregoing reasons, Morgan Stanley requests that this Court expedite Morgan Stanley's Petition for Writ of Certiorari.

Respectfully submitted,

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BY: _____
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Florida Bar No: 176725
Joseph Ianno, Jr.
Florida Bar No: 655351
Christine R. Dean
Florida Bar No. 569372

Attorneys for Petitioner, Morgan Stanley & Co. Incorporated

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Motion to Expedite Proceeding complies with the Times New Roman, 14-point font requirements of Fla. R. App. P. 9.100.

THOMAS E. WARNER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Federal Express (pursuant to an agreement between the parties) to all counsel of record listed below and by facsimile to Jerold S. Solovy and Michael Brody on this 27th day of December 2004.

THOMAS E. WARNER

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Shareholder
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December 27, 2004

Michael T. Brody, Esq.
Jenner & Block LLP
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330 N. Wabash, Suite 4400
Chicago, IL 60611

VIA FACSIMILE
AND FEDERAL EXPRESS

Re: *Coleman (Parent) Holdings Inc. v Morgan Stanley & Co. Inc.*

Dear Mike:

Enclosed please find a copy of Morgan Stanley's Motion to Stay Proceedings Pending Appeal. Please contact me if there is a way to resolve this motion without the necessity of a hearing.

Sincerely,

Joseph Ianno, Jr.

/jed

Enclosure

cc: Jack Scarola, Esq. (w/encl. via Federal Express)
Thomas Clare, Esq. (w/encl. via Federal Express)
Rebecca Beynon, Esq. (w/encl. via Federal Express)

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

MORGAN STANLEY & CO. INC.,

Petitioner,

CASE NO: _____
L.T. CASE NO: 03 CA-005045 AI

v.

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Respondent.
_____/

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CONCLUSION

For the foregoing reasons, Morgan Stanley requests that this Court expedite Morgan Stanley's Petition for Writ of Certiorari.

Respectfully submitted,

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Joseph Ianno, Jr.
Florida Bar No: 655351
Christine R. Dean
Florida Bar No. 569372

Attorneys for Petitioner, Morgan Stanley & Co. Incorporated

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Motion to Expedite Proceeding complies with the Times New Roman, 14-point font requirements of Fla. R. App. P. 9.100.

THOMAS E. WARNER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Federal Express (pursuant to an agreement between the parties) to all counsel of record listed below and by facsimile to Jerold S. Solovy and Michael Brody on this 27th day of December 2004.

THOMAS E. WARNER

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FAX COVER SHEET

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	Rebecca Beynon/Mark Hansen	(202) 326-7900	(202) 326-7999
From:	Joyce Dillard, CLA	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 7

Message:

Morgan Stanley & Co., Inc. v. Coleman

To follow please find a copy of Morgan Stanley's Motion to Expedite Proceeding.

☐ ***Original to follow Via Regular Mail*** ☐ ***Original will Not be Sent*** ☑ ***Original will follow via Overnight Courier***

****
The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (if long distance, please call collect) and return the original message to us at the above address via the U.S. Postal Service. Thank you.
****

IF THERE ARE ANY PROBLEMS OR COMPLICATIONS, PLEASE NOTIFY US IMMEDIATELY AT:
(561) 659-7070

TELECOPIER OPERATOR: _____

Sherry, Bridget E.

From: Thomas Clare [tclare@kirkland.com]
Sent: Monday, December 27, 2004 5:53 PM
To: #MS-Coleman - K&E
Subject: Fw: Scanned document <7 pages ~202 KB> -- 12/27/2004 4:38:19 PM

20041227 MS Motion to Expedite Proceedings

****
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****

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MOTION TO STAY PROCEEDINGS PENDING APPEAL

Pursuant to Rule 9.310 of the Fla. R. App. P., Defendant, Morgan Stanley & Co. Incorporated ("Morgan Stanley"), hereby moves to stay the Court's Order Granting Plaintiff's Motion to Amend Its Complaint to Seek Punitive Damages and all proceedings in this matter, or alternatively all proceedings regarding punitive damages, so that Morgan Stanley can obtain meaningful review of this Court's order before the Fourth District Court of Appeal. As grounds therefore, Morgan Stanley states:

1. On December 20, 2004, Morgan Stanley filed a petition for writ of certiorari in the Fourth District Court of Appeal, requesting review of this Court's punitive damages order. Morgan Stanley has requested expedited review of the petition.

2. In the Petition to the Fourth District, Morgan Stanley asserts that the Court's Order violates Petitioner's legal rights and departs from the essential requirements of law by failing to follow the procedural requirements of section 768.72, Florida Statutes (pleading

punitive damages), as well as Rule 1.190(f) Fla. R. Civ. P., and thus entitles Petitioner to certiorari review. *See Global Newspaper Company v. King*, 658 So. 2d 518 (Fla. 1995).

3. Specifically, Morgan Stanley asserts that this Court failed to apply correctly the requirements of New York substantive law regarding entitlement to punitive damages, despite having previously ruled that New York law applies to Respondent's claim for fraud. (See, "Choice of Law Order" filed August 11, 2004). This Court also failed to determine whether New York or Florida law applied to Respondent's claims for "Conspiracy" and "Aiding and Abetting Fraud" and therefore, did not properly apply the law of either state in testing the sufficiency of Respondent's pleadings and entitlement to seek punitive damages on those claims. *See Haines City Community Development v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995) (holding that the failure to apply the correct law is synonymous with a departure from the essential requirements of law).

4. Under section 768.72, Florida Statutes, Morgan Stanley has a right not to be subjected to a punitive damages claim or financial worth discovery until plaintiff proves that a reasonable evidentiary basis exists for the imposition of such damages and that the procedural requirements of the statute have been met. *Globe Newspaper Co. v. King*, 658 So. 2d 518, 520 (Fla. 1995).

5. Morgan Stanley cannot obtain meaningful review and protect its statutory rights unless a stay is granted to preserve the status quo. A stay should be entered "for the purpose of maintaining the status quo during an appellate proceeding." Fla. R. App. P. 9.310(f); *Perez v. Perez*, 769 So. 2d 389, 391 n.4 (Fla. 3d DCA 1999). Absent a stay, Morgan Stanley will be irreparably harmed and the integrity of the upcoming trial will be at risk.

6. A six-week jury trial is scheduled to begin in this case on February 18, 2005. If a stay is not entered, this case will proceed to trial while the petition for writ of certiorari is

pending. Coleman (Parent) Holdings, Inc. ("CPH") will thus be permitted to present evidence and argument attempting to prove that punitive damages are appropriate in this case. *W.R. Grace & Co. v. Waters*, 638 So. 2d 502 (Fla. 1994). If CPH is permitted to present such evidence and argument before the disposition of Morgan Stanley's petition, the jury will hear evidence that will be unnecessary. Indeed the evidence will be irrelevant to the causes of actions alleged in the complaint and grossly prejudicial to Morgan Stanley, calling into question the validity of the entire proceedings.

7. The disposition of the petition for writ of certiorari will have a profound effect on the parties' preparation for trial and the evidence and argument presented at trial. If the punitive damages order is reversed, any time spent preparing and advocating the punitive damages claim will have been unnecessary.

8. While Morgan Stanley is not requesting that this Court find error in its decision, Morgan Stanley asserts that a likelihood exists that it will succeed on its petition for certiorari. Therefore, as demonstrated above, a stay will permit the status quo to be maintained without creating the risk of irreparable injury to Morgan Stanley or affecting the integrity of the upcoming trial.

WHEREFORE, Morgan Stanley respectfully requests that this Court enter an order staying its Order Granting Plaintiff's Motion to Amend Its Complaint to Seek Punitive Damages and further proceedings in this Court, pending disposition of Morgan Stanley's petition for certiorari.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by Federal Express and by facsimile to Jerold S. Solovy and Michael Brody on this 22nd day of December, 2004.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MOTION TO STAY PROCEEDINGS PENDING APPEAL

Pursuant to Rule 9.310 of the Fla. R. App. P., Defendant, Morgan Stanley & Co. Incorporated ("Morgan Stanley"), hereby moves to stay the Court's Order Granting Plaintiff's Motion to Amend Its Complaint to Seek Punitive Damages and all proceedings in this matter, or alternatively all proceedings regarding punitive damages, so that Morgan Stanley can obtain meaningful review of this Court's order before the Fourth District Court of Appeal. As grounds therefore, Morgan Stanley states:

1. On December 20, 2004, Morgan Stanley filed a petition for writ of certiorari in the Fourth District Court of Appeal, requesting review of this Court's punitive damages order. Morgan Stanley has requested expedited review of the petition.

2. In the Petition to the Fourth District, Morgan Stanley asserts that the Court's Order violates Petitioner's legal rights and departs from the essential requirements of law by failing to follow the procedural requirements of section 768.72, Florida Statutes (pleading

punitive damages), as well as Rule 1.190(f) Fla. R. Civ. P., and thus entitles Petitioner to certiorari review. *See Global Newspaper Company v. King*, 658 So. 2d 518 (Fla. 1995).

3. Specifically, Morgan Stanley asserts that this Court failed to apply correctly the requirements of New York substantive law regarding entitlement to punitive damages, despite having previously ruled that New York law applies to Respondent's claim for fraud. (See, "Choice of Law Order" filed August 11, 2004). This Court also failed to determine whether New York or Florida law applied to Respondent's claims for "Conspiracy" and "Aiding and Abetting Fraud" and therefore, did not properly apply the law of either state in testing the sufficiency of Respondent's pleadings and entitlement to seek punitive damages on those claims. *See Haines City Community Development v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995) (holding that the failure to apply the correct law is synonymous with a departure from the essential requirements of law).

4. Under section 768.72, Florida Statutes, Morgan Stanley has a right not to be subjected to a punitive damages claim or financial worth discovery until plaintiff proves that a reasonable evidentiary basis exists for the imposition of such damages and that the procedural requirements of the statute have been met. *Globe Newspaper Co. v. King*, 658 So. 2d 518, 520 (Fla. 1995).

5. Morgan Stanley cannot obtain meaningful review and protect its statutory rights unless a stay is granted to preserve the status quo. A stay should be entered "for the purpose of maintaining the status quo during an appellate proceeding." Fla. R. App. P. 9.310(f); *Perez v. Perez*, 769 So. 2d 389, 391 n.4 (Fla. 3d DCA 1999). Absent a stay, Morgan Stanley will be irreparably harmed and the integrity of the upcoming trial will be at risk.

6. A six-week jury trial is scheduled to begin in this case on February 18, 2005. If a stay is not entered, this case will proceed to trial while the petition for writ of certiorari is

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pending. Coleman (Parent) Holdings, Inc. ("CPH") will thus be permitted to present evidence and argument attempting to prove that punitive damages are appropriate in this case. *W.R. Grace & Co. v. Waters*, 638 So. 2d 502 (Fla. 1994). If CPH is permitted to present such evidence and argument before the disposition of Morgan Stanley's petition, the jury will hear evidence that will be unnecessary. Indeed the evidence will be irrelevant to the causes of actions alleged in the complaint and grossly prejudicial to Morgan Stanley, calling into question the validity of the entire proceedings.

7. The disposition of the petition for writ of certiorari will have a profound effect on the parties' preparation for trial and the evidence and argument presented at trial. If the punitive damages order is reversed, any time spent preparing and advocating the punitive damages claim will have been unnecessary.

8. While Morgan Stanley is not requesting that this Court find error in its decision, Morgan Stanley asserts that a likelihood exists that it will succeed on its petition for certiorari. Therefore, as demonstrated above, a stay will permit the status quo to be maintained without creating the risk of irreparable injury to Morgan Stanley or affecting the integrity of the upcoming trial.

WHEREFORE, Morgan Stanley respectfully requests that this Court enter an order staying its Order Granting Plaintiff's Motion to Amend Its Complaint to Seek Punitive Damages and further proceedings in this Court, pending disposition of Morgan Stanley's petition for certiorari.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by Federal Express and by facsimile to Jerold S. Solovy and Michael Brody on this 27th day of December, 2004.

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Sherry, Bridget E.

From: Thomas Clare [tclare@kirkland.com]
Sent: Monday, December 27, 2004 5:53 PM
To: #MS-Coleman - K&E
Subject: Fw: Scanned document <7 pages ~197 KB> -- 12/27/2004 4:39:29 PM

20041227 MS Motion To Stay Proceedings Pending Appeal

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

DOROTHY H. WILKEN
CLERK OF CIRCUIT COURT
CIRCUIT CIVIL DIVISION
DEC 29 2004
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NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a hearing has been set in the above-styled case as follows:

DATE:	January 11, 2005
TIME:	8:45 a.m.
PLACE:	Palm Beach County Courthouse, Courtroom 11A 205 North Dixie Highway West Palm Beach, Florida 33401
BEFORE:	Judge Elizabeth T. Maass
CONCERNING:	Morgan Stanley's Motion to Stay Proceedings Pending Appeal

KINDLY GOVERN YOURSELVES ACCORDINGLY.

The undersigned counsel hereby certifies that a good faith attempt to resolve the issues contained in the foregoing motions or matters will be made with opposing counsel prior to hearing on these matters on the Court's Motion Calendar.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no costs to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-2431 within two (2) working days of your receipt of this notice; if you are hearing or voice impaired, call 1-800-955-8771.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by Federal Express and by facsimile to Jerold S. Solovy and Michael Brody on this 29th day of December, 2004.

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MOTION TO COMPEL A BETTER ANSWER TO INTERROGATORY NO. 2 OF MORGAN STANLEY'S FIFTH SET OF INTERROGATORIES TO PLAINTIFF, COLEMAN (PARENT) HOLDINGS, INC.

Defendant, Morgan Stanley & Co. Inc. ("Morgan Stanley"), by its attorneys, pursuant to Fla. R. Civ. P. 1.340 and 1.380, respectfully requests that the Court enter an order compelling Coleman (Parent) Holdings, Inc. ("CPH") to provide a better answer to Morgan Stanley's Interrogatory No. 2 of its Fifth Set of Interrogatories to CPH, which answer should include, *inter alia*, definite references to dates of communications, parties to communications, substance of communications, and definite references to deposition transcripts, including page and line numbers,. In support of this Motion, Morgan Stanley states as follows:

1. On October 25, 2004, Morgan Stanley served its Fifth Set of Interrogatories to Plaintiff ("Fifth Interrogatories"). A copy of the Fifth Interrogatories is attached as Exhibit "A." Interrogatory No. 2 of the Fifth Set of Interrogatories sought the following:

> Identify all communications between Coleman, CPH, or Mafco (or any of their attorneys or financial advisors) and Sunbeam, Arthur Andersen, Morgan Stanley, or Skadden Arps between March 19, 1998 and March 30, 1998 concerning Sunbeam's sales during the first quarter of 1998, Sunbeam's March 19, 1998 Press Release, or any of the information contained in Sunbeam's March 19, 1998 Press Release.

2. CPH provided limited answers to Morgan Stanley's Fifth Interrogatories, and on December 8, 2004 Morgan Stanley served its Motion to Compel Answers to Interrogatories. Following a hearing on December 15, 2004, this Court ruled that CPH was to "serve a more complete answer to Morgan Stanley's Fifth Set of Interrogatories, No. 2," without the use of "and/or" or any "indefinite denominations."

3. On December 22, 2004, CPH served its Amended Supplemental Response to Morgan Stanley's Fifth Set of Interrogatories ("Response"). A copy of the Response is attached as Exhibit "B." The Response does not comply with the Court's order and remains insufficient.

4. The Response fails to denominate a single communication responsive to Interrogatory No. 2 that includes the name of the participants, the date on which the communication occurred, and the substance of the communication.

5. The Response indefinitely refers to testimony of various individuals without any specific reference to the testimony by date, page, and line designations.

6. The Response refers to Mr. Gordon Rich without any definite information as to whether any communication actually occurred. If Mr. Rich participated in communications responsive to Interrogatory No. 2, that information must either be provided with definiteness or any such reference to Mr. Rich removed.

7. The Response indefinitely refers to communications with Mr. Nesbitt without denominating information such as times, dates, places, content, or parties to the communication. If Mr. Nesbitt participated in communications responsive to Interrogatory No. 2, that information must either be provided with definiteness or any such reference to Mr. Nesbitt removed.

8. The Response states that information was provided to CPH and Coleman but does not specify who provided the information, what was provided, when it was provided, or to whom the information was provided.

9. Finally, the Response purports to incorporate deposition testimony. No specific references are given to support this statement, including deponent, deposition date, page number of the relevant testimony, and line number of the relevant testimony.

WHEREFORE, Defendant, Morgan Stanley, respectfully requests that this Court enter an Order compelling CPH to provide a better answer to Morgan Stanley's Interrogatory No. 2 of its Fifth Set of Interrogatories to CPH, which answer should include, *inter alia*, definite references to dates of communications, parties to communications, substance of communications, definite references to deposition transcripts, including page and line numbers, and for such other and further relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by Federal Express and by facsimile to Jerold S. Solovy and Michael Brody on this 30th day of December, 2004.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO. INC.,
Defendant.
_____/

DOROTHY H. WILKEN
CLERK OF CIRCUIT COURT
CIRCUIT CIVIL DIVISION

CASE NO: CA 03-5045 AI

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MORGAN STANLEY & CO. INCORPORATED'S FIFTH SET OF INTERROGATORIES TO PLAINTIFF COLEMAN (PARENT) HOLDINGS, INC.

Pursuant to Florida Rules of Civil Procedure 1.280 and 1.340, Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") hereby requests that Plaintiff Coleman (Parent) Holdings, Inc. ("CPH") answer the following interrogatories and otherwise specify objections, if any, in accordance with the Definitions and Instructions contained herein.

INSTRUCTIONS

1. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

2. The use of the singular form of any word includes the plural and vice versa.

3. The interrogatory should be answered separately and fully, unless it is objected to, in which event the reasons for the objections should be stated with specificity. The answers are to be signed by plaintiffs and the objections, if any, are to be signed by the attorney(s) making them. If a complete answer to the interrogatory is not possible, the interrogatory should be answered to the extent possible and a statement should be made

EXHIBIT
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indicating why only a partial answer is given, the efforts made by you to obtain the information and the source from which all responsive information may be obtained, to the best of your knowledge or belief.

4. If it is claimed that information responsive to the interrogatory is privileged, work product, or otherwise protected from disclosure, state the nature and basis for any such claim of privilege, work product, or other ground for nondisclosure and identify: (a) the subject matter of any such information; (b) if the information is embodied in a document, the author of the document and each person to whom the original or a copy of the document was sent; (c) if the information was communicated orally, the person making the communication and all persons present at or participating in the communication; (d) the date of the document or oral communication; and (e) the general subject matter of the document or oral communication, within the time set forth in the agreed-upon order. Any part of an answer to which you do not claim privilege or work product should be given in full.

5. The term "identify" (with respect to documents) means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).

6. The term "identify" (with respect to persons) means to give, to the extent known, the person's full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

7. When used in reference to a person other than a natural person, "identify" means: (a) to state its name; (b) to describe its nature (e.g., corporation, partnership, etc.); (c) to

state the location of its principal place of business; and (d) to identify the person or persons employed by such entity whose actions on behalf of the entity are responsive to the interrogatory.

8. When used with respect to the identification of facts, acts, events, occurrences, meetings, telephone conferences or communications, "identify" means to describe with specificity the fact, act, event, occurrence, meeting, telephone conference, or communication in question, including, but not limited to: (a) identifying all participants in the fact, act, event, occurrence, meeting, telephone conference or communication; (b) stating the date(s) on which the fact, act, event, occurrence, meeting, telephone conference or communication took place; (c) stating the location(s) at which the fact, act, event, occurrence, meeting, telephone conference or communication took place; and (d) providing a description of the substance of the fact, act, event, occurrence, meeting, telephone conference or communication.

9. The terms "any," "all" and "each" shall be construed to mean "any," "all," or "each."

10. The term "including" shall be construed to mean "including but not limited to."

11. The present tense shall be construed to include the past and future tenses.

DEFINITIONS

1. "Coleman" means The Coleman Company, Inc. and any of its officers, directors, former or present employees, representatives and agents.

2. "CPH" means Coleman (Parent) Holdings Inc. and any of its officers, directors, former or present employees, representatives, agents, corporate parents or subsidiaries including but not limited to CLN Holdings Inc.

I, Steven L. Fasman, being duly sworn, depose and say that I am authorized on behalf of Coleman (Parent) Holdings Inc. and, on its behalf, I have read the foregoing COLEMAN (PARENT) HOLDINGS INC.'S SUPPLEMENTAL RESPONSE TO INTERROGATORY NUMBER 2 OF MORGAN STANLEY & CO. INCORPORATED'S FIFTH SET OF INTERROGATORIES, and to the best of my knowledge and belief the response contained therein are true and correct.

STEVEN L. FASMAN

Subscribed and sworn to before me
this 22 day of December, 2004.

Notary Public

DEBBIE HERNANDEZ
Notary Public, State of New York
No. 01HE5021255
Qualified in Queens County
Certificate Filed in New York County
Commission Expires December 13, 2005

#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiffs,
vs.
MORGAN STANLEY & CO., INC.
Defendant.
_____/

CASE NO: 2003 CA 005045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,
vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant,
_____/

CASE NO. CA 03-5165 AI

NOTICE OF FILING UNDER SEAL

COLEMAN (PARENT) HOLDINGS INC. hereby gives notice of the filing of COLEMAN (PARENT) HOLDINGS INC.'S Appendix to Coleman (Parent) Holdings Inc.'s Summary Judgment filing Volumes 1-12, Filed under Seal on this date.

I HEREBY CERTIFY that a true and correct copy of this Notice of Filing has been furnished by Fax and U.S. Mail to all counsel on the attached list on this 31st day of JAN., 2005.

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and MacAndrews & Forbes Holdings, Inc.

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Notice Of Filing Pleading Under Seal
Case No.: 2003 CA 005045 AI

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INC.,

Defendant.
_____/

AGREED ORDER REVISING SUMMARY JUDGMENT DEADLINES

THIS CAUSE having come before the Court upon an agreement between Coleman (Parent) Holdings, Inc. ("CPH") and Morgan Stanley & Co. Incorporated ("Morgan Stanley") to revise certain summary judgment deadlines by one day, and the Court noting the agreement of the parties, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

In the absence of further extensions by Order of the Court, CPH's response to Morgan Stanley's Proposed Findings of Fact and Conclusions of Law in Support of its Motion for Summary Judgment is due December 24, 2004. Morgan Stanley's Summary Judgment Reply Briefs shall be served on January 7, 2005. All other deadlines remain unchanged.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this ____ day of January, 2005.

SIGNED & DATED
JAN 04 2005
JUDGE ELIZABETH T. MAASS

_____
ELIZABETH T. MAASS
Circuit Court Judge

WPB#587862.1

16div-009367

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FAX COVER SHEET

		Phone Number	Fax Number
Date:	January 4, 2005		
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Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 4

Message:

To follow please find a copy of Morgan Stanley's Re-Notice of Hearing of today's date.

☐ *Original to follow Via Regular Mail* ☐ *Original will Not be Sent* ☒ *Original will follow via Overnight Courier*

****
The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (if long distance, please call collect) and return the original message to us at the above address via the U.S. Postal Service. Thank you.
****

IF THERE ARE ANY PROBLEMS OR COMPLICATIONS, PLEASE NOTIFY US IMMEDIATELY AT:
(561) 659-7070

TELECOPIER OPERATOR: _____

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

RE-NOTICE OF HEARING
(Changes date from January 6, 2005)

NOTICE IS HEREBY GIVEN that a hearing has been set in the above-styled case as follows:

DATE:	January 12, 2005
TIME:	8:45 a.m.
PLACE:	Palm Beach County Courthouse, Courtroom 11A 205 North Dixie Highway West Palm Beach, Florida 33401
BEFORE:	Judge Elizabeth T. Maass
CONCERNING:	Morgan Stanley's Motion to Compel a Better Answer to Interrogatory No. 2 of Morgan Stanley's Fifth Set of Interrogatories to Plaintiff, Coleman (Parent) Holdings, Inc.

KINDLY GOVERN YOURSELVES ACCORDINGLY.

The undersigned counsel hereby certifies that a good faith attempt to resolve the issues contained in the foregoing motions or matters will be made with opposing counsel prior to hearing on these matters on the Court's Motion Calendar.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no costs to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West

Palm Beach, Florida 33401; telephone number (561) 355-2431 within two (2) working days of your receipt of this notice; if you are hearing or voice impaired, call 1-800-955-8771.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 4th day of January, 2005.

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BY Joseph Ianno, Jr.
Joseph Ianno, Jr.
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Counsel for Morgan Stanley & Co. Incorporated

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#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

Case No. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

_____/

Case No. CA 03-5165 AI

ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION FOR EXTENSION OF TIME IN WHICH TO RESPOND TO MORGAN STANLEY & CO., INC.'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

THIS CAUSE having come to be considered upon Coleman (Parent) Holdings Inc.'s Motion for Extension of Time in Which to Respond to Morgan Stanley & Co., Inc.'s Proposed Findings of Fact and Conclusions of Law in Support of Its Motion for Summary Judgment, and the Court having reviewed the file and being fully advised in the premises, it is hereby,

ORDERED and ADJUDGED: the Moti- is granted, - part. Plaint ff shall have until Jan. 14, 2005 to serve by facsimile transmission or hand delivery those portions of its response to Defend's Mot'n for Summ Judgm which Plaintiff contends asserts facts not necessary to be motion's underlying claims. Defendant shall serve its reply to Plaintiff's responses by hand delivery or facsimile transmission by Jan. 17, 2005.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this 4 day of Jan, 2005.

ELIZABETH T. MAASS
CIRCUIT COURT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Case No.:2003 CA 005045 AI
Order

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#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

/

Case No. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

/

Case No. CA 03-5165 AI

ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION FOR EXTENSION OF TIME IN WHICH TO RESPOND TO MORGAN STANLEY & CO., INC.'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

THIS CAUSE having come to be considered upon Coleman (Parent) Holdings Inc.'s Motion for Extension of Time in Which to Respond to Morgan Stanley & Co., Inc.'s Proposed Findings of Fact and Conclusions of Law in Support of Its Motion for Summary Judgment, and the Court having reviewed the file and being fully advised in the premises, it is hereby,

ORDERED and ADJUDGED: the Motion is granted in part. Plaintiff shall have until Jan. 10, 2005 to serve by facsimile transmission or hand delivery those portions of its response to Defendant's Motion for Summary Judgment which Plaintiff contends asserts facts not necessary to the Motion's underlying claims. Defendant shall serve its reply to Plaintiff's response by hand delivery or facsimile transmission by Jan. 17, 2005.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this 4 day of Jan, 2005.

ELIZABETH T. MAASS
CIRCUIT COURT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

16div-009375

COUNSEL LIST

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#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

Case No. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

_____/

Case No. CA 03-5165 AI

ORDER ON COLEMAN (PARENT) HOLDINGS, INC.'S MOTION TO STRIKE MORGAN STANLEY & CO. INCORPORATED'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

THIS CAUSE having come to be considered upon Coleman (Parent) Holdings Inc.'s Motion to Strike Morgan Stanley & Co. Incorporated's Proposed Findings of Fact and Conclusions of Law in Support of Its Motion for Summary Judgment, and the Court having reviewed the file and being fully advised in the premises, it is hereby,

ORDERED and ADJUDGED: the Court finds there is insufficient time available to permit the Motion to be heard prior to hearing on the Motions for Summary Judgment.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this 4 day of Jan., 2005

ELIZABETH T. MAASS
CIRCUIT COURT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Case No.:2003 CA 005045 AI
Order

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INC.,

Defendant.
_____/

AGREED ORDER REVISING SUMMARY JUDGMENT DEADLINES

THIS CAUSE having come before the Court upon an agreement between Coleman (Parent) Holdings, Inc. ("CPH") and Morgan Stanley & Co. Incorporated ("Morgan Stanley") to revise certain summary judgment deadlines by one day, and the Court noting the agreement of the parties, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

In the absence of further extensions by Order of the Court, CPH's response to Morgan Stanley's Proposed Findings of Fact and Conclusions of Law in Support of its Motion for Summary Judgment is due December 24, 2004. Morgan Stanley's Summary Judgment Reply Briefs shall be served on January 7, 2005. All other deadlines remain unchanged.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this ____ day of January, 2005.

SIGNED & DATED
JAN 04 2005
JUDGE ELIZABETH T. MAASS

_____
ELIZABETH T. MAASS
Circuit Court Judge

WPB#587862.1

16div-009379

Copies furnished to:

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiffs,

CASE NO: 2003 CA 005045 AI

vs.

MORGAN STANLEY & CO., INC.
Defendant.
_____/

NOTICE OF FILING PLEADING UNDER SEAL

COLEMAN (PARENT) HOLDINGS INC. hereby gives notice of the filing of COLEMAN (PARENT) HOLDINGS INC.'S Motion to Compel Adequate Answers to Morgan Stanley's Supplemental Responses to CPH's First Set of Interrogatories, Filed under Seal on this date.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 5th day of January 2005.

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Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Notice Of Filing Pleading Under Seal
Case No.: 2003 CA 005045 AI

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16div-009382

#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiffs,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

CASE NO.: 2003 CA 005045 AI

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: January 12, 2005

TIME: 8:45 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

CPH's Motion to Compel Adequate Answers to Morgan Stanley's Supplemental Responses to CPH's First Set of Interrogatories.

Moving counsel certifies that he or she contacted opposing counsel and attempted to resolve the discovery dispute without hearing.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all Counsel on the attached list, this 5th day of January, 2005.

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#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

Case No. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

Case No. CA 03-5165 AI

_____/

RE-NOTICE OF HEARING
(at the request of defense counsel)

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: January 12, 2005

TIME: 8:45 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO EXTEND THE TIME FOR SUBMISSION OF THE REBUTTAL EXPERT REPORT OF SAMUEL KURSH.

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Re-Notice of Hearing

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all Counsel on the attached list, this 5th day of January ~~2004~~ 2005.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of Eugene Yoo under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 6th day of January, 2005.

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BY: _____
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WPB#5712612.4

Coleman v. Morgan Stanley, Case No: CA 03-5045 AI
Morgan Stanley v. MacAndrews, Case No: CA 03-5045
Notice of Filing Under Seal

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16div-009390

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF EUGENE YOO

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of Eugene Yoo taken June 16, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 6th day of January, 2005.

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BY: Joseph Ianno Jr.
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Counsel for Morgan Stanley & Co. Incorporated

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF FILING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed a copy of Morgan Stanley's exhibit 520 under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal on this 6th day of January, 2005.

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BY: Joseph Ianno Jr.
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Counsel for Morgan Stanley & Co. Incorporated

WPB#571261.25

Coleman v. Morgan Stanley, Case No: CA 03-5045 AI
Morgan Stanley v. MacAndrews, Case No: CA 03-5045
Notice of Filing Under Seal

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16div-009393

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

NOTICE OF FILING MORGAN STANLEY EXHIBIT 520

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of Morgan Stanley's Exhibit 520 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 6th day of January, 2005.

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BY: Joseph Ianno, Jr.
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WPB#587994.31

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF FILING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed a copy of Morgan Stanley's exhibit 520 under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal on this 6th day of January, 2005.

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Coleman v. Morgan Stanley, Case No: CA 03-5045 AI
Morgan Stanley v. MacAndrews, Case No: CA 03-5045
Notice of Filing Under Seal

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16div-009396

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

NOTICE OF FILING MORGAN STANLEY EXHIBIT 520

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of Morgan Stanley's Exhibit 520 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 6th day of January, 2005.

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

CASE NO.: 2003 CA 005045 AI

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiffs,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

PLAINTIFF'S NOTICE OF FILING AMENDED CERTIFICATE OF SERVICE

COMES NOW the Plaintiffs, COLEMAN (PARENT) HOLDINGS INC., by and through the undersigned counsel, and hereby provides notice that an Amended Certificate of Service with regard to CPH's Motion to Compel Adequate Answers to Morgan Stanley's Supplemental Responses to CPH's First Set of Interrogatories has been filed with the Clerk of Court.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all Counsel on the attached list, this 7th day of JANUARY, 2005.

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Coleman Holdings, Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Filing Amended Certificate Of Service

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AMENDED
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of CPH's Motion to Compel Adequate Answers to Morgan Stanley's Supplemental Responses to CPH's First Set of Interrogatories was furnished by Federal Express to all counsel on the attached list on the 5th day of January, 2005.

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Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 56

Message:

To follow please find a copy of Morgan Stanley's Notice of Filing Appendix (No. 5) to its Reply Memorandum Under Seal, Notice of Filing Reply Memorandum Under Seal, and Reply Memorandum. A copy of Appendix will be sent only by Federal Express..

☐ ***Original to follow Via Regular Mail*** ☐ ***Original will Not be Sent*** ☐ ***Original will follow via Overnight Courier***

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(561) 659-7070

TELECOPIER OPERATOR: _____

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed Morgan Stanley & Co. Incorporated's Appendix, labeled Volume 5, to its Reply Memorandum in Support of its Motion for Summary Judgment under seal.

16div-009403

002/059 CARLTON FIELDS-WPB 07/01 2005 16:26 FAX 13616508022

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the service list below by facsimile and Federal Express on this 12 day of January, 2005.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed Morgan Stanley & Co. Incorporated's Reply Memorandum in Support of its Motion for Summary Judgment under seal.

WPB#571261.26

16div-009406

005/059

07/01 2005 16:27 FAX 15616508022 CARLTON FIELDS-WPB

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2005 WL 3957747 (Fla.Cir.Ct.) (Partial Expert Testimony)
Circuit Court of Florida,
Fifteenth Judicial District
Palm Beach County

COLEMAN (PARENT) HOLDINGS, Plaintiff,
v.
MORGAN STANLEY & CO., INC., Defendant.

No. 2003 CA 005045 AI.
January 7, 2005.

Videotape Deposition of Mark Grinblatt

Case Type: Fraud & Misrepresentation >> Business
Case Type: Fraud & Misrepresentation >> Fraud - Fraud & Misrepresentation
Case Type: Securities >> Securities Fraud
Jurisdiction: Palm Beach County, Florida
Name of Expert: Mark Grinblatt
Area of Expertise: Accounting & Finance >> Economics/Economist

Representing: Unknown

District of Columbia

Job No. 165111

Q. Okay. Now, in -- in your methodology, you've not calculated any deduction that must come from any damages to be paid to McAndrews & Forbes for the Arthur Andersen settlement; is that correct?

A. I have not figured any other litigation settlements into my damage calculation.

Q. And --

A. I'm simply saying that on March 30th, one party received at least $376 million more than he gave up apart from anything else.

Q. Okay. But as you calculate damages in this case, you are trying to limit them to any consequences that would result from the -- from the curative disclosures before the accounting issues are first raised; is that correct?

MR. BEMIS: Objection. Objection to the form.

THE WITNESS: I'm not trying to limit anything. I mean, I -- the report is what it says. I'm saying this is the curative disclosure and these are the damages under that --

MR. BRODY: Okay.

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THE WITNESS: -- assumption.

...

BY MR. BRODY:

Q. But to -- As you performed your methodology, you would not need to deduct anything further for the Anderson settlement, would you?

MR. BEMIS: Objection to the form of the question. He didn't -- Never mind. Objection to the form of the question.

THE WITNESS: I don't understand. I mean, I -- I -- I don't have an answer to that question. I don't know the answer to this. I -- I didn't consider any settlements in this. I don't know whether they would be deducted or not. Maybe, upon further study, I'd have an answer for you, but I don't have an answer here today.

BY MR. BRODY:

Q. Okay. Likewise, you've not deducted anything for the value of any warrants that Coleman received, that the owners -- former owners of Coleman received as a result of the settlement with Sunbeam?

A. I mean, I -- I -- I think my damage estimate is very straightforward. All I'm saying is, apart from anything else that ever took place after March 30th, one party received in true value at least $376 million -- than it gave up. And the reasons for is this is not -- you know, high tech math. It's because there's about $700 million in cash in this, and it's very, very difficult to argue that approximately 44 million Coleman shares are worth $700 million more than 14.1 million shares of Sunbeam stock.

Q. Now, the 14.1 million shares of Sunbeam stock that you value in your analysis -- you value at the price that they would reflect after the curative disclosures; correct?

A. Correct. And -- and -- and merger termination, yes.

Q. Right. And that price is approximately $20 less than the price of those shares at the time the transaction was assigned -- ??cuse me -- announced.

A. I'll have to look at the exact date, but if you're willing to stretch it 10 or 15 percent -- I mean, the price that I have as true value for Sunbeam is substantially less, probably about half what it was, but in terms of the exact date, I can't say whether it's 40 or 50 or 60 percent less.

Q. Okay. Now, would you turn, please, to page 12 of your report.

Are you there?

A. I'm there.

Q. Paragraph -- Excuse me. Page 12 of your report, Exhibit 2, calculates what you believe to be an 84 percent premium. Do you see that?

A. Yeah. It's what I call a premium. It's not an economic premium in that some of these items are at book value, and I don't believe these are true values. This is just a characterization of the merger based on the book value of the debt and

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the prices of -- not true values but the actual market prices of the various pieces of property exchanged in the merger on February 27th, '98, which is the date the board ratified these things.

Q. Right. So this tran -- this document would show that as a result of the transaction, based on those values as you just described, Sunbeam paid an 84 percent premium for Coleman?

A. Again, “premium”'s just a way of labeling that number, 84 percent, for lack of a better thing to call it. I wouldn't call this an economic premium. It's not based on true values. It's not based on market values except in the case ??

End of Document

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

PLAINTIFF'S MOTION IN LIMINE (NO. 1) TO BAR EVIDENCE AND ARGUMENT CONCERNING COLEMAN (PARENT) HOLDINGS INC.'S ALLEGED PROFITS FROM ITS INVESTMENT IN THE COLEMAN COMPANY, INC.

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") hereby moves this Court for an Order barring Defendant Morgan Stanley & Co. Inc. ("Morgan Stanley") from introducing any evidence or argument at trial regarding whether CPH made any profit on its investment in The Coleman Company, Inc. ("Coleman") and, if so, how much.

Based on arguments and issues that Morgan Stanley has attempted to raise and develop during discovery, CPH expects that Morgan Stanley may seek to introduce evidence at trial that CPH profited on its investment in Coleman and may argue that those supposed profits should be taken into account by the jury in determining the amount of damages to be awarded. This Court already has determined that evidence regarding CPH's profit or loss on its investment in Coleman is irrelevant to the issues in this case. *See* Ex. A, Order on CPH's Mot. for Protective Order, 11/15/04 (granting CPH's Motion for a Protective Order barring Morgan Stanley from taking the deposition of a CPH representative on the topic of the gains or losses experienced by CPH as a result of CPH's investment in Coleman, on the grounds that such evidence is irrelevant). For the same reasons that this Court granted CPH's Motion for a Protective Order,

this Court should bar Morgan Stanley from attempting to introduce this irrelevant evidence at trial.

ARGUMENT

No evidence is admissible at trial unless it is relevant — that is, it must be "evidence tending to prove or disprove a material fact." FLA. STAT. ANN. § 90.401 (West 2004); *see also* CHARLES W. EHRHARDT, FLORIDA EVIDENCE § 401.1, at 116-23 (2004 ed.). Even relevant evidence is inadmissible "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence." FLA. STAT. ANN. § 90.403 (West 2004); *see also* EHRHARDT, FLORIDA EVIDENCE, *supra*, § 403.1, at 161-73. Under these standards, evidence and argument concerning the profit CPH made from its investment in Coleman should be barred at trial.

First, as stated above, this Court already has determined that CPH's profit or loss on its investment in Coleman is irrelevant. Morgan Stanley sought a Rule 1.310(b)(6) deposition of CPH on the topic of "[a]ll gains and/or losses experienced by CPH as a result of CPH's investment in The Coleman Company, including the value of all payments, consideration, and other financial benefits received by CPH, directly or indirectly, as a result of that investment." *See* Ex. B, Morgan Stanley's Am. Notice of Dep., 11/3/04. CPH filed a Motion for a Protective Order on the grounds that CPH's profit or loss on its investment in Coleman was irrelevant. *See* Ex. C, CPH's Mot. for Protective Order, 11/8/04. The Court granted that Motion on November 15, 2004. *See* Ex. A, Order on CPH's Mot. for Protective Order, 11/15/04.

That ruling is dispositive. As this Court recognized in granting CPH's motion, the details of CPH's investment in Coleman have nothing to do with whether Morgan Stanley defrauded CPH. The 1998 fraud and the resulting damage to CPH are unrelated to how much Coleman was

worth when CPH acquired it in 1989 or the history of that investment since 1989. Nor is this evidence relevant to CPH's damages, which are measured by what CPH lost; what CPH may have gained on the investment prior to giving up the asset has no bearing on what it lost. Morgan Stanley should not be permitted to introduce this irrelevant evidence at trial.

Second, evidence regarding CPH's profit on its investment in Coleman would create unfair prejudice, confuse the issues, and mislead the jury. Allowing Morgan Stanley to inject CPH's overall profit on its Coleman investment at trial would create a substantial danger that the jury might improperly reduce CPH's damages. That should not be allowed to occur: CPH is entitled to recover all damages occasioned by Morgan Stanley's fraud.

CONCLUSION

For the foregoing reasons, this Court should enter an Order barring Morgan Stanley from introducing at trial any evidence or argument concerning CPH's profit on its investment in Coleman, including any evidence or argument that that profit somehow diminishes CPH's losses caused by Morgan Stanley's fraud.

Dated: January 10, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC., Case No. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

MORGAN STANLEY SENIOR FUNDING, INC., Case No. CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

_____/

ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION FOR PROTECTIVE ORDER DATED NOVEMBER 8, 2004.

THIS CAUSE having come to be considered upon the Coleman (Parent) Holdings Inc.'s Motion for Protective Order dated November 8, 2004, and the Court having reviewed the file and being fully advised in the premises, it is hereby,

ORDERED and ADJUDGED: The Motion is granted, in part, and denied, in part. The CMH representative will not be deposed on Topic 2, but may be deposed on Topic 5.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this 15 day of Nov., 2004.

ELIZABETH T. MAASS
CIRCUIT COURT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

EXHIBIT
tabbies
A

16div-009417

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16div-009418

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INC.,

Defendant.

_____/

AMENDED NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") will take the deposition of Coleman (Parent) Holdings, Inc. ("CPH") through a CPH representative or representatives with knowledge on the following topics, pursuant to Florida Rules of Civil Procedure 1.280 and 1.310, on the dates and times set forth below. The oral examination will take place at Kirkland & Ellis LLP, Citigroup Center, 153 East 53rd Street, New York, NY 10022-4611. The deposition will be taken before a person authorized to administer oaths and recorded by stenographic and videographic means. The video operator will be Esquire Deposition Services of 216 E. 45th Street in New York, New York.

Topic	Representative	Date & Time
The value of the warrants and other consideration that CPH received from Sunbeam pursuant to the August 12, 1998 Settlement Agreement between CPH and Sunbeam.	Lawrence Winoker	November 18, 2004, at 1:30 pm
All gains and/or losses experienced by CPH as a result of CPH's investment in The Coleman Company, including the value of all payments, consideration, and other financial benefits received by CPH, directly or indirectly, as a result of that investment.		November 10, 2004, at 9:30 am
CPH's decision not to hedge its position in the Sunbeam stock that CPH received from Sunbeam in connection with the February 27, 1998.	Glenn Dickes	November 18, 2004, at 9:30 am

EXHIBIT
tabbies
B

16div-009419

Topic	Representative	Date & Time
The authenticity, source, creation, use, maintenance, and business purpose of documents produced and/or authored by CPH and/or MacAndrews & Forbes bearing the bates numbers identified in Attachment A.		November 10, 2004, at 9:30 am
The balances due and available under any Mafco Finance Corp. (or Marvel IV Holdings Inc.) Credit Agreement or Mafco Holdings Inc. Guaranty (including any Amendments or Restatements) in the first and second quarters of 1998.		November 10, 2004, at 9:30 am

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 3d day of November, 2004.

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Attachment A

MS	Ex. No.	Bates
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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

DOROTHY H. WILKEN
CLERK OF CIRCUIT COURT
CIRCUIT CIVIL DIVISION
NOV 0 9 2004
COPY / ORIGINAL
RECEIVED FOR FILING

COLEMAN (PARENT) HOLDINGS INC.'S MOTION FOR PROTECTIVE ORDER

Pursuant to Fla. R. Civ. P. 1.280(c), Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, respectfully requests that this Court enter a Protective Order barring Morgan Stanley & Co., Inc. ("Morgan Stanley") from taking the deposition of a CPH corporate representative on Topics Two and Five as described in the notice of deposition attached hereto as Exhibit 1. In support of this motion, CPH states as follows:

1. Morgan Stanley has served upon CPH a notice of deposition pursuant to Fla. R. Civ. P. 1.310(b)(6), stating its intent to depose a CPH corporate representative designated by CPH on five separate topics. Two topics — Topics Two and Five — are pertinent to the instant motion. Topic Two requests that the CPH representative address (*id.* at 1):

> All gains and/or losses experienced by CPH as a result of CPH's investment in The Coleman Company, including the value of all payments, consideration, and other financial benefits received by CPH, directly or indirectly, as a result of that investment.

Topic Five requests that the CPH representative address (*id.* at 2):

> The balances due and available under any Mafco Finance Corp. (or Marvel IV Holdings Inc.) Credit Agreement or Mafco Holdings Inc. Guaranty (including any Amendments or Restatements) in the first and second quarters of 1998.

On November 2, 2004, CPH notified Morgan Stanley that it objected to these two lines of inquiry as irrelevant. *See* 11/2/04 Letter from M. Brody to T. Clare at 1. Morgan Stanley, however, is persisting in its effort to take the corporate representative deposition on these topics.

Morgan Stanley should be barred from doing so because Topics Two and Five concern lines of inquiry that cannot possibly lead to the discovery of admissible evidence.

2. With respect to Topic Two, Morgan Stanley has demanded testimony about "[a]ll gains and/or losses experienced by CPH" and "all payments, consideration, and other financial benefits received by CPH" for the entire (and lengthy) period of its investment in The Coleman Company, Inc. ("Coleman"). *See* Ex. 1 at 1 (emphasis added). Besides seeking an enormous quantity of historical information, this topic is irrelevant, because historical details of CPH's investment in Coleman, which began in 1989, have nothing to do with the issue in this case — namely, whether Morgan Stanley defrauded CPH in 1998. The 1998 fraud — and the resulting damage to CPH — are unrelated to how much Coleman was worth when CPH acquired it in 1989 or the history of that investment since 1998.

3. With respect to Topic Five, Morgan Stanley has demanded deposition testimony concerning "balances due and available" under any MAFCO credit agreement or guaranty "in the first and second quarters of 1998." *See* Ex. 1 at 2. But the credit status of MAFCO (a parent of CPH) during that time period — or in any time period, for that matter — has nothing to do with this case. Whether Morgan Stanley defrauded CPH does not turn in any way upon the credit status of CPH's parent.

4. Rule 1.280(c) provides that a Protective Order may issue where "good cause" exists. Because Topics Two and Five in Morgan Stanley's deposition notice involve factual issues that are unrelated to this lawsuit, good cause exists for the issuance of a Protective Order. *See, e.g., Leonhardt v. Cammack*, 327 So. 2d 848, 849 (Fla. 4th DCA 1976) (reversing trial court's denial of a protective order where the discovery sought "related to matters that were clearly not relevant to the subject matter of the pending action").

WHEREFORE, CPH requests a Protective Order barring Morgan Stanley from taking the deposition of a CPH corporate representative on Topics Two and Five, as set forth in the notice of deposition attached hereto as Exhibit 1.

Dated: November 8, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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Ronald L. Marmer
Jeffrey T. Shaw
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#1176201

16div-009428

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 8th day of Nov., 2004.

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Attorneys for Coleman(Parent)Holdings Inc.
and MacAndrews & Forbes Holdings, Inc.

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Washington, DC 20036-3206

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO. INC.,
Defendant.

CASE NO: CA 03-5045 AI

AMENDED NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") will take the deposition of Coleman (Parent) Holdings, Inc. ("CPH") through a CPH representative or representatives with knowledge on the following topics, pursuant to Florida Rules of Civil Procedure 1.280 and 1.310, on the dates and times set forth below. The oral examination will take place at Kirkland & Ellis LLP, Citigroup Center, 153 East 53rd Street, New York, NY 10022-4611. The deposition will be taken before a person authorized to administer oaths and recorded by stenographic and videographic means. The video operator will be Esquire Deposition Services of 216 E. 45th Street in New York, New York.

Topic	Representative	Date & Time
The value of the warrants and other consideration that CPH received from Sunbeam pursuant to the August 12, 1998 Settlement Agreement between CPH and Sunbeam.	Lawrence Winoker	November 18, 2004, at 1:30 pm
All gains and/or losses experienced by CPH as a result of CPH's investment in The Coleman Company, including the value of all payments, consideration, and other financial benefits received by CPH, directly or indirectly, as a result of that investment.		November 10, 2004, at 9:30 am
CPH's decision not to hedge its position in the Sunbeam stock that CPH received from Sunbeam in connection with the February 27, 1998.	Glenn Dickes	November 18, 2004, at 9:30 am

EXHIBIT
1

Topic	Representative	Date & Time
The authenticity, source, creation, use, maintenance, and business purpose of documents produced and/or authored by CPH and/or MacAndrews & Forbes bearing the bates numbers identified in Attachment A.		November 10, 2004, at 9:30 am
The balances due and available under any Mafco Finance Corp. (or Marvel IV Holdings Inc.) Credit Agreement or Mafco Holdings Inc. Guaranty (including any Amendments or Restatements) in the first and second quarters of 1998.		November 10, 2004, at 9:30 am

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I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 3d day of November, 2004.

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MS	304	DPW 0000719-0000720
MS	305	DPW 0014400-0014403
MS	306	DPW 0011015-0011020
MS	307	CPH 1421212-1421219
MS	308	CPH 2006236-2006249
MS	310	CPH 2011528-2011531
MS	311	CPH 2006641-2006669
MS	313	CPH 2008016-2008020
MS	314	WLRK 0014181-0014295
MS	315	CPH 0643329-0643338
MS	316	
MS	317	CPH 2011532-2011533
MS	318	CPH 1408945-1408947
MS	319	CPH 1407858-1407860
MS	322	CPH 1087788-1087789
MS	323	CPH 1408270
MS	325	CPH 1395054-1395058
MS	326	
MS	327	DPW 0013825-0013827

MS	No.	Bates
MS	328	CPH 1408269
MS	330	CPH 1121275-1121332
MS	337	CPH 1258279-1258282
MS	342	CPH 0642672-0642678
MS	343	WLRK0008557-0008560
MS	344	WLRk0007564-0007662
MS	345	CPH 1167570-1167612
MS	346	CPH 1414454-1414459
MS	347	CPH 1421220-1421223
MS	348	WLRK 0010179
MS	349	CPH 1167561-1167563
MS	350	WLRK 0012067
MS	351	CPH 1411596-1411654
MS	352	CPH 1411183-1411209
MS	353	CPH 2005703
MS	354	CPH 2005706
MS	355	CPH 1278481-1278484
MS	356	CPH 1120685-1120704
MS	357	CPH 1087146-1087148
MS	358	WLRK 0020591-0020595
MS	359	CPH 1010541-1010546
MS	360	CPH 1411943
MS	361	CPH 1192456-1192488
MS	362	WLRK 0012066-0012067
MS	363	CPH 1426259
MS	364	CPH 1433908-1433917
MS	365	CPH 1433895
MS	366	CPH 1428745-1428746
MS	367	DPW 0014300-0014301
MS	368	CPH 1272487-1272536
MS	369	DPW 0014073-0014074
MS	370	DPW 0014028-0014029
MS	371	WLRK 0013747-0013790
MS	372	DPW 0013720-0013723
MS	373	DPW 0013793-0013794
MS	374	WLRK 0003018-0003020
MS	375	DPW 0014137-0014110
MS	376	DPW 0014141-0014142
MS	377	DPW 0013936-0013936
MS	378	DPW 0013821-0013822
MS	379	
MS	380	DPW 0013662
MS	381	
MS	382	

MS	No.	Bates
MS	383	
MS	385	CPH 1111639-1111648
MS	388	WLRK 0008777-0008794
MS	395	
MS	402	DPW 0013767-0013768
MS	403	CPH 0637558-0637570

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

PLAINTIFF'S MOTION IN LIMINE (NO. 2) TO BAR EVIDENCE AND ARGUMENT CONCERNING THE WEALTH, NET WORTH, INCOME, OR FINANCIAL STATUS OF PERELMAN, GITTIS, OR ANY OTHER MAFCO, CPH, OR COLEMAN EMPLOYEES

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") hereby moves this Court for an Order barring Defendant Morgan Stanley & Co. Inc. ("Morgan Stanley") from introducing any evidence or argument at trial regarding the wealth, net worth, income, or financial status of Ronald Perelman, Howard Gittis, or any other employees of MacAndrews & Forbes Holdings Inc. ("MAFCO"), CPH, or The Coleman Company, Inc. ("Coleman").

Based on arguments and issues that Morgan Stanley has attempted to raise and develop during discovery, CPH expects that Morgan Stanley may seek to introduce at trial evidence regarding the wealth, net worth, income, or financial status of Messrs. Perelman and Gittis, and perhaps other MAFCO, CPH, or Coleman employees. The Court should bar this evidence as irrelevant and unfairly prejudicial.

ARGUMENT

No evidence is admissible at trial unless it is relevant — that is, it must be "evidence tending to prove or disprove a material fact." FLA. STAT. ANN. § 90.401 (West 2004); *see also* CHARLES W. EHRHARDT, FLORIDA EVIDENCE § 401.1, at 116-23 (2004 ed.). Even relevant

evidence is inadmissible "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence." FLA. STAT. ANN. § 90.403 (West 2004); *see also* EHRHARDT, FLORIDA EVIDENCE, *supra*, § 403.1, at 161-73. Under these standards, evidence and argument concerning the wealth, net worth, income, or financial status of MAFCO, CPH, or Coleman employees should be excluded.

First, to date, this Court has declined to require CPH to provide information concerning personal finances. *See* Ex. A, Order on Def.'s Mot. to Compel Disc., 1/13/04. This information is no more relevant at trial than it was during discovery. *See, e.g., Allstate Ins. Co. v. Langston*, 655 So. 2d 91, 94 (Fla. 1995) (relevancy for purposes of discovery is broader than the concept of relevancy in the trial context). CPH does not contest that, within reason, Morgan Stanley may explore the business experience of CPH executives. But exploring personal wealth should be off limits.

Second, admitting evidence of the personal financial status of MAFCO, CPH, or Coleman employees would raise a real and substantial danger of unfair prejudice, confusion of the issues, and misleading the jury. "The general rule is that during trial no reference should be made to the wealth or poverty of a party, nor should the financial status of one party be contrasted with the other's." *Batlemento v. Dove Fountain, Inc.*, 593 So. 2d 234, 241-42 (Fla. 5th DCA 1991); *see id.* (noting that "inherent in our system of trial by jury is always a danger the jury will be influenced by the wealth or power of one party or another"); *Silbergleit v. First Interstate Bank of Fargo*, 37 F.3d 394, 398 (8th Cir. 1994) (concluding that references to plaintiff's wealth were "highly prejudicial"). Because evidence of Mr. Perelman's or others'

personal financial status would be highly prejudicial, the balance clearly weighs in favor of exclusion.

CONCLUSION

For the foregoing reasons, this Court should enter an Order barring Morgan Stanley from introducing at trial any evidence or argument concerning the wealth, net worth, income, or financial status of Ronald Perelman, Howard Gittis, or any other MAFCO, CPH, or Coleman employee.

Dated: January 10, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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Jeffrey T. Shaw
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One IBM Plaza
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(312) 222-9350

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 10th day of January, 2005.

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON DEFENDANT'S MOTION TO COMPEL DISCOVERY AND ORE TENUS MOTION TO CONTINUE AND ORDER SETTING CASE MANAGEMENT CONFERENCE

This case came before the Court January 12, 2004 on Defendant's Motion to Compel Discovery, with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Defendant's Motion to Compel Discovery is Granted, in part, and Denied, in part. Interrogatory 1 of Defendant's Third Set of Interrogatories is amended by interlineation to request the information as to Global Holdings only, expressed as a percentage of net worth. As so modified, Plaintiff shall serve its answer to the Interrogatory for Plaintiff and MAFCO, within 30 days. The Court defers ruling on the portion of the interrogatory directed to Perelina, Gittis, and any other MAFCO or CPH employees who participated in the due diligence or financial review of Sunbeam's acquisition of Coleman Company, pending further hearing. It is further

ORDERED AND ADJUDGED that Defendant's ore tenus Motion to Continue is Granted. The Order Setting Jury Trial and Directing Pretrial and Mediation Procedures entered January 6, 2004 is stricken. It is further

EXHIBIT
tabbies
A

ORDERED AND ADJUDGED that a case management conference shall be held

February 20, 2004, at 3:30 p.m., 1 hour reserved

at the West Palm Beach Courthouse, Room 11A, 205 N Dixie Hwy, WPB, FL. Counsel shall confer and file an agreed statement of the case's background and procedural history at least three business days prior to the scheduled hearing. A copy shall be delivered to the undersigned's office. In addition, each counsel shall file, serve, and deliver a copy to the undersigned a statement of unresolved legal issues remaining in the action, attaching copies of any unresolved motions or other requests for action. The purpose of the conference is to:

1. educate the Court on the action's procedural and legal posture;
2. discuss filing and setting hearing on pre-trial motions;
3. limit, schedule, or expedite discovery;
4. schedule exchange of witness lists and documents;
5. require filing of preliminary stipulations, if the issues can be narrowed;
6. discuss filing of deposition designations, cross-fairness designations, and objections thereto, and motions in limine;
7. schedule other conferences or determine other matters that may aid in the disposition of the case;
8. discuss time limits for the progress of the trial, including length of trial, voir dire, opening statements, and closing arguments;
9. discuss jury selection procedures;
10. identify unique questions of law;
11. identify the need for any special equipment, courtroom facilities, or interpretors; and
12. select the most appropriate docket for trial.

This hearing may be canceled only if the action is settled and a final order issued or the action dismissed. This hearing may be re-set only on Court order, and may not be canceled by the parties or their counsel.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 13th day of January, 2003.

ELIZABETH T. MAASS
Circuit Court Judge

16div-009444

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David M. Wells, Esq.
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Jacksonville, FL 32202

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-4380 within two (2) working days of your receipt of this [describe notice]; if you are hearing or voice impaired, call 1-800-955-8771.

SPANISH

Si Ud. es una persona incapacitada que necesita de un servicio especial para participar en este proceso, Ud. tiene derecho a que le provean cierta ayuda sin costo alguno. Por favor pongase en contacto con el Coordinador de la Oficina Administrativa de la Corte ADA, situada en el 205 North Dixie Highway, Oficina 5.2500, West Palm Beach, Florida, 33401, teléfono (561) 355-4380, dentro de los dos (2) próximos días hábiles después de recibir esta [describa la notificación]; si tiene incapacidad de oir ó hablar llame al 1-800-955-8771.

CREOLE

Si ou sé yon moun ki Infim, ki bézwen ninpôt akomodasyon pou ka patisipé nan pwosè sa-a, ou gen dwa, san'l pa kouté'w anyin, pou yo ba'w kèk sèvis. Tanpri kontakté koôdinatè ADA ya nan Biro Administratif Tribinal nan cité Palm Beach la, ki nan 205 North Dixie Highway, Cham 5.2500, West Palm Beach, Florida 33401, niméro téléfonn-nan sé (561) 355-4380, rélé dé (2) jou dé lè ou résévwa [notis sa-a]; si ou bèbè ou byen soud rélé 1-800-955-8771.

FRENCH

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

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DIARIED
CLIENT LTR

ORDER ON DEFENDANT'S MOTION TO COMPEL DISCOVERY AND ORE TENUS MOTION TO CONTINUE AND ORDER SETTING CASE MANAGEMENT CONFERENCE

This case came before the Court January 12, 2004 on Defendant's Motion to Compel Discovery, with both counsel present. Based on the proceedings before the Court, it is

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This hearing may be canceled only if the action is settled and a final order issued or the action dismissed. This hearing may be re-set only on Court order, and may not be canceled by the parties or their counsel.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 13th day of January, 2003.

ELIZABETH T. MAASS
Circuit Court Judge

16div-009448

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

PLAINTIFF'S MOTION IN LIMINE (NO. 3) TO BAR EVIDENCE AND ARGUMENT OF MORGAN STANLEY'S SUPPOSED LOSSES IN THE TRANSACTION BETWEEN COLEMAN COMPANY INC. AND SUNBEAM CORPORATION

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") hereby moves this Court for an Order barring Defendant Morgan Stanley & Co. Inc. ("Morgan Stanley") from introducing any evidence or argument at trial that it or its sister company, Morgan Stanley Senior Funding Inc. ("MSSF"), or any other corporate affiliate lost money in the Coleman-Sunbeam transaction, including any evidence or argument that such losses show that Morgan Stanley and MSSF were purportedly victims of Sunbeam's fraud.

Morgan Stanley repeatedly has attempted to argue that it was a victim of Sunbeam's fraud because MSSF ultimately lost some of the money it loaned to Sunbeam. *See, e.g.*, Ex. A, MSSF Compl. in MSSF v. MAFCO, 5/12/03, at 1-3. However, this Court previously has questioned the relevance of the amount of money Morgan Stanley or MSSF lost. *See, e.g.*, Ex. B, 11/16/04 Tr., at 23 ("[T]he only relevant piece I see is that Morgan Stanley lent the money."); Ex. C, 11/17/04 Tr., at 15 ("I would agree that sort of a relevant piece of the puzzle is, did Morgan Stanley stand to make substantial amounts of money if the deal closed. . . . If a year or two down the road it turns out [Morgan Stanley] ultimately lost money, how is that relevant?"); *id.* at 23 ("I'm still trying to figure out why what's relevant isn't limited to what the parties

reasonably believed at the time the allegedly fraudulent misrepresentations were made?"). Nevertheless, as the Court is aware, Morgan Stanley persists in its argument that it lost money and therefore is a victim.

Moreover, Morgan Stanley is estopped from invoking the losses of MSSF in light of the fact that in the proceedings associated with the Sunbeam bankruptcy, MSSF defeated an equitable subordination claim, which was predicated on the improper conduct of Morgan Stanley, by successfully arguing that MSSF and Morgan Stanley are separate and distinct corporate entities whose conduct is not attributable to each other: "the Lenders [including MSSF] are independent legal entities separate from Morgan Stanley [and] no facts are alleged to justify disregarding their separateness." *See* Ex. D, Lenders' Mot. to Dismiss Br., 10/1/01, at 17; *see also* Ex. E, Order at 16-19, *In re Sunbeam*, No. 01-40291 (Bankr. S.D.N.Y. Oct. 18, 2002) (refusing to impute Morgan Stanley's conduct to MSSF). Thus, for multiple reasons, Morgan Stanley should not be allowed to present evidence or argument about the losses of MSSF or any other corporate affiliate.

ARGUMENT

No evidence is admissible at trial unless it is relevant — that is, it must be "evidence tending to prove or disprove a material fact." FLA. STAT. ANN. § 90.401 (West 2004); *see also* CHARLES W. EHRHARDT, FLORIDA EVIDENCE § 401.1, at 116-23 (2004 ed.). Even relevant evidence is inadmissible "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence." FLA. STAT. ANN. § 90.403 (West 2004); *see also* EHRHARDT, FLORIDA EVIDENCE,

supra, § 403.1, at 161-73. Under these standards, evidence and argument concerning the money MSSF lost in the Coleman-Sunbeam transaction should be excluded.

First, evidence that MSSF lost money is irrelevant. As this Court consistently has noted, the relevant inquiry in an action for fraudulent misrepresentation focuses on the parties' states of mind at the time the fraudulent misrepresentations were made. *See* Exs. B & C cited *supra.*

Second, the evidence is irrelevant because the doctrine of judicial estoppel bars Morgan Stanley from arguing that MSSF's losses are indistinguishable from Morgan Stanley's losses. MSSF successfully argued to the Sunbeam bankruptcy court that MSSF and Morgan Stanley "are separate legal entities" and should be treated as such. *See* Ex. D at 17; Ex. E at 16-19. Morgan Stanley's invocation of MSSF's losses is an improper attempt to have it both ways. *See Chase & Co. v. Little*, 156 So. 609, 610 (Fla. 1934) ("A claim made or a position taken in a former action or judicial proceeding will, in general, estop the party to make an inconsistent claim or to take a conflicting position in a subsequent action or judicial proceeding."); *see also Blumberg v. USAA Cas. Ins. Co.*, 790 So. 2d 1061, 1066-67 (Fla. 2001) (estopping a party from taking a position contrary to one taken by a closely related party in an earlier case, which would have made a "'a mockery of justice by inconsistent pleadings'") (quoting *American Nat'l Bank v. Federal Deposit Ins. Corp.*, 710 F.2d 1528, 1536 (11th Cir. 1983)).

Third, evidence of MSSF's losses should be excluded because it would create unfair prejudice, confuse the issues, and mislead the jury. Under Section 90.403, "'it is proper for the court to consider the need for the evidence; the tendency of the evidence to suggest an improper basis to the jury for resolving the matter, e.g., an emotional basis; the chain of inference necessary to establish the material fact; and the effectiveness of a limiting instruction.'" *State v. McClain*, 525 So. 2d 420, 422 (Fla. 1988) (quoting EHRHARDT, FLORIDA EVIDENCE § 403.1, at

100-03 (2d ed. 1984)); *see also Taylor v. State*, 855 So. 2d 1, 22 (Fla. 2003); *Mansfield v. State*, 758 So. 2d 636, 648 (Fla. 2000), *cert. denied,* 532 U.S. 998 (2001); *Walker v. State*, 707 So. 2d 300, 310 (Fla. 1997). Given that this case is about what CPH lost, not what MSSF lost, the danger of jury confusion and prejudice if Morgan Stanley were allowed to present evidence about the purported losses of MSSF is manifest.

CONCLUSION

For the foregoing reasons, this Court should enter an Order barring Morgan Stanley from introducing evidence or argument at trial that Morgan Stanley, MSSF, or any corporate affiliates lost money in the Coleman-Sunbeam transaction.

Dated: January 10, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 10th day of January, 2005.

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

MORGAN STANLEY SENIOR FUNDING, INC. Plaintiff, vs. MACANDREWS & FORBES HOLDINGS INC., and COLEMAN (PARENT) HOLDINGS INC. Defendants.	2003CA005165AG Case No. _____ DOROTHY H. WILKEN CLERK OF CIRCUIT COURT CIVIL DIVISION JURY TRIAL DEMANDED MAY 12 2003 COPY / ORIGINAL RECEIVED FOR FILING

COMPLAINT

Plaintiff Morgan Stanley Senior Funding, Inc., by and through its undersigned counsel, alleges the following against Defendants MacAndrews & Forbes Holdings, Inc. and Coleman (Parent) Holdings, Inc.:

Nature of Action

1. This is an action brought by Morgan Stanley Senior Funding, Inc. ("MSSF") against MacAndrews and Forbes Holdings Inc. ("MAFCO") and its wholly-owned subsidiary, Coleman (Parent) Holdings Inc. ("Coleman-Parent"), for fraud, negligent misrepresentation, and other actionable misconduct arising from Defendants' sale of Coleman Company, Inc. ("Coleman") to Sunbeam Corporation ("Sunbeam") in March 1998. In the course of these transactions, Defendants provided Sunbeam and its lenders with a series of false information about the "synergies" that Sunbeam could expect to achieve from the combination of Sunbeam and Coleman. Defendant's fraudulent synergy projections caused Sunbeam to pay a higher price to acquire Coleman and consequently caused Sunbeam's lenders (including MSSF) to make larger loans to finance the acquisition. When Sunbeam declared bankruptcy in February 2001,

EXHIBIT
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MSSF suffered hundreds of millions of dollars in damages when Sunbeam defaulted on acquisition-related loans.

2. The inflated price that Sunbeam agreed to pay for Coleman ($2.2 billion) resulted from Defendants' misrepresentations of the annual synergies that Sunbeam would achieve from the acquisition. During the negotiations that led to the pricing of the deal, Defendants provided Sunbeam's financial team with a detailed written schedule identifying 15 different areas of synergies between Sunbeam and Coleman and representing that the acquisition would result in post-closing synergies totaling $150.5 million per year. Defendants affirmed these fraudulent synergy figures through additional oral representations to Sunbeam, its agents, and its financial advisors. Through these fraudulently inflated synergy projections, Defendants hoped to make Coleman — a money-losing enterprise — an attractive target that could command a price substantially above market value.

3. Defendants foisted their fraudulent synergy numbers on virtually everyone associated with the acquisition, including Sunbeam, Sunbeam's shareholders, Sunbeam's financial advisors, Sunbeam's accountants and (especially) Sunbeam's lenders, who relied on the inflated synergy numbers in financing the acquisition at the Defendants' fraudulently inflated price. Indeed, Coleman's $2.2 billion purchase price was the proximate result of Defendants' grossly false representations about annual post-closing synergies. To finance the acquisition at this price, Sunbeam sought $1.7 billion in secured loans from MSSF and other lending institutions, including First Union National Bank ("First Union") and Bank of America National Trust ("Bank of America"). Accordingly, in March 1998, MSSF loaned Sunbeam approximately $680 million to be used for the acquisition. First Union loaned Sunbeam approximately $510 million. And Bank of America loaned Sunbeam approximately $510 million. The amounts of these loans relate directly to the $2.2 billion price that Sunbeam agreed to pay for Coleman.

4. Sunbeam has been unable to repay its $680 million loan from MSSF. On February 6, 2001, Sunbeam and several of its subsidiaries filed petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of

16div-009458

New York. As a result of the bankruptcy, MSSF's $680 million loan to Sunbeam was discharged in full. In exchange, as part of the court-approved reorganization plan, MSSF received Sunbeam stock valued at a fraction of the original loan.

5. MSSF now knows that the synergy figures provided by Defendants during the negotiations were grossly overstated. Documents and deposition testimony from Sunbeam's bankruptcy proceeding has confirmed that, although Defendants were representing annual synergy figures of more than $150 million, even *lower* synergy figures — prepared by Sunbeam and its management — were thought by Coleman to be "fictional." Yet it was Defendants' ***higher*** figures that caused Sunbeam to pay a fraudulently inflated price for Coleman, increased the amount of money Sunbeam was required to borrow from MSSF, and increased the damages suffered by MSSF when Sunbeam was unable to repay the loan. Because of these and other injuries suffered by MSSF as a result of Defendants' wrongful conduct, MSSF seeks compensatory damages of several hundred million dollars. In addition, MSSF reserves the right to seek leave to amend its complaint pursuant to Fla. Stat. § 768.72 to assert claims for recovery of punitive damages.

THE PARTIES AND OTHER RELEVANT ENTITIES

6. Plaintiff Morgan Stanley Senior Funding, Inc. ("MSSF") is a financial services company that provides credit services to its clients. In 1998, MSSF entered into a credit agreement with Sunbeam under which MSSF agreed to provide senior secured financing to Sunbeam in connection with Sunbeam's acquisition of Coleman and three smaller competitors. Pursuant to the credit agreement, Sunbeam borrowed $680 million from MSSF, with the borrowings used by Sunbeam to fund certain costs relating to the acquisitions. MSSF is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York.

7. Defendant MacAndrews and Forbes Holdings, Inc. ("MAFCO") is a global investment firm owned and operated by financier Ronald O. Perelman ("Perelman"). Through

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IN THE FIFTEENTH JUDICIAL CIRCUIT COURT IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO.: 2003 CA 005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

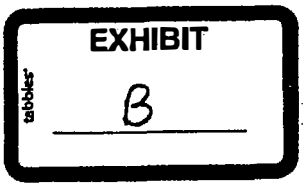
Defendant.
_____/

* * *

TRANSCRIPT OF THE PROCEEDINGS BEFORE
THE HONORABLE ELIZABETH J. MAASS

* * *

West Palm Beach, Florida
November 16th, 2004
9:28 a.m. - 10:40 a.m.



out the text of something like that? And if it's agreeable, we'll present it to The Court tomorrow?

MR. SHAW: Quite honestly, Judge, I think we can take two minutes and work it out right now.

THE COURT: I would rather you try to do it.

MR. SHAW: And -- I'm sorry, Your Honor.

THE COURT: We have other motions tomorrow?

MR. CLARE: We have one motion tomorrow.

MR. SHAW: If they are willing to stipulate and we can work it out now, it would --

THE COURT: I would rather you guys take a few minutes and see if you can come up with acceptable language now because, again, you know, what happened after the fact is not really relevant unless somehow you're going to be able to show somebody knew that that was what was going to happen. I don't think anybody's really shown that line of reasoning yet. So the only relevant piece I see is that Morgan Stanley lent the money.

MR. CLARE: The position that we've consistently taken is we're more than happy to provide the discovery we outlined here. They got the sale agreement, as counsel indicated, that actually does list the consideration that Morgan Stanley is going to get in the pending sale.

IN THE FIFTEENTH JUDICIAL CIRCUIT COURT IN AND
FOR PALM BEACH COUNTY, FLORIDA
CASE NO.: 2003 CA 005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

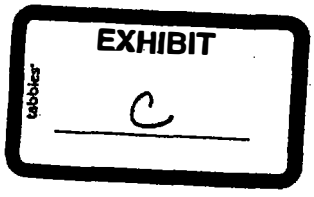
Defendant.
_____/

* * *

TRANSCRIPT OF THE PROCEEDINGS BEFORE
THE HONORABLE ELIZABETH J. MAASS

* * *

West Palm Beach, Florida
November 17th, 2004
9:27 a.m. to 11:17 a.m.



relevant, why didn't you get a stipulation yesterday?

MR. CLARE: Well, if I can address that, we cannot in good faith and to service our clients unilaterally disarm on this issue. The concern is that, if the plaintiffs are going to introduce evidence about Morgan Stanley fees that we made and how much money we made from the transaction and any aspect of the Coleman engagement, we have to be able to respond to that.

THE COURT: You need to be able to explain -- I mean, I would agree that sort of a relevant piece of the puzzle is, did Morgan Stanley stand to make substantial amounts of money if the deal closed. That obviously would go, plaintiff would allege, that's a motivating factor in not aborting the deal when they contend your client found out about this massive fraud. If a year or two down the road it turns out your client ultimately lost money, how is that relevant?

MR. IANNO: The reason it is, Your Honor, is because of Mr. Shaw's argument this morning. Mr. Shaw's argument is, he wants to know how much Morgan Stanley entities, the global Morgan Stanley, made subsequent to the transaction.

THE COURT: Only because they are afraid you guys are going to want to show the jury that you lost money. If you guys agree nobody is going to talk about what happened after the closing, I think everybody is happy.

MR. IANNO: That's the problem. They won't agree to that, Judge. They want us to say we won't talk about it, but they go first. This is the argument we made to Mr. Shaw. I don't know what they are going to say in their case in chief. From what I'm hearing today --

THE COURT: Let me ask you this: Do you intend to present any information in your case in chief to show anything other than the money Morgan Stanley expected to earn at the time these allegedly fraudulent misrepresentations were made?

MR. SHAW: Let me preface this by saying this is a tentative statement, Your Honor, because, you know, you're asking me to commit what my case is going to be at this point in time, especially when we have no commitment from the other side. Let me tell you some of the things we certainly want to prove up and some things we don't think we necessarily want to prove up.

Let's talk about the loan. Morgan Stanley is

going to say that MSSF made this loan and that the loan is evidence that they obviously were not involved in some sort of fraud. We're going to want to say that Morgan Stanley, MSSF, doing this loan is actually evidence of Morgan Stanley's substantial insistence in making sure that the fraudulent scheme came to fruition. We're going to want to say that.

THE COURT: That all predates the closing of the transaction.

MR. SHAW: Right. Let me move on. On the issue of the fees to be reaped from the MSS loan, if we were to get a stipulation from the other side, for example, on the issue about the losing money issue that we've been discussing here, we would have absolutely no intention whatsoever of putting in any evidence of what fees were made by MSSF on the loan. Let me move to another piece. I don't want there to be any ambiguity about this.

THE COURT: Fees, it will be easier for me if you tell me first from the plaintiff's perspective what financial piece of information post-dates the closing that you think is relevant.

MR. SHAW: The M&A fees received by Morgan Stanley, the 30 to 40 million dollars, whatever it

was, that Mr. Strong boasted to his colleagues that he reaped because of the Sunbeam transaction.

THE COURT: Why would that not be at least earned at the time of the closing?

MR. SHAW: Well, you know, you, Your Honor, I haven't gone back to examine our evidence on the M&A fee piece, so I can't give you a date cutoff. That's the honest answer. I'm kind of dividing this into the loan and the M&A fees.

We talked about this in some detail yesterday, Your Honor. We couldn't reach an agreement. But certainly, I mean, that is a -- what Morgan Stanley stood to earn and what Morgan Stanley certainly did earn in terms of M&A fees is very, very important.

THE COURT: Were those fees dependent on anything that occurred post-closing?

MR. SHAW: I don't believe so, Your Honor. I mean, you could be right, Your Honor, but I just don't know the evidence standing here right now on that issue, so I'm not trying to be evasive. I just don't know the evidence to commit to a date cutoff here when we have five motions on various issues.

MR. IANNO: I think that illustrates a

problem, Judge. Until we know that the plaintiff is not going to say Morgan Stanley committed this fraud and they made hundreds of millions of dollars, that we can't say that we're not going to introduce money that we lost because you have to be able to counter that statement in your defense case. And since we go second --

THE COURT: You're saying that the only evidentiary piece that they made hundreds of millions of dollars is how much did they expect to make at the time the alleged fraud occurred? We agree that that's a relevant --

MR. SHAW: Quite frankly, when I asked Mr. Ianno the question, would you enter into this stipulation if we agree -- and this is one reason why I can't answer your question today, Your Honor. I asked Mr. Ianno and Mr. Clare yesterday, on the M&A side of this, if we were to, you know, agree that we would only introduce evidence about what you expected to gain, would you be willing to enter into a stipulation. They said, I don't know.

So, quite frankly, Your Honor, based on that, I did not pursue this any further to explore with my colleagues chapter and verse what our evidence

would be on the M&A fee side.

MR. IANNO: This is where it goes back, Judge. There's too many permutations to say we're never going to introduce anything when the other part of the puzzle was, to enter into a stipulation, it has to be subject to whether or not they introduce any evidence that opens the door.

THE COURT: Well, yes. Sort of like the general ruling on a motion in limine. We never talk about it. We don't talk about it unless it's relevant and admissible all of a sudden.

MR. SHAW: I couldn't get a scenario from the other side in which they would commit to the stipulation.

THE COURT: I'm still back to where we were yesterday. What is the relevancy of any of this other than the fees that Morgan Stanley expected to make if the transaction closed and sort of the issues around their loan and them trying to sell the loan? Is that it? Is there any other relevancy to any of this?

MR. IANNO: To us, and Mr. Clare will have to add to it, to us the relevancy is a counter of their argument. Your Honor is absolutely correct.

THE COURT: From plaintiff's perspective, is there any other relevancy to any of this financial information?

MR. SHAW: You're talking about a lot of financial information. I'm a little flat-footed, and I apologize. I told you that on the loan side, for sure --

THE COURT: On the loan side, what do we need other than the extent of the loan and then according to plaintiff they tried to immediately go out and sell it?

MR. SHAW: That's basically it. As I indicated, as I represented before, what fees they ultimately reaped on the loan, we would agree that that would be off limits in exchange for the stipulation. On the M&A side, as I just represented, that's the stickier issue.

THE COURT: I don't understand why that would be a sticky issue. You all tell me, the amount of fees to be earned by your client, was that fixed at the time of closing, or was there something else going on that made the fees dependent on --

MR. CLARE: The fee structure, and this has actually been the subject of a lot of discovery and the agreement that we reached this morning,

the fee structure is more complex than I think we're all talking about.

THE COURT: Is it dependent on post-closing things?

MR. CLARE: The fees were paid post-closing based on aspects of the Sunbeam engagement, yes.

THE COURT: Like what? Give me an example.

MR. CLARE: For example, there are fees that are payable on the signing of the definitive agreement. There are fees that are payable on the signing of the closing of the transaction. There are fees for the subsequent offering of the convertible debentures that we've been talking about. There are loan fees. There are fees that relate to amendments and waivers of the credit agreement. There were fees for other M&A work done for Sunbeam in the fall of 1998. So you have this kind of string.

THE COURT: Was that contemplated?

MR. CLARE: It's a two-step merger as well, Your Honor. If you remember, there's the public portion and the CPH portion, so it's difficult for us to simplify and say that on the date of the closing everything was fixed and everything was in place.

THE COURT: I guess I'm still trying to figure out why what's relevant isn't limited to what the parties reasonably believed at the time the allegedly fraudulent misrepresentations were made?

MR. CLARE: Because a part of the plaintiff's case is going to be that Morgan Stanley expected to be able to syndicate this loan.

THE COURT: Right.

MR. CLARE: After the closing. The loan was extended, and after the closing we expected to go out and be able to syndicate the loan. In fact, Morgan Stanley was not able to do that. If The plaintiff sets forth evidence and says, here's the steps Morgan Stanley took to syndicate the loan, we need to be able to come back to say we were not able to syndicate the loan, and in fact we were stuck with --

THE COURT: Why? Isn't the only evidentiary piece the attempt to syndicate it?

MR. CLARE: I think that would present a misleading and one-sided picture of what we did.

THE COURT: Why? Why? Why is that -- if their theory is you were willing to extend the loan and you were going to go out and sell it any

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	Return Date: November 15, 2001 Time: 10:00 a.m.
SUNBEAM CORPORATION, INC., Debtor.	Chapter 11
	Case No. 01-40291 (AJG)
OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF SUNBEAM CORPORATION, on behalf of the estate of SUNBEAM CORPORATION, Plaintiff, -against- MORGAN STANLEY & CO. INC., MORGAN STANLEY SENIOR FUNDING, INC., FIRST UNION NATIONAL BANK and BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, Defendants.	Adv. Pro. 01-02886 (AJG)

MEMORANDUM OF DEFENDANTS FIRST UNION NATIONAL BANK, BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION AND MORGAN STANLEY SENIOR FUNDING, INC., IN SUPPORT OF MOTION TO DISMISS THE AMENDED COMPLAINT

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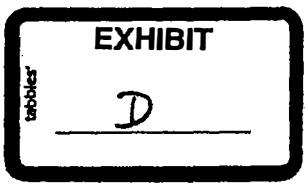

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The question for the court was "[w]hether a creditor can be penalized for the inequitable conduct of another person," and the answer was "no." Id. at 543. Consequently, the court held that the threshold requirement of equitable subordination -- wrongdoing by the claimant -- had not been met. It fails equally in the case at bar: the Lenders are independent legal entities separate from Morgan Stanley; no facts are alleged to justify disregarding their separateness or to allow any inference of an agency relationship; and the Lenders themselves are not alleged to have done anything inequitable.*

3. **No factual allegations of alter ego**

FUB and BOA are banking companies that are entirely separate from and unaffiliated with Morgan Stanley, and the Amended Complaint does not attempt to allege otherwise. As shown in Points I.A.2 and I.A.4 herein, there are no facts alleged from which it could be concluded that Morgan Stanley's alleged misconduct could even remotely be attributed to them. Furthermore, there are no facts alleged by the Committee to support any inference that MSF, an affiliate of Morgan Stanley, was merely its alter ego. As the Second Circuit cautioned in rejecting the alter ego allegations in United States v. Wetterer, "courts must be extremely reluctant to disregard corporate form, and should do so only when the corporation primarily transacts the business of the dominating interest rather than its own." 210 F.3d 96, 106 (2d Cir. 2000).

To survive a motion to dismiss, the Committee's allegations must meet the alter ego test under the controlling law of Delaware, Morgan Stanley's and MSF's state of incorporation. See Kalb, Voorhis & Co. v. American Fin. Corp., 8 F.3d 130, 132 (2d Cir. 1993) (holding, with respect to creditor's alter ego claims in chapter 11 adversary proceeding, that "the law of the state of incorporation determines when the corporate form will be disregarded"); Fletcher v. Atex, Inc., 68 F.3d 1451, 1456 (2d Cir. 1995) (whether the corporate form of a Delaware company should be disregarded is determined by Delaware law); Pereira v. Cogan, 2001 WL 243537, *21 (S.D.N.Y. Mar. 8, 2001) (dismiss-

* The Committee has indicated that it will rely on the Fifth Circuit decision in In re Missionary Baptist Foundation of America, 818 F.2d 1135 (5th Cir. 1987), characterized by the Claxton court as "the only case in which the inequitable conduct of one person has been imputed to another to allow the claim of another to be equitably subordinated." 76 B.R. at 544. Missionary Baptist is based on the concededly "peculiar facts" of that case, 818 F.2d at 1146, and its conclusions regarding "imputation" have not been followed in this Circuit.

ing trustee's alter ego claims under Delaware law).* As shown below, the allegations of the Amended Complaint do not even begin to meet this test.

Delaware courts have been extremely reluctant to disregard the corporate form under the alter ego theory. See, e.g., Harco National Ins. Co. v. Green Farms, Inc., 1989 WL 110537, at *4 (Del. Ch. 1989) ("To date, the Delaware courts have not explicitly adopted the *alter* ego theory of piercing the corporate veil."); Fletcher, 68 F.3d 1451, 1457 (2d Cir. 1995) (noting that "the Delaware Supreme Court has never explicitly adopted an alter ego theory"); see generally 3 Folk on Delaware General Corporation Law, § 329.3 (4th ed. 2001) ("More often than not, the Delaware courts have upheld the legal significance of corporate form in a corporate-subsidiary complex, despite the fact of substantial overlap in the management and control of the two entities.").

Accordingly, a party "seeking to persuade a Delaware court to disregard the corporate structure faces a difficult task." Fletcher, 68 F.3d at 1458; see also, e.g., In re Sunstates Corp. Shareholder Litig., 2001 WL 491173, *4 (Del. Ch. 2001). "Disregard of the corporate entity is appropriate only in exceptional circumstances." Mobil Oil Corp., 718 F. Supp. at 270. Under this "difficult standard," "[e]ffectively, the corporation must be a sham and exist for no other purpose than as a vehicle for fraud." Wallace v. Wood, 752 A.2d at 1175, 1183 (Del. Ch. 1999); In re Sunstates Corp., 2001 WL 491173 at *4; Waller v. Van Wagner, 1985 WL 165737, *2 (Del. Ch. 1985) ("Absent fraud, the separate corporate entity will not be disregarded.").

And, significantly, alter ego liability requires that such fraud or similar injustice be caused by the *use* of the corporate structure itself. See, e.g., Lasalle Nat'l Bank v. Perelman, 82 F. Supp. 2d 295 (D. Del. 2000); Wallace, 752 A.2d at 1184; Outokumpu Eng'g Enters., Inc. v. Kvaerner

* There exists a body of federal alter ego law, which federal courts have applied under certain circumstances. See, e.g., United States v. Golden Acres, Inc., 702 F. Supp. 1097, 1102-04 (D. Del. 1988). Defendants have not been able to locate any reported opinions applying such federal alter ego standard to equitable subordination claims as alleged herein. However, as more fully discussed below, Delaware alter ego law is "altogether compatible with the federal analysis," Golden Acres, 702 F. Supp. at 1104, and under either law, the outcome of the inquiry would be the same. See Mobil Oil Corp. v. Linear Films, Inc., 718 F. Supp. 260, 268 (D. Del. 1989) ("In any event, the Court will not launch into a protracted choice of law analysis because it is convinced that regardless of which law is applied to the alter ego question -- whether federal, Delaware or Oklahoma common law -- the outcome is the same.").

EnviroPower, Inc., 685 A.2d 724, 729 (Del. Super. 1996). The same requirement exists under the federal alter ego standard. See Mobil Oil, 718 F. Supp. at 268-69 (both Delaware and federal laws require that "fraud or injustice be found in the defendants' *use* of the corporate form") (emphasis added).

In order to find that a corporation is such a "sham" and a "vehicle for fraud" so that its corporate entity could be disregarded under the alter ego theory, Delaware courts require a plaintiff to plead and prove the following factors: gross undercapitalization, failure to observe corporate formalities, nonpayment of dividends, insolvency of the corporation, siphoning of funds from the corporation by the dominant stockholder, nonfunctioning of officers and directors, absence of corporate records, and whether the corporation simply functioned as a façade for the dominant stockholder. Harco, 1989 WL 110537, at *4; Pearson v. Component Tech. Corp., 247 F.3d 471, 484-85 (3d Cir. 2001). The same factors must be shown under the federal alter ego standard. See Golden Acres, 702 F. Supp. at 1104.

Where the plaintiff fails to show such "exceptional circumstances," Delaware courts readily dismiss the alter ego claims as a matter of law. See, e.g., Fletcher, 68 F.3d at 1458 (observing that Delaware and other courts "have granted motions to dismiss as well as motions for summary judgment in favor of defendant parent companies where there has been a lack of sufficient evidence to place the alter ego issue in dispute"); In re Sunstates Corp., 2001 WL 491173 at *4-5 (granting summary judgment where "plaintiffs' brief simply ignores this more difficult standard" required to state a viable alter ego claim); Wallace, 752 A.2d at 1184.

The Committee does not even begin to satisfy this difficult alter ego standard, and its claims against the Lenders accordingly should be dismissed as a matter of law. Indeed, the Amended Complaint is entirely devoid of the "exceptional circumstances" required for the alter ego showing and is more revealing for what it does not say than for what it says. Thus, there are no allegations whatsoever -- nor could there be -- that would tend to establish (a) that MSF was at any time undercapitalized or insolvent; (b) that MSF failed to observe corporate formalities, did not maintain corporate records or had nonfunctioning officers and directors; (c) that there was any siphoning of funds from MSF or (d)

that it simply functioned as a façade for the dominant entity. In short, the Amended Complaint does not allege any facts that, if proven, would state a viable alter ego liability theory.

The few "factual" circumstances that the Committee does allege in the Amended Complaint (albeit in general, conclusory terms only), on the other hand, consistently have been held by Delaware courts to be insufficient to sustain a claim of alter ego liability. Thus, the Amended Complaint alleges that "[s]ince at least as early as 1997, MSF and Morgan Stanley have acted as an integrated investment and commercial bank serving Morgan Stanley's clients. At all relevant times, Morgan Stanley and MSF and each of their affiliated companies acted in concert with respect to Sunbeam and have been owned and operated under common and interrelated control," and that "[a]t all relevant times, Morgan Stanley and MSF had substantially identical management, business purposes, operations, customers and supervision." Amended Complaint ¶¶ 20, 103.

But the Delaware courts consistently have held that mere domination and control of a subsidiary by a parent -- let alone the "common and interrelated control" of the affiliated Morgan Stanley and MSF, which are not, nor could be, even alleged to be a parent and subsidiary -- is insufficient to support an alter ego theory. See Trustees of the Village of Arden v. Unity Constr. Co., 2000 WL 130627, at *4 (Del. Ch. 2000) ("The undisputed fact that [the two companies] have similar ownership is not sufficient to justify disregarding their business forms."); Outokumpu Eng'g Enters., 685 A.2d at 729 ("Mere dominion and control of the parent over the subsidiary will not support alter ego liability."); Hart Holding Co. v. Drexel Burnham Lambert, Inc., 1992 WL 127567 at *5 (Del. Ch. 1992) (the degree of control required is "exclusive domination and control . . . to the point that [the company] no longer ha[s] legal or independent significance of [its] own"). *A fortiori*, as a matter of law, the Amended Complaint's mere conclusory allegations that affiliates Morgan Stanley and MSF operated under "interrelated and common control" with "substantially identical management" (Amended Complaint ¶¶ 20, 103) -- entirely unexceptional and unobjectionable characteristics of affiliated companies -- do not adequately plead the alter ego status of MSF.

Further, in blatant misrepresentation of the underlying facts -- flatly contradicted by the very documents upon which the Committee relies in the Amended Complaint -- the Committee also

alleges in conclusory fashion as "facts" supposedly establishing alter ego status, that MSF was only a "nominal lender under the Bank Facility," that Sunbeam "never differentiated between Morgan Stanley and MSF in determining which corporate entity would participate in the loan," that "Morgan Stanley was granted an 'exclusive' retention by Sunbeam with respect to the prospective senior secured financing," and that Morgan Stanley allegedly "held itself out to Sunbeam and the public as a unitary organization that could offer Sunbeam a variety of services and financing." Amended Complaint ¶¶ 44, 86, 103. The documents show otherwise.

Thus, to support its contention that Morgan Stanley "held itself out to Sunbeam" as a unitary organization, the Committee cites Morgan Stanley's representation in its engagement letter to Sunbeam as follows: "In the ordinary course of trading, brokerage, and financing activities, [Morgan Stanley] may trade or otherwise effect transactions, for our own account or the accounts of customers, in debt or equity securities or *senior loans* of the Company, Sunbeam or any other company that may be involved in this transaction." Amended Complaint ¶ 44 (emphasis by the Committee). However, instead of the deliberately bracketed "[Morgan Stanley]," the letter in fact says "Morgan Stanley ***or its affiliates***." Joffe Aff. Exh. A (emphasis added). The Committee's contention that Morgan Stanley was granted "an 'exclusive' retention by Sunbeam with respect to the prospective senior secured financing" (Amended Complaint ¶ 86) is likewise refuted by such unexpurgated language of the letter. And, in any event, the latter allegation of Morgan Stanley's purportedly "exclusive" retention provides no support for the Committee's claim of alter ego liability.

Likewise, the Note Offering Memorandum flatly contradicts the Committee's contention that Morgan Stanley was holding itself out as a "unitary organization" with respect to the Bank Facility to Sunbeam and to the public, or that Sunbeam "never differentiated between Morgan Stanley and MSF in determining which corporate entity would participate in the loan." Amended Complaint ¶¶ 44, 86, 103. Thus, the Note Offering Memorandum expressly provides:

> [Sunbeam] is currently negotiating the terms of the New Credit Facility with a group of banks which [Sunbeam] expects will provide for borrowings by [Sunbeam] or one or more of its subsidiaries in the aggregate principal amount of $2.0 billion. ***The New Credit Facility is being arranged by an affiliate of [Morgan Stanley.]***

16div-009479

In any event, even if there were any facts supporting the Committee's contention that Morgan Stanley held itself out as a "unitary organization" -- other than the patent misrepresentations of facts offered here -- Delaware courts have long held that such self-descriptions are insufficient to establish alter ego. See, e.g., Japan Petroleum Co. v. Ashland Oil, Inc., 456 F. Supp. 831, 846 (D. Del. 1978) (representations made by parent suggesting that subsidiary served as its instrumentality insufficient to disregard the corporate form, noting that such representations may result from "an attempt at simplification"); Owl Fumigating Corp. v. California Cyanide Co., 24 F.2d 718, 721 (D. Del. 1928) (statements in a letter by parent identifying parent and subsidiary as one company "were not intended to and do not describe the legal relationship between the two companies"); see also Fletcher, 68 F.3d at 1460-61 (holding that under Delaware law, "the descriptions of the relationship between Atex and Kodak and the presence of the Kodak logo in Atex's promotional literature [does not] justify piercing the corporate veil").

In short, the Committee has utterly failed to allege facts that, if proven, would satisfy the difficult "alter ego" standard under the applicable Delaware law. The Amended Complaint also variously describes MFS as Morgan Stanley's "alter ego," "mere instrumentality," and "corporate vehicle" with "no separate will of its own" -- but, as shown herein, these stock phrases are purely legal conclusions derived from case law that are not supported by any factual allegations here, add absolutely nothing to the Committee's otherwise defective alter ago claim and, in any event, should be disregarded on this motion to dismiss. See, e.g., In re Daley, 222 B.R. at 46 (on a motion to dismiss, "courts are free to disregard legal conclusions, deductions or opinions couched as factual allegations") (citing 5 Wright & Miller, Federal Practice and Procedure § 1357, at 311-18 (2d ed. 1990)).

Quite apart from the Committee's failure to allege sufficient alter ego facts, it also has failed to satisfy the ***additional requirement*** under Delaware law that the corporate form may be disregarded only if it is also established that defendants' ***use of the corporate form itself*** caused fraud or similar injustice. See Outokumpu Engineering Enters., 685 A.2d at 729 ("[T]he alter ego theory requires that the corporate structure cause fraud or similar injustice."); Wallace, 752 A.2d at 1184 (same); Mobil Oil, 718 F. Supp. at 269 (same). No such allegations are made here.

In a feeble effort to satisfy this requirement, the Committee makes a disingenuous and implausible allegation that Morgan Stanley's alleged domination of MSF harmed unsecured creditors because it "allowed Morgan Stanley to segregate its claim against Sunbeam and Sunbeam's subsidiaries from its misconduct." Amended Complaint ¶ 103. But unsecured creditors can attempt to pursue whatever claims they wish to pursue against Morgan Stanley outside this bankruptcy case and are in no conceivable manner hampered in their ability to do so (or to collect) even if MSF were indeed an alter ego of Morgan Stanley, which it is not.

In sum, the Committee has failed to plead facts that, if proven, would either show the "exceptional circumstances" required to disregard the corporate structure or satisfy the additional requirement that the corporate structure was itself used to effectuate the alleged fraud or similar injustice.

4. **No factual allegations of agency**

The Committee's attempt to attribute Morgan Stanley's alleged misconduct to the Lenders based on a theory that an agent's misconduct may be imputed to the principal is also ineffective. According to the Amended Complaint's conclusory allegations, Morgan Stanley acted "on behalf" of the Lenders, and "the MS Entities acted as agent for FUB and BOA with respect to the Bank Facility." Amended Complaint ¶¶ 2, 104. As shown below, the Committee's allegations that Morgan Stanley was an agent of the Lenders fare no better than its contrary alter ego allegations.

"The crucial element of an agency relationship . . . is that the agent acts subject to the principal's direction and control." National Petrochemical Co. v. M/T Stolt Sheaf, 930 F.2d 240, 244 (2d Cir. 1991). Control is "a defining hallmark of a legal agency relationship." Cochran v. Stifel Fin. Corp., 2000 WL 286722, *17 (Del. Ch. 2000); see also Abex Inc. v. Koll Real Estate Group, Inc., 1994 WL 728827, *14 (Del. Ch. 1994) ("Critical to an agency relationship is the power of the principal to direct and control the agent."); J.E. Rhoads & Sons, Inc. v. Ammeraal, Inc., 1988 WL 32012, *4 (Del. Super. 1988) ("The right to control the conduct of an agent is the test of agency."). Therefore, "when the existence of an agency relationship is in dispute, the courts normally will look to the right to control as the critical factor." Abex, 1994 WL 728827, at *14. And "the control must be actual, participatory, and total." Japan Petroleum Co., 456 F. Supp. at 841.

16div-009481

initial motions to dismiss, the Committee now claims that it already "has substantially revised its original Complaint" and takes the position that the Amended Complaint "forecloses debate with respect to virtually all of Defendants' objections" to "the level of specificity and particularity of the allegations in the original Complaint," and that "the additional allegations in the Amended Complaint address, and resolve, virtually all of the issues raised in the Motions to Dismiss." Comm. Br. 2, 25. Thus, it is clear that if the Amended Complaint is dismissed, any further amendment would be even more futile, taxing the time and resources of the defendants and this Court and delaying the prospects of Sunbeam's emergence from chapter 11 as a viable economic enterprise. Having taken two bites at the apple, the Committee should not be allowed to bite again and seek further delay of Plan confirmation. Accordingly, the Court should dismiss the Amended Complaint against the Lenders with prejudice.

Conclusion

Based on the foregoing, it is respectfully submitted that the claims against the Lenders should be dismissed with prejudice pursuant to Rules 12(b)(6) and 9(b).

Dated: October 1, 2001
New York, New York

Respectfully submitted,

WACHTELL, LIPTON, ROSEN & KATZ

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For Publication

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
SUNBEAM CORP.,	:	Case No. 01-40291 (AJG)
Debtor.	:	
OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF SUNBEAM CORPORATION, on behalf of the estate of SUNBEAM CORPORATION,	:	
Plaintiff,	:	
v.	:	Adv. Pro. No. 01-2886A
MORGAN STANLEY & CO., INC., MORGAN STANLEY SENIOR FUNDING, INC., FIRST UNION NATIONAL BANK, and BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION,	:	
Defendants.	:	

MEMORANDUM DECISION GRANTING
MOTIONS TO DISMISS AMENDED COMPLAINT

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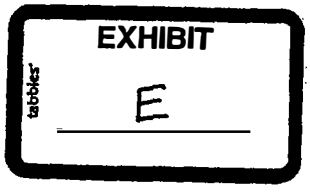

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ARTHUR J. GONZALEZ
UNITED STATES BANKRUPTCY JUDGE

Before the Court are two motions, each dated October 1, 2001, to dismiss portions of an Amended Complaint,[1] dated September 6, 2001 (the "Amended Complaint"). The Amended Complaint was filed by the Official Committee of Unsecured Creditors (the "Committee") against (i) Morgan Stanley Senior Funding, Inc. ("MSSF"), (ii) First Union National Bank ("First Union"), (iii)

[1] The original complaint was filed on July 13, 2001. On August 15, 2002, the parties that filed the current motions to dismiss filed motions to dismiss the original complaint. The August 15, 2002 motions to dismiss were rendered moot by the filing of the Amended Complaint.

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Bank of America National Trust & Savings Association ("BANTSA") (collectively, the "Lenders") who are holders of secured claims in excess of $1.6 billion against Sunbeam Corp. ("Sunbeam" or the "Debtor"); and (iv) Morgan Stanley & Co., Inc. ("Morgan Stanley," and collectively with the Lenders, the "Defendants"). The Amended Complaint seeks to equitably subordinate, or equitably disallow, the claims of all of the Defendants; to avoid and recover for the estate the Lenders' claims and liens as fraudulent conveyances; to recover damages for Morgan Stanley's alleged gross negligence and for Morgan Stanley allegedly having aided and abetted fraud and aided and abetted breach of fiduciary duty; and to recoup from MSSF's claims against the Debtor, all of the Debtor's claims against what the Committee refers to as the Morgan Stanley entities.

One motion to dismiss was filed by the Lenders and the other by Morgan Stanley. The two motions seek dismissal of the Amended Complaint for lack of standing to pursue the action, pursuant to Fed. R. Civ. P. 12(b)(6) and Fed. R. Bankr. P. 7012(b) for failure to state a claim upon which relief can be granted, and pursuant to Fed. R. Civ. P. 9(b) and Fed. R. Bankr. P. 7009 for failure to state fraud with the requisite particularity. The Debtor supports the relief sought in the two motions to dismiss.

DISCUSSION

Fed. R. Civ. P. 12(b)(6) is incorporated into bankruptcy procedure by Fed. R. Bankr. P. 7012(b). In considering a 12(b)(6) motion to dismiss for failure to state a claim for relief, the court accepts as true all material facts alleged in the complaint and draws all reasonable inferences in favor of the plaintiff. *Bolt Elec., Inc. v. City of New York* , 53 F.3d 465 (2d Cir. 1995). The motion to dismiss is granted only if no set of facts can be established to entitle the plaintiff to relief. *Walker v.*

principal *directs* and *controls* the agent's action. *Nat'l Petrochemical Co. of Iran v. M/T Stolt Sheaf*, 930 F.2d 230, 244 (2d Cir. 1991); *see also Abex, Inc. v. Koll Real Estate Group, Inc.*, 1994 WL 728827 *14 (Del.Ch. 1994) (noting that the right to control is the critical factor in establishing an agency relationship).

Moreover, acting in the name of another, by itself, does not make one an agent. Rather, "[t]o be an agent, one must have been appointed by the principal and be subject to the principal's orders." *Abex, Inc.*, 1994 WL 728827 at *15 *citing*, RESTATEMENT (SECOND) OF AGENCY §§ 1 and 14.

Application of the Facts, as Alleged, to the "Alter Ego" and "Agency" Theories

The Committee argues that the alter ego theory applies because Morgan Stanley and MSSF operated as a single economic unit and therefore there should be no distinction between them. The Committee alleges that MSSF was just named as the lender in the loan documents but that Morgan Stanley really controlled the entire process.

With respect to the alter ego theory, the Defendants maintain that mere control of one entity by another is not sufficient to pierce the corporate veil. The Defendants also contend that because the Committee has not alleged any of the *Fletcher* factors, their motion must be dismissed.

The Amended Complaint contains no allegation concerning the *Fletcher* factors. Most relevant, there are no allegations that MSSF was undercapitalized, or that it had no business operations, or that its finances were intermingled with those of Morgan Stanley. Nevertheless, even in the absence of allegations of *Fletcher* factors, in certain cases, it may be proper to deny a motion to dismiss where there are other specific relevant allegations.

In this case, the Committee argues that the corporate veil should be pierced because of Morgan

Stanley's purported control and dominance over its affiliate, MSSF, throughout the entire process leading to the extension of the Bank Facility. The Committee alleges that the allocation of responsibility concerning the Bank Facility was to be determined solely by Morgan Stanley. The Committee also alleges that Morgan Stanley did not distinguish between itself and MSSF in its engagement letter to Sunbeam or in the Note offering. The Committee further alleges that in addition to its oversight over MSSF's actions concerning the Bank Facility, MSSF did not perform any due diligence and had no independent discretion. The Committee asserts that MSSF's role was merely to be named a lender on the Bank Facility.

The Committee's assertion that MSSF had no discretion is conclusory. The Committee has had ample discovery and has not provided support for this assertion. Moreover, the Court does not credit the Committee's reference to Morgan Stanley's alleged failure to distinguish between itself and MSSF in Morgan Stanley's engagement letter to Sunbeam or in the Note Offering because in both instances, despite the Committee's allegation to the contrary, Morgan Stanley clearly referenced the fact that either it or "its affiliates" or "an affiliate" would provide the services mentioned in those documents.

In addition, mere domination or control by one entity over another is not sufficient to require piercing of the corporate veil. Rather there must be such complete domination and control that the controlled entity is a mere shell.

Moreover, the purpose in allowing the corporate veil to be pierced is to ensure that an entity who engaged in inequitable conduct is held accountable for its actions and to prevent that wrongdoer from using another entity to shield it from liability. The typical situation arises where an entity

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completely controls an undercapitalized subsidiary or affiliate and, through that dominance, causes the underfunded-controlled entity to engage in inequitable conduct. When, as a result of that conduct, the injured party attempts to obtain redress, the controlling entity shields itself from liability behind the facade of the shell corporation, while the injured party has no recourse against the undercapitalized shell corporation. In that instance, the corporate form was used to effect a fraud or injustice and the corporate veil is pierced to allow the injured party to obtain redress from the actual wrongdoer who has the wherewithal to pay any damages awarded.

In this case, the allegations of wrongdoing are all based on the conduct of Morgan Stanley. Morgan Stanley's purported wrongful conduct is blamed for the injury to the Noteholders and other unsecured creditors. There is no evidence, however, that Morgan Stanley used MSSF to shield itself from potential liability. Rather, Morgan Stanley has liability exposure to the Noteholders by virtue of its role as underwriter of the Note Offering. Moreover, MSSF is not the typical undercapitalized shell used to shield a related entity from creditors. MSSF had sufficient capital to make the loan and there are no allegations that it did not have sufficient capital to fund its operations generally. Thus, the corporate form was not used to allow Morgan Stanley to escape any liability it might have based on its conduct. The Committee has not presented a sufficient rationale to overcome the reluctance to disregard the corporate structure.

In addition, the Court finds that the Committee has not alleged a sufficient basis upon which to hold MSSF liable for any conduct on Morgan Stanley's part based upon a theory of agency. The Court has rejected application of alter ego liability and as the characteristics of agency based upon complete dominance and control are identical, agency cannot be established on that basis. Under a

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traditional agency theory, in order to hold the principal liable for the agent's conduct, there would have to be allegations that the principal directed and controlled the agent. There are no allegations in the Amended Complaint that Morgan Stanley acted subject to MSSF's direction and control. Thus, there are no allegations that MSSF controlled Morgan Stanley upon which to conclude that Morgan Stanley was MSSF's agent. Indeed, the Committee has alleged the opposite, that Morgan Stanley controlled MSSF.

The Court, further finds that even if one were to impute Morgan Stanley's conduct to MSSF, the allegations in the Amended Complaint would be insufficient to hold First Union or BANTSA liable on a theory of agency. There are no allegations that First Union or BANTSA controlled either Morgan Stanley or MSSF. The Committee referenced the titles given the Lenders under the documents - Syndication Agent, Documentation Agent, and Administrative Agent. However, merely having been given a title does not establish an agreement by one to be subject to another's control. The titles by themselves do not set forth legal relationships. In any case, the alleged inequitable conduct by Morgan Stanley sought to be imputed to MSSF would be outside of its scope as syndication agent and could not therefore be imputed to its principal even if it were established that First Union and BANTSA were the principals of MSSF in its role as syndication agent. Aside from the reference to the titles, there are no allegations in the Amended Complaint that specifically reference anything in the loan documents or in the agreement between the Lenders establishing an agreement by MSSF to be subject to the control of First Union or BANTSA. Nor are there any allegations that First Union or BANTSA directed any specific actions of either Morgan Stanley or MSSF. Thus, the allegation that Morgan Stanley and MSSF acted as agent for First Union and BANTSA in connection with the Bank Facility is conclusory.

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Moreover, there is no allegation that Morgan Stanley acted as agent for First Union and BANTSA in connection with the Note Offering or the Acquisitions. Yet, it is Morgan Stanley's conduct in relation to the Note Offering and Acquisitions that form the basis for its allegedly inequitable conduct.

The Committee argues that First Union and BANTSA are also liable based on their own actions. In the Amended Complaint, the Committee alleges that BANTSA and First Union failed to conduct due diligence concerning the March 19, 1998 press release issued by Sunbeam which was purportedly fraudulent.[2] However, in connection with their extension of the loan as part of the Bank Facility, failure to conduct such due diligence cannot be considered inequitable conduct as the Lenders did not have a duty to conduct due diligence concerning the press release. Nor is the Lenders' decision to attempt to syndicate all or a portion of the loan evidence of inequitable conduct as syndication of large loans is common, and acceptable, practice.

None of the allegations directed at the Lenders themselves, as opposed to those directed to Morgan Stanley and attempted to be imputed to the Lenders, are the type of gross and egregious conduct required to equitably subordinate a claim.

The allegations in the Amended Complaint do not provide a basis to impute Morgan Stanley's conduct to MSSF, under either an alter ego or agency theory. Nor is there any basis to find First Union or BANTSA liable on a theory of agency. In addition, there are no allegations in the Amended Complaint concerning actionable inequitable conduct by the Lenders themselves. Thus, the Court

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[2] The Committee contradicts this assertion in ¶ 74 of the Amended Complaint where it is alleged that First Union and BANTSA performed due diligence on Sunbeam's revenues and short falls.

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grants the Lenders motion to dismiss the first claim for relief.[3]

Second Claim for Relief

Concerning the second claim for relief which seeks to avoid the Lenders' claims and liens as fraudulent conveyances, the Committee argues that the loans were earmarked for the Acquisitions at a time when the Lenders knew or recklessly disregarded that Sunbeam would not receive reasonably equivalent value for the loans. Further, the Committee notes that as security for the loans, Sunbeam and its subsidiaries conveyed security interests in their respective property to the Defendants. The Committee contends that the Acquisitions, and the incurrence of the debt and transfer of the security interests related to the Bank Facility, reduced Sunbeams's assets available to other creditors. The Committee urges that the Court consider the Bank Facility and the Acquisitions a single integrated transaction. Further, the Committee contends that this series of transactions occurred at a time when Sunbeam was insolvent or, alternatively, the transactions caused Sunbeam to become insolvent.

The Lenders move to dismiss this claim for relief arguing first that the Amended Complaint fails to allege the absence of fair consideration or reasonably equivalent value with the requisite particularity. In addition, the Lenders argue that the facts do not warrant "collapsing" the loan transaction and the Acquisitions into a single integrated transaction. The Lenders maintain that the transaction pursuant to which Sunbeam borrowed from the Lenders and secured those loans is separate and independent from

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[3] With respect to the request for equitable disallowance of the Lenders' claims, the Court need not address the issue of the continued viability of such doctrine after the enactment of § 501(c). The Committee concedes that to the extent equitable disallowance would apply, such disallowance would be based on the same equitable principles as equitable subordination. Inasmuch as the Court has found that the allegations in the Amended Complaint do not support a finding of inequitable conduct sufficient to warrant subordination of the Lenders' claim, they even less support disallowance of such claim.

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The Court further finds that as there are no facts alleged in the Amended Complaint to support a finding that the Lenders had either actual or constructive knowledge that the Debtor was insolvent at the time of, or would be rendered insolvent by, the purchase of the Acquisitions, or that the Debtor was overpaying for the Acquisitions, there is no basis to warrant collapsing the several transactions for the purpose of finding any of the conveyances to be fraudulent. Thus, the second claim for relief is dismissed.

The Court further finds that because the Creditors' Committee has not met the standards for obtaining the Court's approval to pursue any claim the estate may have against Morgan Stanley, the third, fourth and fifth claims for relief against Morgan Stanley are dismissed.

The Court further finds that, as the other claims for relief have been dismissed, there is no basis upon which to assert the defense of recoupment and the final claim for relief is dismissed.

Thus, the entire Amended Complaint is dismissed.

Counsel for the Lenders is to settle an order, consistent with this Memorandum Decision, on three (3) days' notice.

Dated: New York, New York
October 18, 2002

/s/ Arthur J. Gonzalez
UNITED STATES BANKRUPTCY JUDGE

16div-009492

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

PLAINTIFF'S MOTION IN LIMINE (NO. 4) TO BAR EVIDENCE AND ARGUMENT CONCERNING MONICA LEWINSKY, WEBSTER HUBBELL, THE GRAND JURY INVESTIGATIONS REGARDING LEWINSKY AND HUBBELL, AND THE REPORT OF THE OFFICE OF THE INDEPENDENT COUNSEL

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") hereby moves this Court for an Order barring Defendant Morgan Stanley & Co. Inc. ("Morgan Stanley") from introducing any evidence or argument at trial referencing Monica Lewinsky or Webster Hubbell; the grand jury investigations regarding Lewinsky or Hubbell; or the report of the Office of the Independent Counsel ("OIC") (the "Starr Report") concerning the Lewinsky and Hubbell investigations (the "Starr investigations").

Based on arguments and issues that Morgan Stanley has attempted to raise and develop during discovery, CPH expects that Morgan Stanley may seek to argue at trial that during early 1998, senior executives at MacAndrews & Forbes Holdings Inc. ("MAFCO") were supposedly distracted by the OIC's investigations into the Lewinsky and Hubbell matters and the ensuing media reports, and thus failed to pay sufficient attention to and conduct adequate due diligence for the transaction between CPH and Sunbeam Corporation. *See, e.g.*, Ex. A, Perelman Dep., 11/18/04, at 545 ("Were there stories that Mr. [Vernon] Jordan had called and asked you about helping find Monica Lewinsky a job?"); *id.* at 548 ("Do you know that [Webster Hubbell]

eventually pled guilty and served time in a federal penitentiary?"); *id.* at 552 ("The story about Ms. Lewinsky and Mr. Vernon Jordan's call broke just about the time that Mr. Reid called you to discuss resuming the negotiations with Sunbeam, correct, mid January of 1998?"); *id.* at 555 ("In addition to the reports that we looked at in The New York Post and the Washington Post were there other newspapers that carried stories about Mr. Jordan's activities in attempting to find Ms. Lewinsky a job at Revlon?").

Morgan Stanley may attempt to introduce evidence that MAFCO executives were distracted by the Starr investigations. First, Morgan Stanley may seek to introduce evidence of the Starr investigation into MAFCO's consulting contract with Hubbell from more than a decade ago — April to December of 1994 — after Hubbell's resignation from the Department of Justice. Second, Morgan Stanley may attempt to introduce evidence that Revlon, Inc. — another MAFCO company — made, and then rescinded, an employment offer to Lewinsky in January 1998, and that Ronald O. Perelman and other senior executives at MAFCO or Revlon were involved in interviews and depositions conducted by the OIC regarding these matters. The only conceivable relevance of this evidence would be to show that Mr. Perelman or others were distracted by these investigations. But that was not the case. *See id.* at 556 ("Q. Was it distracting to you? A. No."). The real danger is that this evidence would distract the jury from the issues in this case and would play upon jurors' emotions and political prejudices. This Court therefore should bar such evidence.

ARGUMENT

No evidence is admissible at trial unless it is relevant — that is, it must be "evidence tending to prove or disprove a material fact." FLA. STAT. ANN. § 90.401 (West 2004); *see also* CHARLES W. EHRHARDT, FLORIDA EVIDENCE § 401.1, at 116-23 (2004 ed.). Even relevant evidence is inadmissible "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence." FLA. STAT. ANN. § 90.403 (West 2004); *see also* EHRHARDT, FLORIDA EVIDENCE, *supra*, § 403.1, at 161-73. Under those standards, evidence and argument concerning Lewinsky, Hubbell, the grand jury investigations, and the Starr Report should not be allowed at trial.

First, the Hubbell evidence (involving events that occurred more than a decade ago) and the Lewinsky evidence are irrelevant. There is no claim or defense in this suit that hinges on the participation of MAFCO and Revlon executives in the OIC's investigation. Indeed, MAFCO and Revlon are not even parties to this suit. Morgan Stanley simply offers evidence of the Hubbell and Lewinsky investigations and the ensuing media reports about MAFCO and Revlon executives in the hope that it can divert attention from its own wrongdoing.

Second, introducing the Lewinsky and Hubbell evidence presents a real and substantial danger of unfair prejudice, confusion of the issues, and misleading the jury. Morgan Stanley hopes to distract the jury with needless and politically charged digressions into the Starr Report and Hubbell indictments. In doing so, Morgan Stanley seeks to play upon jurors' emotions and political prejudices. Under Section 90.403, "'it is proper for the court to consider the need for the evidence; the tendency of the evidence to suggest an improper basis to the jury for resolving the matter, e.g., an emotional basis; the chain of inference necessary to establish the material fact; and the effectiveness of a limiting instruction.'" *State v. McClain*, 525 So. 2d 420, 422

(Fla. 1988) (quoting EHRHARDT, FLORIDA EVIDENCE § 403.1, at 100-03 (2d ed. 1984)); *see also Taylor v. State*, 855 So. 2d 1, 22 (Fla. 2003); *Mansfield v. State*, 758 So. 2d 636, 648 (Fla. 2000), *cert. denied,* 532 U.S. 998 (2001); *Walker v. State*, 707 So. 2d 300, 310 (Fla. 1997). As shown above, there is no relevance to these matters and the danger of unfair prejudice, confusion of the issues, and misleading the jury is self-evident. Florida courts have consistently held that evidence presenting "purely collateral issues which would serve to confuse and mislead the jury is too remote and should be excluded." *Donahue v. Albertson's, Inc.*, 472 So. 2d 482, 483 (Fla. 4th DCA 1985); *see also Atlantic Coast Line R.R. Co. v. Campbell*, 139 So. 886, 890 (Fla. 1932). That is the situation here.

CONCLUSION

For the foregoing reasons, this Court should enter an Order barring Morgan Stanley from introducing at trial any evidence or argument concerning Lewinsky, Hubbell, the grand jury investigation, or the Starr Report.

Dated: January 10, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 10th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. Case No. CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendants.

----------x

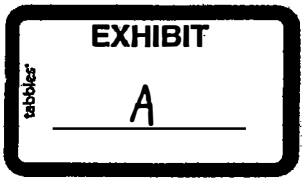
RONALD O. PERELMAN

New York, New York

Thursday, November 18, 2004

Reported by: Steven Neil Cohen, RPR

Job No. 167564



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director; is that right?
A. Whatever the directors were paid. I don't know.
Q. Whatever is reported in the 10-K would be correct, right?
A. Yes.
Q. If the 10-K reports $25,000 that would be the number, right?
A. Yes.
Q. Mr. Jordan called you at some point in January of 1998, did he not?
A. I don't remember the date. Is that when it was?
Q. I believe so.
A. Okay.
MR. SOLOVY: Mr. Bemis, I would like a standing objection to this line.
MR. BEMIS: You may have it.
MR. SOLOVY: Thank you.
MR. BEMIS: All your relevancy objections are preserved in Florida.
MR. SOLOVY: Nevertheless, I would like a standing objection.
MR. BEMIS: I would be gracious enough to give you both.

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MR. SOLOVY: Thank you.
BY MR. BEMIS:
Q. Did you -- did your communication with Mr. Jordan and your interview by the office of independent counsel become a matter that was disclosed in the press of the United States?
A. Yes.
Q. For example, were there stories in the Washington Post about your communications with Mr. Jordan?
A. I don't think there were stories about it, no.
Q. Were there stories that Mr. Jordan had called and asked you about helping find Monica Lewinsky a job?
A. I don't recall any stories about that phone call. I recall stories where that phone call was mentioned.
Q. The stories were -- that was mentioned -- these were in late January of 1998, right?
A. You will have to refresh my memory if you would on the date of the phone call.

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Q. The date of the phone call was January 8, 1998 according to the report of the office of independent counsel?
A. Okay.
Q. Do you accept that date?
A. Yes, sure.
Q. Do you recall when the story, stories first surfaced in the press about the call from Mr. Jordan to you?
A. No.
Q. Mr. Jordan, Vernon Jordan, the wife of Ann Jordan, the Coleman board member, concerned a request by Mr. Jordan that you, Mr. Perelman, do something or help find a job for Monica Lewinsky, correct?
A. No.
Q. What was the call from Mr. Jordan about?
A. First of all, he is not the wife of. He is the husband of.
Secondly --
Q. I stand corrected.
Now tell me what the conversation was between you and Mr. Jordan when he

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spoke to you on January 8, 1998.
A. He asked if I would arrange an interview for her at Revlon.
Q. Did you do so?
A. No.
Q. What did you do?
A. I spoke to Jamie Durnham who was then my assistant and told him about the call and he indicated to me that he was already aware of -- I did not know the name of this person that he was referring to, Vernon did not tell me, just that a friend, and I then called up Jamie, asked him to come to my office, said that Vernon called and has a friend that he would like to get an interview for at Revlon. He said we have already done that. I said, thank you very much and that was the end of it.
Q. Before the call from Mr. Jordan had you also -- withdrawn.
Before the call from Mr. Jordan had you also through one of your companies entered into a consulting contract with Webster Hubbell?
A. I believe so.

Q. This is the Webster Hubbell who was eventually indicted, correct?
A. Former Attorney General of the United States.
Q. For stealing money from his law partners, correct?
A. I don't know what for.
Q. Do you know that he eventually pled guilty and served time in a federal penitentiary?
A. Yes.
Q. You hired him -- when did you hire him, that is, your companies?
A. I don't know and I don't think we hired him.
Q. You hired him -- excuse me.
You entered into a contract with him as a consultant, did you not?
A. I believe so.
Q. To do public relations work for your companies, correct?
A. I believe so.
Q. Did he do any?
A. I don't know. I had nothing to do with that.

Q. Who did?
A. I believe Mr. Gittis.
Q. Mr. Gittis hired Mr. Hubbell?
A. I didn't.
Q. Did Mr. Gittis talk to you about hiring Mr. Hubbell?
A. No.
Q. How did Mr. Hubbell come to call upon Mr. Gittis to get a job with your companies?
A. I don't know. I had nothing to do with it.
Q. It just came out of the blue?
A. I don't know.
Q. In any event, let's go back to Ms. Lewinsky.
You -- at the time that -- withdrawn.
I asked you about when the story first surfaced in the press. Let me show you one of the articles that I think you may be referring to.
I will show you what has been marked as Morgan Stanley Exhibit 419.
If you would mark that,

Mr. Reporter?
(Morgan Stanley Exhibit 419 marked for identification)
BY MR. BEMIS:
Q. Do you have Exhibit 419 in front of you?
A. Yes.
Q. Have you read it?
A. I am reading it now.
Q. Okay.
This -- for the record this is a January 26, 1998 report printed from The New York Post.
A. Okay.
Q. Have you seen this story before?
A. I don't believe so.
Q. Is -- on the second page it refers to Mr. Barry Schwartz having testified before Starr's grand jury in 1994. Do you see that?
A. Yes.
Q. He was threatened with a possible perjury indictment, do you see that?
A. Yes.
Q. You were aware of that?

A. No, and I --
Q. Did you want to say something else?
A. There are so many inaccuracies that I know of in the story. I don't know where this story came from, the National -- Washingtonian Magazine which I don't know what that is.
Q. Did you -- were there other articles about this time in January of 1998 concerning Ms. Lewinsky and Mr. Jordan and Revlon?
A. Yes. I don't know if there were articles about it. It was included in stories.
Q. Stories in newspapers?
A. Yes, but this is a patently false document, story.
Don't make a face, sir. I can attest to it.
Q. I am sure you can. Don't accuse me of making faces. No one is making faces at you.
A. It sure looked like you were making a face to me.

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Q. I apologize to whatever it was you thought you saw.
The story about Ms. Lewinsky and Mr. Vernon Jordan's call broke just about the time that Mr. Reid called you to discuss resuming the negotiations with Sunbeam, correct, mid January of 1998?
A. Yes, probably.
Q. Indeed it was during this same period, January of 1998, that you were first interviewed by the office of independent counsel, isn't it?
A. I don't believe so.
Q. The record reflects that, according to the reports, that you were interviewed on January 30, 1998. Do you know deny that?
A. Is that when it was?
Q. Yes. That is according to public records.
A. It is fact whenever it was. I think Mr. Starr is a partner of yours.
Q. I think Mr. Starr is currently the Dean of the Pepperdine Law School.
A. Isn't he of counsel to the firm?

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Q. Would you like to take a look at Morgan Stanley Exhibit 420?
Please tell me when you have had an opportunity -- withdrawn.
Please tell me when you have finished looking at Exhibit 420.
A. I skimmed it, yes.
Q. This is an article reprinted from the Washington Post, February 6, 1998?
A. That is what it says, yes.
Q. Have you seen this article before?
A. I don't believe so.
Q. You can hand that back to me.
Do you recall that Mr. Jordan testified before the -- a grand jury in connection with the Lewinsky matter in March 1998?
A. No.
Q. Did you see any reports of that in the newspapers?
A. Not that I recall.
Q. You weren't following it at all?
A. No.
Q. It was after Mr. Jordan's

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testimony before the grand jury, was it not, that you were interviewed a second time by the office of independent counsel?
A. I don't recall.
Q. The record reflects that you were -- the public record reflects that you were interviewed on April 2, 1998. Is that consistent with your recollection?
A. I don't have a recollection. I wouldn't dispute the prosecutor's record but I don't have a specific recollection of when it was.
Q. The public record reflects that you then testified --
A. What do you mean "the public record?"
Q. The public record that one can -- in the reports of the office of independent counsel.
A. Okay. That is the prosecutor's record.
Q. The office of independent counsel.
A. I would not disagree with that record but I don't have independent

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recollection of that.
Q. The records also reflect that you then testified before the office of independent counsel on April 23, 1998.
Is that consistent with your recollection?
A. I don't have a specific recollection but that would not be inconsistent.
Q. In addition to the reports that we looked at in The New York Post and the Washington Post were there other newspapers that carried stories about Mr. Jordan's activities in attempting to find Ms. Lewinsky a job at Revlon?
A. As I said before, I don't recall specific stories about it.
I recall it being included in bigger stories about President Clinton and the investigation on President Clinton.
Q. Were these stories generally of -- being published in the press during the period of the first three months of 1998 while the Coleman-Sunbeam acquisition was being negotiated?

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A. They are still being published.
Q. Is your answer, yes, and they are still being published?
A. There have been stories since then through today. I mean this phone call took 20 seconds.
My involvement in this phone call was one conversation with Jamie Durnham after that phone call, nothing after that, and then two or three subsequent interviews with a member or members of the special prosecutor's office.
That was my entire involvement in this procedure or activity.
Q. What was your reaction to being drawn into President Clinton's difficulties during this time period in early 1998?
MR. SOLOVY: Object to the form of the question.
BY MR. BEMIS:
Q. You can answer.
A. I wasn't happy about it.
Q. Was it distracting to you?
A. No.
MR. BEMIS: If you give me a

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minute I may be finished.
May I have five minutes?
THE VIDEOGRAPHER: Going off the record. The time is 4:20 p.m.
(Recess)
THE VIDEOGRAPHER: Returning to the record. The time is 4:28 p.m.
BY MR. BEMIS:
Q. Did you have any discussions with anyone before the closing on March 30, 1998 of the Coleman transaction about hedging your interest in the Sunbeam stock if the transaction closed?
A. Yes.
Q. With whom?
A. Mr. Maher.
Q. Anyone other than Mr. Maher?
A. Primarily Maher. Gittis might have been aware of it too.
Q. When did you first discuss the subject with Mr. Maher?
A. I don't recall.
Q. How many times did you have discussions with Mr. Maher about hedging the Sunbeam stock? Again we are in the

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period before the closing.
A. I can't recall. A couple.
Q. What did you say and what did Mr. Maher say in these discussions?
A. Something to the effect that if we could I would like to see us hedge some of these securities but there is a legal issue as to whether or not we can hedge them because of the lock up and ultimately the conclusion was that they could not be hedged.
Q. When you say ultimately the conclusion was they could not be hedged who reached that conclusion?
A. Everybody.
Q. Who is everybody?
A. Nobody would hedge them and we reached the conclusion that those that would supply the hedge concluded they couldn't be hedged.
Our counsel concluded that they couldn't be hedged and our executives concluded they couldn't be hedged.
Q. Did you consider hedging the Sunbeam stock after the closing on August,

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on April -- withdrawn.
Did you consider hedging the stock after the closing on March 30, 1998?
A. I didn't consider hedging the stock.
Q. I don't understand your answer.
You just said you discussed it with Mr. Maher.
A. Yes.
Q. Yes. What do you mean you didn't consider it?
A. It was discussed but I didn't consider it.
Q. All right.
Did you discuss it after March 30, 1998?
A. I don't recall.
Q. Did you discuss it as late as May of 1998?
A. I don't recall. I don't recall the dates that it -- that this conversation took place.
Q. Did you have more -- strike that.
Who were the companies that you were discussing hedging the stock with?

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

PLAINTIFF'S MOTION IN LIMINE (NO. 7) TO BAR EVIDENCE AND ARGUMENT CONCERNING PLAINTIFF'S SETTLEMENT WITH ARTHUR ANDERSEN

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") hereby moves this Court for an Order barring Defendant Morgan Stanley & Co. Inc. ("Morgan Stanley") from introducing any evidence or argument at trial referring to the settlement between CPH and Arthur Andersen LLP ("Andersen") in *Coleman (Parent) Holdings, Inc. v. Arthur Andersen LLP et al.*, Case No. CA 01-06062 AN – Rapp (15th Cir., Palm Beach County, Fla.). The law is clear that any setoff to which Morgan Stanley might be entitled is a matter for this Court to calculate after the jury returns its verdict.

ARGUMENT

Florida law prohibits a party from introducing evidence that the adverse party has settled a claim with a joint tortfeasor:

> The fact that a written release or covenant not to sue exists or the fact that any person has been dismissed because of such release or covenant not to sue shall not be made known to the jury.

FLA. STAT. ANN. § 46.015 (West 2004) (emphasis added). This statute is dispositive. It confirms that it is impermissible to inform the jury of a party's prior settlement with a joint tortfeasor. Indeed, revealing evidence to the jury of the amount of settlement, or any payment that the plaintiff received from a collateral source, constitutes reversible error. As the Florida Supreme

Court has recognized, "introduction of collateral source evidence misleads the jury on the issue of liability and, thus, subverts the jury process. . . . Evidence of collateral source benefits may lead the jury to believe that the plaintiff is trying to obtain a double or triple payment for one injury or to believe that compensation already received is sufficient recompense." *Gormley v. GTE Prod. Corp.*, 587 So. 2d 455, 458 (Fla. 1991) (per curiam) (internal citation and quotation marks omitted); *see also Goble v. Frohman*, 848 So. 2d 406, 410 (Fla. 2d DCA 2003) (affirming the inadmissibility of collateral-source evidence at trial because of its tendency to mislead the jury); *Sheffield v. Superior Ins. Co.*, 800 So. 2d 197, 200 (Fla. 2001) (trial court committed clear error in denying motion in limine to exclude introduction of collateral sources of payment); *Rease v. Anheuser-Busch, Inc.*, 644 So. 2d 1383, 1387 (Fla. 1st DCA 1994) ("collateral source evidence . . . is not probative of any material issue of liability"); *Cook v. Eney*, 277 So. 2d 848, 850 (Fla. 3d DCA 1973) (admission of collateral-source evidence is reversible error on the issue of liability).

The only conceivable relevance of the settlement at issue here is to the issue of setoff of damages, but under Section 46.015(2), that is a matter for the judge, after the jury renders its verdict on damages:

> At trial, if any person shows the court that the plaintiff, or his or her legal representative, has delivered a written release or covenant not to sue to any person in partial satisfaction of the damages sued for, the court shall set off this amount from the amount of any judgment to which the plaintiff would be otherwise entitled at the time of rendering judgment.

FLA. STAT. ANN. § 46.015(2) (West 2004) (emphasis added); *see also Peterson v. Morton F. Plant Hosp. Ass'n*, 656 So. 2d 501, 503 (Fla. 2d DCA 1995) (remanding for new trial on grounds that disclosure of settlement to jury clearly prejudiced plaintiffs); *cf. Black v. Montgomery*

Elevator Co., 581 So. 2d 624, 625 (Fla. 5th DCA 1991) (finding that a statute analogous to § 46.015 "prohibits informing the jury that a settlement has been made").

The statute's application to the Andersen settlement is beyond dispute: Andersen paid CPH for a covenant not to sue, the existence of which cannot be made known to the jury, and the setoff of which can be made only by the Court. FLA. STAT. ANN. § 46.015 (West 2004).

CONCLUSION

For the foregoing reasons, this Court should enter an Order barring Morgan Stanley from introducing at trial any evidence or argument referring to the settlement between CPH and Andersen.

Dated: January 10, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 10th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

PLAINTIFF'S MOTION IN LIMINE (NO. 8) TO BAR EVIDENCE AND ARGUMENT CONCERNING THE VALUE OF MAFCO'S SETTLEMENT WITH SUNBEAM CORPORATION

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") hereby moves this Court for an Order barring Defendant Morgan Stanley & Co. Inc. ("Morgan Stanley") from introducing any evidence or argument at trial referring to the value of the settlement between MacAndrews & Forbes Holdings, Inc. ("MAFCO") and Sunbeam Corporation. The law is clear that any setoff to which Morgan Stanley might be entitled is a matter for this Court to calculate after the jury returns its verdict.

CPH expects that Morgan Stanley may seek to raise at trial the value of MAFCO's settlement with Sunbeam. That settlement was for stock warrants entitling MAFCO to purchase Sunbeam stock at a specified price after a future date. CPH takes the position that the warrants were worth nothing, while Morgan Stanley suggests that they were worth somewhere between $40 million and $70 million. Regardless, evidence and argument concerning the value of the warrants should be addressed by the Court only after the jury returns its verdict.

ARGUMENT

Florida law prohibits a party from introducing evidence that the adverse party has settled a claim with a joint tortfeasor:

> The fact that a written release or covenant not to sue exists or the fact that any person has been dismissed because of such release or covenant not to sue shall not be made known to the jury.

FLA. STAT. ANN. § 46.015 (West 2004) (emphasis added). This statute is dispositive. It confirms that it is impermissible to inform the jury of a party's prior settlement with a joint tortfeasor. Indeed, revealing evidence to the jury of the amount of settlement, or any payment that the plaintiff received from a collateral source, constitutes reversible error. As the Florida Supreme Court has recognized, "introduction of collateral source evidence misleads the jury on the issue of liability and, thus, subverts the jury process. . . . Evidence of collateral source benefits may lead the jury to believe that the plaintiff is trying to obtain a double or triple payment for one injury or to believe that compensation already received is sufficient recompense." *Gormley v. GTE Prod. Corp.*, 587 So. 2d 455, 458 (Fla. 1991) (per curiam) (internal citation and quotation marks omitted); *see also Goble v. Frohman*, 848 So. 2d 406, 410 (Fla. 2d DCA 2003) (affirming the inadmissibility of collateral-source evidence at trial because of its tendency to mislead the jury); *Sheffield v. Superior Ins. Co.*, 800 So. 2d 197, 200 (Fla. 2001) (trial court committed clear error in denying motion in limine to exclude introduction of collateral sources of payment); *Rease v. Anheuser-Busch, Inc.*, 644 So. 2d 1383, 1387 (Fla. 1st DCA 1994) ("collateral source evidence . . . is not probative of any material issue of liability"); *Cook v. Eney*, 277 So. 2d 848, 850 (Fla. 3d DCA 1973) (admission of collateral-source evidence is reversible error on the issue of liability).

The only conceivable relevance of the settlement at issue here is to the issue of setoff of damages, but under Section 46.015(2), that is a matter for the judge, after the jury renders its verdict on damages:

> At trial, if any person shows the court that the plaintiff, or his or her legal representative, has delivered a written release or covenant not to sue to any person in partial satisfaction of the damages sued for, the court shall set off this amount from the amount of any judgment to which the plaintiff would be otherwise entitled at the time of rendering judgment.

FLA. STAT. ANN. § 46.015(2) (West 2004) (emphasis added); *see also Peterson v. Morton F. Plant Hosp. Ass'n*, 656 So. 2d 501, 503 (Fla. 2d DCA 1995) (remanding for new trial on grounds that disclosure of settlement to jury clearly prejudiced plaintiffs); *cf. Black v. Montgomery Elevator Co.*, 581 So. 2d 624, 625 (Fla. 5th DCA 1991) (finding that a statute analogous to § 46.015 "prohibits informing the jury that a settlement has been made").

The statute's application to the Sunbeam settlement is clear under FLA. STAT. ANN. § 46.015 (West 2004). Morgan Stanley might argue that the jury needs to resolve the factual dispute about the value of the warrants. That argument is not well taken. The plain text of Section 46.015, quoted above, sets forth the rule that the court, not the jury, makes setoff determinations. When the Florida Legislature has carved out exceptions to that rule, it has done so expressly. *See, e.g.*, FLA. STAT. ANN. §§ 768.76(1), 768.71(3) (West 2004) (generally requiring the court, not the jury, to reduce damages unless some other statute specifically provides otherwise); *id.* § 627.736(3) (carving out such a statutory exception to the rule, and requiring "the trier of facts, whether judge or jury," to make setoff determinations in certain actions under the Motor Vehicle No-Fault Law); *see also Caruso v. Baumle*, 880 So. 2d 540, 543-44 (Fla. 2004) (recognizing § 627.736(3) as an exception to the statutory rule requiring the amount of setoff to be determined by the court, not by the jury). Here, no express statutory

exception to the rule applies, so Morgan Stanley cannot present the issue of warrant valuation to the jury. *See Peterson*, 656 So. 2d at 501-02 ("Because the trial court allowed the details of a settlement with a codefendant to become a feature of the trial, we reverse and remand for a new trial."); *see also* Florida Standard Jury Instructions in Civil Cases 6.13a, note 1 (2003) (setting forth a collateral-source charge to be given to the jury "[i]f improper evidence of collateral benefits is inadvertently admitted or if, in the circumstances of the case, the payment of collateral benefits is inferred").

At bottom, Morgan Stanley's argument is based on the fallacy that judges cannot make any fact determinations in a case tried to a jury. But it is routine for courts, even in jury cases, to make factual findings about subject-matter jurisdiction, choice of law, and a host of other issues. *See, e.g.*, 14B CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE: JURISDICTION § 3707, at 225-36 (3d ed. 1995). The valuation of a settlement is no different.

CONCLUSION

For the foregoing reasons, this Court should enter an Order barring Morgan Stanley from introducing at trial any evidence or argument referring to the value of the settlement between MAFCO and Sunbeam.

Dated: January 10, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

PLAINTIFF'S MOTION IN LIMINE (NO. 11) TO BAR EVIDENCE AND ARGUMENT CONCERNING ALLEGED BUSINESS PRACTICES OF REVLON, INC.

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") hereby moves this Court for an Order barring Defendant Morgan Stanley & Co. Inc. ("Morgan Stanley") from introducing any evidence or argument at trial referencing allegations about the business practices of Revlon, Inc., including those raised in *In re Revlon, Inc. Securities Litigation*, No. 99-CV-10192 (SHS), 2001 WL 293820, at *1-*6 (S.D.N.Y. Mar. 27, 2001) (judgment entered July 1, 2003 approving settlement and dismissing all claims with prejudice).

Based on arguments and issues that Morgan Stanley has attempted to raise and develop during discovery, CPH expects that Morgan Stanley may seek to argue at trial that Revlon — which is indirectly owned in part by CPH's parent company, MacAndrews & Forbes Holdings Inc. ("MAFCO") — engaged in allegedly improper business practices, and that because a MAFCO subsidiary allegedly was engaged in the same types of fraudulent practices as Sunbeam Corporation, MAFCO and CPH were well-positioned to recognize Sunbeam's fraud. This Court should bar such evidence because it is irrelevant, unfairly prejudicial, and founded on a complete mischaracterization of Revlon's business practices.

First, Revlon is not a party to this case, and any evidence of alleged wrongdoing on the part of a third party is irrelevant to the issues in dispute between the parties here. Second, Revlon's business practices bear no meaningful resemblance to Sunbeam's practices. Revlon announced in October 1998 that it expected its third-quarter and full-year earnings to fall short of analyst expectations for several reasons. Unlike Sunbeam, Revlon was not engaged in fraud, and Revlon's full and early disclosures about its projected earnings stand in stark contrast to the affirmative misrepresentations and omissions made in the March 19, 1998 press release and the debenture offering memorandum. Third, introduction of evidence about the business practices of Revlon — a nonparty to this case — would serve only to confuse the issues and to mislead the jury, which must focus on the business practices of the parties in this case.

ARGUMENT

No evidence is admissible at trial unless it is relevant — that is, it must be "evidence tending to prove or disprove a material fact." FLA. STAT. ANN. § 90.401 (West 2004); *see also* CHARLES W. EHRHARDT, FLORIDA EVIDENCE § 401.1, at 116-23 (2004 ed.). Even relevant evidence is inadmissible if "it is relevant solely to prove bad character or propensity," FLA. STATE. ANN. § 90.404(2)(a); *see also* EHRHARDT, FLORIDA EVIDENCE, *supra*, § 403.1, at 197-214, or if "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence." FLA. STAT. ANN. § 90.403; *see also* EHRHARDT, FLORIDA EVIDENCE, *supra*, § 403.1, at 161-73. Under those standards, evidence and argument concerning the allegations and litigation against Revlon should be excluded at trial.

First, such evidence is irrelevant because Revlon is not a party to this case. Florida law is clear that "evidence of wrongdoing on the part of a third party is inadmissible as irrelevant to a

given case." *Jenkins v. State*, 533 So. 2d 297, 300 (Fla. 1st DCA 1988), *rev. denied*, 542 So. 2d 1334 (Fla. 1989); *see also Beckett v. State*, 730 So. 2d 809, 811 (Fla. 4th DCA 1999); *Denmark v. State*, 646 So. 2d 754, 757 (Fla. 2d DCA 1994); *Banks v. State*, 400 So. 2d 188, 189 (Fla 1st DCA 1981); *Armstrong v. State*, 377 So. 2d 205, 206 (Fla. 2d DCA 1979); *Hirsch v. State*, 279 So. 2d 866, 869 (Fla. 1973); *Kellum v. State*, 104 So. 2d 99, 103 (Fla. 3d DCA 1958).

The fact that the parent of CPH also indirectly owns a majority, but not all, of Revlon common stock makes no difference. Under well-settled principles of corporate law, CPH and Revlon are separate entities. *See, e.g., American Renaissance Lines, Inc. v. Saxis S.S. Co.*, 502 F.2d 674, 677 (2d Cir. 1974) ("a corporation . . . is entitled to a presumption of separateness from a sister corporation . . . even if both are owned and controlled by the same individuals"); *Crown Cent. Petroleum Corp. v. Cosmopolitan Shipping Co.*, 602 F.2d 474, 476 (2d Cir. 1979). Because Revlon is not a party to this suit, any evidence or argument about alleged wrongdoing on the part of Revlon is irrelevant under the Florida rule barring evidence of third-party wrongdoing.

Moreover, Revlon's practices in fact bear no resemblance to Sunbeam's fraudulent conduct. Revlon announced in October 1998 that it expected its third-quarter and full-year earnings to fall short of analyst expectations. The shortfall was due to slow growth in the mass-market color cosmetics category, a greater-than-expected seasonal flattening of share caused by a shift in advertising and promotional activity, delays in product introductions, retailer consolidations, a downturn in international sales, and reduced inventory levels. *See* Ex. A, *Revlon Expects Third Quarter and Full Year Earnings to Fall Short of Analysts' Expectations*, PR NEWSWIRE, Oct. 2, 1998. Revlon's full and early disclosures about its projected earnings stand in stark contrast to the affirmative misrepresentations and omissions made in the March 19,

1998 press release and the debenture offering memorandum. Thus, nothing in Revlon's experience could have led CPH's executives to suspect the fraud being perpetrated by Sunbeam and Morgan Stanley.

Second, any probative value of evidence regarding the allegations against Revlon is substantially outweighed by the danger of unfair prejudice, confusion of issues, and misleading the jury. Morgan Stanley hopes to divert attention from its own wrongdoing with allegations of wrongdoing by a CPH sister company. But as Florida courts have recognized, evidence presenting "purely collateral issues which would only serve to confuse and mislead the jury is too remote and should be excluded." *Donahue v. Albertson's, Inc.*, 472 So. 2d 482, 483 (Fla. 4th DCA 1985); *see also Atlantic Coast Line R.R. Co. v. Campbell*, 139 So. 886, 890 (Fla. 1932). That is the situation here. Moreover, to admit the Revlon evidence would "create a real danger of establishing guilt by societal association and should not be allowed because of its tendency to prejudicially distort a jury's perception." *Denmark v. State*, 646 So. 2d 754, 757 (Fla. 2d DCA 1994).

CONCLUSION

For the foregoing reasons, this Court should enter an Order barring Morgan Stanley from introducing at trial any evidence or argument concerning allegations against the business practices of Revlon, Inc., including those raised in *In re Revlon, Inc. Securities Litigation*, No. 99-CV-10192 (SHS), 2001 WL 293820, at *1-*6 (S.D.N.Y. Mar. 27, 2001).

Dated: January 10, 2005

Respectfully submitted,

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27 of 63 DOCUMENTS

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HEADLINE: Revlon Expects Third Quarter and Full Year Earnings to Fall Short of Analysts' Expectations;
Company Cites Lower Than Anticipated Growth in U.S. Mass Market Color Cosmetics Category and Continuing Retailer Inventory Reductions;
Weak International Economy and Strength of Dollar Also Impacted Results;
Company Announces Restructuring Plan;
Fundamentals of the Company's Business Remain Strong;
Revlon Brand Still Number One, Almay Still Fastest Growing Major Brand In U.S. Mass Market Color Cosmetics**LEXIS-NEXIS Related Topicsno targeted Topics.**

DATELINE: NEW YORK, Oct. 2

BODY:

Revlon, Inc. (NYSE: REV) today said that it expects 1998 net sales and earnings from continuing operations will fall below analysts' expectations.

"Our business in the U.S. has been affected by a number of factors," said George Fellows, President and CEO. "Among them are a slowdown in the rate of growth in the mass market color cosmetics category as well as a greater than expected seasonal flattening of share caused by a shift in advertising and promotional activity and delays in some product introductions. At the same time, retailers, particularly chain drugstores, driven by recent consolidation, are pursuing efficiencies by reducing inventory levels.

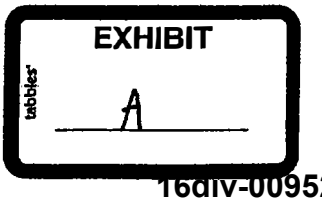
"Another factor impacting performance is the aggregate effect of the weak international economic environment, which has hurt consumer and trade demand outside the U.S., particularly in South America and the Far East as well as Russia and other developing economies. The weakness in foreign currencies against the dollar has also hurt our results. Positive results from operations in other areas were not strong enough to outweigh these negatives."

For these reasons, results for the third quarter are expected to be lower than in the same period last year. The Company anticipates third quarter earnings from continuing operations to be approximately $.22 per diluted share, including a gain on the sale of a small non-core business of $.15. Net sales are expected to be approximately $540 million for the third quarter and operating income is expected to be approximately $45 million (including the non-recurring gain).

Based on the expectation that these conditions will continue, the business plan for the fourth quarter has been revised. Net sales for the fourth quarter are expected to be in the range of $630 million to $650 million, operating income is expected to be in the range of $43 million to $46 million and earnings from continuing operations are expected to be in the range of $.10 to $.15 per diluted share. These are before restructuring costs estimated at $50 million.

This restructuring will include the closing of three international plants, a reorganization of the Company's workforce principally outside the U.S., and other actions designed to reduce costs. The resulting efficiencies are intended to enhance the Company's competitive position and result in estimated annual benefits in the range of $25 million to $30 million.

"While the anticipated results for the second half of the year are very disappointing, the longer-term outlook for our Company continues to be extremely positive, despite significant challenges in the marketplace," said Mr. Fellows. "The business fundamentals of our Company are strong. The Revlon brand is number one in color cosmetics in the U.S. mass



market with a market share of 21.8% year to date through August while retail consumption is up 12.4%. Almay leads the mass market color cosmetics category in growth at 44% with an 8% share year to date through August. Our program to broaden distribution of our Ultima II line is showing significant strength. Additionally, we expect that as retail inventories are stabilized, our growth will again outpace category growth."

Fellows Reaffirms Company's Business Strategy

"We are addressing the challenges Revlon currently faces by pursuing the successful business strategy that has spurred the growth of this Company — from a combined U.S. mass market color cosmetics share of 21.2% in 1993 to 29.8% year to date through August. Based on the Company's fundamental strengths and its plans to adjust to changing market conditions, the Company anticipates earnings from continuing operations in 1999 to be in the range of $1.80 to $2.00 per diluted share, including restructuring benefits of approximately $.25 per diluted share. Despite the challenges we now face, we are confident that our long-term outlook remains positive and we intend to pursue the fundamental business strategy that fueled our success to date," Fellows concluded.

Revlon is a worldwide leader in cosmetics, skin care, fragrance, personal care and professional products. Revlon's vision is to provide glamour, excitement and innovation through quality products at affordable prices. Revlon's brands include Revlon(R), ColorStay(R), Revlon Age Defying(R), Almay(R), Ultima II(R), Charlie(R) and Flex(R), and Creme of Nature(R) and are sold in approximately 175 countries and territories.

Information in this press release includes forward-looking statements made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Such statements include, without limitation, (i) the Company's expected net sales, operating income and earnings per share from continuing operations for the third and fourth quarters of 1998; (ii) the Company's estimate of restructuring activities, costs and benefits; (iii) the Company's expectation of earnings per diluted share in 1999; and (iv) the Company's expectation that once retailer efficiencies have been achieved, growth will outpace category growth. In addition to the factors that are described in the Company's SEC filings, including its quarterly reports on Form 10-Q and annual reports on Form 10-K, the following factors could cause actual results to differ materially from those expressed in the forward-looking statements: (i) lower than expected net sales, operating income and earnings from continuing operations in 1998; (ii) difficulties or delays in or unexpected costs or lower than expected benefits from the restructuring; (iii) lower than expected earnings per diluted share in 1999; (iv) less than expected growth after retailer efficiencies have been realized; and (v) actions by competitors including business combinations, technological breakthroughs, new product offerings and marketing and promotional successes. The Company assumes no responsibility to update forward-looking information contained herein.

SOURCE Revlon, Inc.

CONTACT: Walter Montgomery, media, 212-527-5791, or Deena Fishman, investors, 212-527-5230, both of Revlon

LOAD-DATE: October 3, 1998

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

PLAINTIFF'S MOTION IN LIMINE (NO. 12) TO BAR EVIDENCE AND ARGUMENT CONCERNING THE ACQUISITION OF PANAVISION, INC.

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") hereby moves this Court for an Order barring Defendant Morgan Stanley & Co. Inc. ("Morgan Stanley") from introducing any evidence or argument at trial referencing the acquisition of Panavision, Inc. by an affiliate of CPH's parent company, MacAndrews & Forbes Holdings Inc. ("MAFCO"), including any reference to negotiations, renegotiations, purchase price, or due diligence conducted in connection with that acquisition.

Based on arguments and issues that Morgan Stanley has attempted to raise and develop during discovery, CPH expects that Morgan Stanley may seek to argue at trial that the jury should compare CPH's actions during the Sunbeam-Coleman merger with a MAFCO affiliate's actions during its acquisition of Panavision. Morgan Stanley hopes to use the Panavision acquisition as a point of comparison for two purposes: (1) to argue that CPH failed to conduct adequate due diligence during the Sunbeam transaction; and (2) to argue that CPH would have renegotiated the price — rather than refused to close — the Sunbeam transaction if CPH had learned the truth about Sunbeam's first-quarter 1998 performance. But the Panavision transaction is entirely different from the Sunbeam transaction, and the Court should bar this

evidence because evidence of a single, factually different incident in the course of MAFCO's business history is irrelevant and unfairly prejudicial.

Morgan Stanley first seeks to use the Panavision evidence to argue that CPH should have conducted at least the same level of due diligence during the Coleman-Sunbeam transaction as MAFCO conducted during its acquisition of Panavision. *See* Ex. A, Rosenbloom Rep., 12/04, at 5 n.9. But the transactions are very different. CPH was becoming only a minority investor in a company during the Coleman-Sunbeam transaction, while MAFCO was taking a controlling interest in Panavision during that transaction. The level of due diligence required of an entity becoming a minority investor in a company is materially different from the level of due diligence one would expect in a transaction where a buyer is taking a controlling interest. *See* Ex. B, Dickes Dep., at 109-10 ("rigorous due diligence was appropriate in an M&A transaction like Panavision in which [MAFCO] sought control and . . . modest due diligence was acceptable in a transaction like Sunbeam in which a minority interest, for investment purposes was obtained"). Because the transactions are so fundamentally dissimilar, Morgan Stanley should not be permitted to mislead and confuse the jury with evidence about Panavision. Indeed, Morgan Stanley's own expert points out just how different these two transactions were. *See* Ex. A, Rosenbloom Rep., 12/04, at 5 n.9.

Morgan Stanley also seeks to use the Panavision evidence to argue that because MAFCO renegotiated the price of Panavision after being advised that its results would not meet analysts' expectations, CPH similarly would have renegotiated the price of Sunbeam, and not simply walked away from the deal, if CPH had learned the truth about Sunbeam's first-quarter 1998 performance. But again, the transactions are very different. In the Panavision transaction, the parties were in preliminary negotiations and due-diligence review when Warburg Pincus Capital

Company, LP ("Warburg") — Panavision's then-majority stockholder — made a full disclosure to MAFCO that Panavision's earnings for the fourth quarter of 1997 would be modestly lower than analysts' estimates. At the time of that disclosure, no agreement between MAFCO and Warburg had been reached or executed. Following Warburg's full disclosure of Panavision's condition, MAFCO offered a price lower than it had previously indicated.

The situation here is much different. The facts about Sunbeam clearly showed that the Sunbeam "turnaround" had not occurred — and Morgan Stanley hid those facts even after the parties had reached an agreement on price. If CPH had learned the truth, CPH, like any reasonable company, would have called off the transaction.

ARGUMENT

No evidence is admissible at trial unless it is relevant — that is, it must be "evidence tending to prove or disprove a material fact." FLA. STAT. ANN. § 90.401 (West 2004); *see also* CHARLES W. EHRHARDT, FLORIDA EVIDENCE § 401.1, at 116-23 (2004 ed.). Even relevant evidence is inadmissible "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence." FLA. STAT. ANN. § 90.403 (West 2004); *see also* EHRHARDT, FLORIDA EVIDENCE, *supra*, § 403.1, at 161-73. There is a particularly heightened danger of unfair prejudice and confusion where, as here, a party offers evidence of an organization's business practice with examples that are not "'sufficiently regular or [with] circumstances [that are not] sufficiently similar.'" *Wilson v. Volkswagen of Am.*, 561 F.2d 494, 511 (4th Cir. 1977) (quoting MCCORMICK ON EVIDENCE § 162 (1964)). Under these standards, evidence regarding the Panavision deal should be barred at trial.

First, the Panavision acquisition evidence is irrelevant. Morgan Stanley seeks to introduce evidence of the Panavision negotiations to show that Panavision is emblematic of how CPH should conduct due diligence in all transactions, no matter how dissimilar, and to show that Panavision is predictive of how CPH reacts upon hearing bad news about a company with which it is about to enter into a transaction. But, as shown above, the two transactions cannot be compared for due-diligence purposes because they are entirely dissimilar. Indeed, Morgan Stanley's own expert acknowledges that there are major differences between the transactions. *See* Ex. A, Rosenbloom Rep., 12/04, at 5 n.9. Comparing the early and complete disclosure Warburg made about Panavision's performance before an agreement was reached or executed, with the fraudulent conduct of Sunbeam and Morgan Stanley, would be a classic "apples to oranges" comparison. Morgan Stanley cannot simply pluck out the Panavision transaction — a single, factually different transaction in MAFCO's business history — and argue that it is relevant to MAFCO's or its subsidiaries' behavior in the Sunbeam transaction.

Second, any minimal probative value of the evidence regarding the Panavision deal would be far outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury. Morgan Stanley is attempting to use the Panavision transaction to show the "routine practices" of MAFCO-related companies when they enter into transactions with other companies. But courts repeatedly have recognized that there is an extraordinarily high threshold for the admissibility of routine-practice evidence because of the danger that such evidence will create unfair prejudice:

> It has been repeatedly stated that habit or pattern of conduct is never to be lightly established, and evidence of examples, for purpose of establishing such habit, is to be carefully scrutinized before admission. The reason for such an attitude toward evidence of habit is the obvious danger of abuse in such evidence resulting from "the confusion of the issues, collateral inquiry, prejudice, and the like."

Wilson, 561 F.2d at 511 (quoting MCCORMICK ON EVIDENCE § 162 (1964)); *see also Nelson v. Brunswick Corp.*, 503 F.2d 376, 380 (9th Cir. 1974) (discussing the inadmissibility of routine-practice evidence in light of "the danger that it may afford a basis for improper inferences [and] the likelihood that it may cause confusion or operate to unfairly prejudice the party against whom it is directed").

Before admitting evidence such as that offered by Morgan Stanley, the Court must consider whether the examples are "numerous enough" and "sufficiently regular" to be probative of the company's regular business practices. *Wilson*, 561 F.2d at 511 (internal citation and quotation marks omitted); *see also Simplex, Inc. v. Diversified Energy Sys., Inc.*, 847 F.2d 1290, 1293 (7th Cir. 1988) (discussing the need for examples with a "degree of specificity and frequency of uniform response"); *G.M. Brod & Co. v. U.S. Home Corp.*, 759 F.2d 1526, 1533 (11th Cir. 1985) (finding that "adequacy of sampling and uniformity of response are controlling considerations" in determining whether to admit this type of evidence).

Morgan Stanley seeks to introduce evidence of only one other incident in the course of dealings of a MAFCO affiliate as a basis for comparison with the CPH-Sunbeam transaction. But the party attempting to show that an organization is violating a routine practice "must show regularity over substantially all occasions or with substantially all other parties with whom [the adverse party] has had similar business transactions." *Mobil Exploration & Producing U.S., Inc. v. Cajun Constr. Servs., Inc.*, 45 F.3d 96, 100 (5th Cir. 1995); *see also United States v. West*, 22 F.3d 586, 592 (5th Cir.) (requiring a comparison of the number of allegedly deficient transactions with the total number of nondeficient transactions), *cert. denied*, 513 U.S. 1020 (1994); *Simplex*, 847 F.2d at 1294 (requiring the plaintiff to acknowledge and compare all the defendant's contracts in order to establish a routine practice). Morgan Stanley's attempt to pluck

a single, unrepresentative transaction out of context and argue that it is probative of all MAFCO-related companies' behavior in all transactions constitutes an improper attempt to confuse the issues and mislead the jury.

CONCLUSION

For the foregoing reasons, this Court should enter an Order barring Morgan Stanley from introducing at trial any evidence or argument concerning the acquisition by a MAFCO affiliate of Panavision, Inc., including any reference to negotiations, renegotiations, purchase price, or due diligence conducted in connection with that acquisition.

Dated: January 10, 2005

Respectfully submitted,

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COLEMAN (PARENT) HOLDINGS INC.

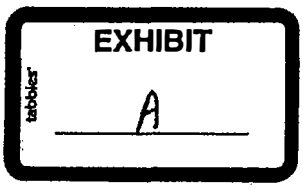
V.

MORGAN STANLEY & CO., INC.

Circuit Court of the Fifteenth Judicial Circuit, Palm Beach County, Florida

Expert Report

Arthur H. Rosenbloom
CFC Capital LLC
December, 2004



("MAFCO") harbored their own reservations about the attainability by Sunbeam of its internal projections.[8]

In light of these circumstances, it is surprising that Coleman (Parent's) savvy, well-financed, operational and financial executives and their advisors involved in the Coleman sale appear not to have undertaken any material due diligence on Sunbeam, but rather chose to rely primarily on the sales pitch made to them by Sunbeam in the meeting of February 23, 1998.

Coleman (Parent) and its MAFCO affiliate had all the people and financial resources required to perform a thorough operational and financial due diligence on Sunbeam as MAFCO did in the generally contemporaneous Panavision transaction.[9] Because the parties exchanged confidentiality agreements, that task was made easier.

---

8 Jerry Levin, who attended the third meeting on February 23, 1998 did so because he was probably in the best position to evaluate Sunbeam's business plans for Coleman (Parent), Levin TR p. 182:6-8. Mr. Levin's noted that Sunbeam's earnings per share for 1998 would likely be $1.99, Wall Street's estimate, which was less than Sunbeam was projecting in the Long Range Plan, Levin TR p. 234: 9-23, and that the earnings projected in Sunbeam's long term business plan were a stretch and not achievable. Levin TR pp. 256:1–4.

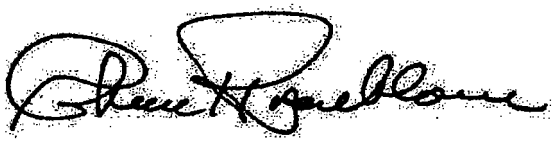
9 See deposition transcript of Glenn F. Dickes, pp. 109:22-25, 110:13-15. I am aware that MAFCO believes that rigorous due diligence was appropriate in an m&a transaction like Panavision in which it sought control and that modest due diligence was acceptable in a transaction like Sunbeam in which a minority interest, for investment purposes was obtained. Dickes TR. pp. 110:13 - 111:4, 112:14 - 114:1. In that regard, three points should be observed: (i) the Sunbeam transaction, a $2.0 billion deal was dramatically larger than most acquisitions of control; (ii) the Panavision deal, in which MAFCO's due diligence efforts resulted in a purchase price reduction, was materially smaller than the Sunbeam transaction, and that; (iii) where, as here, Coleman (Parent) received close to $800 million in Sunbeam's restricted shares and only the limited rights and powers of a minority stockholder, unable to materially impact Sunbeam's strategy or operations, prudence would have argued for a due diligence inquiry of Sunbeam by Coleman (Parent) at least as rigorous as the one employed by MAFCO in the Panavision transaction.

16div-009534

were for the protection of the Sunbeam bondholders not for the benefit of Coleman (Parent).

Respectfully submitted this 17th day of December, 2004.

CFC CAPITAL LLC



By: _____
Arthur H. Rosenbloom

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

----------X

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. No. CA 03-5045AI

MORGAN STANLEY & CO., INC.,

Defendant.

----------X

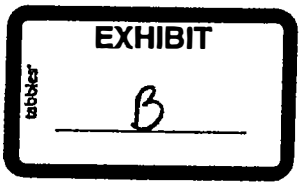
CONFIDENTIAL VIDEOTAPED DEPOSITION OF

GLENN P. DICKES

New York, New York

Thursday, November 18, 2004

Reported by:
THOMAS R. NICHOLS, RPR
JOB NO. 166744A



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million shares I think that would -- 14.1 million shares, that would make the Sunbeam stock the most valuable portion of the consideration, followed by the debt that was being assumed, followed by the cash.
Q. So did you view the value of the debt assumption to be greater than the cash?
A. Yes.
Q. Why was the debt assumption valuable to McAndrews & Forbes?
MR. BRODY: Object, foundation. Go ahead.
A. I think the debt was in the nature of $500 million. If McAndrews & Forbes no longer had to concern itself with repaying that debt, then McAndrews & Forbes achieved a valuable benefit.
Q. And you would value that at 500 million?
A. Whatever the value, whatever the amount of the debt was at the time, which I think I recollect being in the neighborhood of 500 million.
Q. At the time did McAndrews & Forbes have the ability to secure more debt?

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MR. BRODY: No. Let's take a step back because we're kind of mixing things here. You're talking about the entire entity?
MR. PHAIR: Yes. And I'll go back to the distinctions we talked about earlier.
MR. BRODY: OK.
Q. At the time of the transaction did the Mafco entities as we've defined them have the ability to secure more debt?
MR. BRODY: And by secure more debt you mean go out and negotiate more or do they have unused lines, or what's the question?
MR. PHAIR: If they had the ability to go out and secure more debt.
MR. BRODY: Object to the form.
A. I think the answer is yes.
Q. What was your understanding of McAndrews & Forbes' debt position at the time of the transaction?
MR. BRODY: I guess I object to the form. I don't know what you mean by debt position. Are you asking what the --
MR. PHAIR: Fair enough.

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MR. BRODY: What lines they had?
MR. PHAIR: Fair enough.
Q. Sir, you were in charge of managing McAndrews & Forbes' debt; is that correct?
A. No, that's not correct. The chief financial officer is in charge of managing McAndrews & Forbes' financial affairs, including its cash needs, its borrowing needs.
I had principal responsibility in a lawyer's capacity for seeing to it that transactions for borrowed funds were negotiated and documented, complied with.
Q. Let me also ask you with the form of the transaction, was there anyone within McAndrews & Forbes who was advocating taking more cash as opposed to more stock?
MR. BRODY: This is the Coleman/Sunbeam transaction?
MR. PHAIR: Yes.
A. I don't know.
Q. Were you involved in the negotiation of the deal at all?
A. No.
Q. Were you aware of McAndrews & Forbes simultaneously pursuing a deal with Panavision

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in early 1998?
A. Yes.
Q. And were you aware -- and as part of the -- strike that. As part of the Panavision deal McAndrews & Forbes conducted due diligence, correct?
A. Correct.
Q. And is it your understanding that McAndrews & Forbes advised the company that it would revise its price per share prior to closing as a result of information that they uncovered during due diligence?
MR. BRODY: Object to form. Foundation. Go ahead.
A. I'm sorry. McAndrews advised what company? Panavision?
Q. Yes.
A. I don't recollect.
Q. What was your involvement in the Panavision transaction?
A. I worked on the documentation of the merger and acquisition documents and worked on the financing arrangements for the transaction.
Q. Were you involved in due diligence at all?

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A. No.
Q. Do you know who was?
A. That was Maher Nesbitt. Internally, again, we're talking about principal responsibility or lead responsibility, Maher Nesbitt as well as a good team of associates at Skadden Arps.
Q. Skadden Arps was outside counsel on that?
A. Was representing McAndrews in its proposed transaction with Panavision.
Q. Oh, OK, so for Panavision you used Skadden instead of Wachtell?
A. Yes.
Q. Do you know what they did for due diligence on the Panavision transaction?
MR. BRODY: Who is they?
MR. PHAIR: The due diligence team.
Let me rephrase that.
Q. Do you know what the due diligence team did to conduct due diligence on Panavision?
A. I don't know quite what you mean by did. But I understood the due diligence group to make a rather exhaustive investigation of Panavision.

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Q. Would you say that the investigation that was done on Panavision was more exhaustive than what was done on Sunbeam?
MR. BRODY: Object, lacks foundation.
MR. PHAIR: Let me rephrase.
Q. Do you know whether the investigation that was done on the Panavision transaction, which you characterize as exhaustive, was any more or less exhaustive than on the Sunbeam transaction?
MR. BRODY: Same objection. You can answer.
A. Significantly more due diligence on Panavision than on Sunbeam. To the best of my knowledge.
Q. Why was that?
A. Well, McAndrews was going to at the conclusion of the Panavision transaction own I think approximately 92 percent of the outstanding stock of Panavision and was intending to essentially operate Panavision with a view toward hopefully substantially enhancing value over some period of time for itself and the minority public stockholders in Panavision.
Whereas in the Sunbeam transaction

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McAndrews was simply going to be, while having a large economic stake, was going to be a minority stockholder in a company that other people were managing and operating.
Q. Are you aware as a result of the exhaustive due diligence that McAndrews & Forbes did on the Panavision transaction that they uncovered information that McAndrews & Forbes used to revise its price for Panavision?
MR. BRODY: Object to form. Asked and answered.
You can answer.
A. I don't know specifically.
Q. What specific due diligence was done on the Panavision transaction that was not done on Sunbeam?
MR. BRODY: Objection. Foundation.
A. I don't know.
Q. Are you aware of McAndrews & Forbes doing anything with regard to due diligence on the Panavision transaction that it did not do on the Sunbeam transaction?
MR. BRODY: Same question, same objection.
A. To the best of my knowledge, I think I

Page 113

am repeating myself at this point, McAndrews did a substantially more detailed investigation of Panavision than it did of Sunbeam.
But that's to the best of my knowledge. I cannot offer up any specifics because I myself was not directly involved in either of the due diligence efforts.
Q. Well, what facts support your belief that the due diligence done on the Panavision transaction was much more exhaustive than on the Sunbeam transaction?
A. I testified a few minutes ago to the fact that McAndrews took an altogether different view of an acquisition in the nature of the Panavision acquisition than it took an acquisition in the nature of the Sunbeam acquisition.
In fact, I wouldn't even -- I think it's a mischaracterization to call what McAndrews did with Sunbeam an acquisition. I mean, clearly, McAndrews acquired 14.1 million shares, but it was not an acquisition. It was an investment. It was part of the basket of payments or consideration for an asset which McAndrews sold.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

PLAINTIFF'S MOTION IN LIMINE (NO. 14) TO BAR EVIDENCE AND ARGUMENT THAT THE "COMFORT LETTERS" REFERRED TO IN THE PUBLIC MERGER AGREEMENT OR THE HOLDINGS MERGER AGREEMENT INCLUDE THE MARCH 19, 1998 AND MARCH 25, 1998 COMFORT LETTERS

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") hereby moves this Court for an Order barring Defendant Morgan Stanley & Co. Inc. ("Morgan Stanley") from introducing any evidence or argument that the "comfort letters" referred to in the Public Merger Agreement (involving Sunbeam and Coleman) or the Holdings Merger Agreement (involving Sunbeam and CPH) include the March 19, 1998 and March 25, 1998 "comfort letters" that Arthur Andersen prepared for Morgan Stanley in connection with Morgan Stanley's underwriting of Sunbeam's subordinated debenture offering. *See* Ex. A, Dep. Ex. CPH 17 (the "March 19 letter"); Ex. B, Dep. Ex. CPH 112 (the "March 25 letter").

Based on arguments and issues that Morgan Stanley has attempted to raise and develop during discovery, CPH expects that Morgan Stanley may seek to argue at trial that the Public Merger Agreement, Ex. C, and the Holdings Merger Agreement, Ex. D, gave CPH the specific, express right to obtain the March 19 and March 25 comfort letters that Arthur Andersen provided to Morgan Stanley — letters which show the collapse in Sunbeam's performance in the first quarter of 1998. But the Public Merger Agreement and the Holdings Merger Agreement refer

not to the March 19 and March 25 comfort letters, but rather to entirely different comfort letters that did not exist and could not have existed before the March 30, 1998 closing. The Court should thus bar Morgan Stanley from confusing the issues and misleading the jury (as it has attempted to do with certain witnesses at deposition) by arguing that the "comfort letters" referred to in the Public Merger Agreement or the Holdings Merger Agreement, which could not have existed before the March 30 closing, are the March 19 and March 25 letters that Arthur Andersen provided to Morgan Stanley.

ARGUMENT

No evidence is admissible at trial unless it is relevant — that is, it must be "evidence tending to prove or disprove a material fact." FLA. STAT. ANN. § 90.401 (West 2004); *see also* CHARLES W. EHRHARDT, FLORIDA EVIDENCE § 401.1, at 116-23 (2004 ed.). Even relevant evidence is inadmissible if "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence." FLA. STAT. ANN. § 90.403; *see also* EHRHARDT, FLORIDA EVIDENCE, *supra*, § 403.1, at 161-73. Under those standards, the Court should bar evidence that would confuse the comfort letters expressly referred to in the Public Merger Agreement or in the Holdings Merger Agreement with the entirely different comfort letters of March 19 and 25, 1998.

Morgan Stanley misreads both the Public Merger Agreement and the Holdings Merger Agreement. The Holdings Merger Agreement permitted CPH to request that Sunbeam provide it with a comfort letter from Sunbeam's accountants "in connection with a sale of Registerable Securities by or through an underwriter." *See* Ex. D, at Exhibit A § 2.4(a)(12) ("Registration Rights Agreement"). But CPH's shares were subject to a "lock-up" clause, which provided that CPH could not dispose of any of its shares for "three (3) months following the Holdings

Effective Time." *Id.* § 7.1, at 19. As a result, the earliest possible date on which CPH could seek a comfort letter was June 30, 1998 — long after the March 30, 1998 closing. Obviously, then, this contractual comfort-letter provision does not refer to the comfort letters that Morgan Stanley obtained from Arthur Andersen on March 19 and March 25, 1998.

With respect to the Public Merger Agreement, an important threshold problem is that CPH was not a party to this agreement. The agreement was between Coleman and Sunbeam, and CPH therefore could not have obtained any "rights" through it. But even setting that problem aside, the agreement does not confer any specific right to obtain the March 19 and March 25, 1998 comfort letters. Section 7.3(b) of the Public Merger Agreement provided that Coleman was entitled to request that Sunbeam provide it with a comfort letter from Sunbeam's accountants "dated the date on which the Registration Statement shall become effective and as of the date on which the Information Statement is mailed to the Company's stockholders." Ex. C, § 7.3(b), at 29. The undisputed evidence is that the Registration Statement to which Section 7.3(b) refers became effective on December 6, 1999, and that Coleman distributed its Information Statement the next day, on December 7, 1999 — more than a year and a half after Morgan Stanley received the March 19 and March 25, 1998 comfort letters from Andersen. *See id.* § 4.9, at 17 (defining the "Information Statement" as "the information statement to be distributed in connection with the Company Merger," and defining the "Registration Statement" as the "registration statement on Form S-4 under the Securities Act for the purpose of registering the shares of Laser Common Stock to be issued in the Company Merger"). Although Coleman mailed a document entitled "Information Statement" to its public shareholders on March 18, 1998, *see* Ex. E, Dep. Ex. MS 130 (Information Statement Pursuant to Section 14(f) of the Securities Exchange Act of 1934), that plainly is not the same "Information Statement" to which Section 7.3(b) refers. When

pressed on this issue after its misleading use of Section 7.3 with certain witnesses at deposition, Morgan Stanley itself admitted that the March 18, 1998 Information Statement "is not the 'Information Statement' referred to in Section 7.3(b) of the Public Merger Agreement." *See* Ex. F, MS's Inc. Resp. and Objections to CPH's 3rd Set of Req. for Admis., Resp. #1. Again, it is undisputed that the Public Merger Agreement refers to entirely different comfort letters, not the letters Morgan Stanley obtained from Andersen on March 19 and March 25.

The construction of the merger agreements is a complex matter, and one that Morgan Stanley has explored with a number of witnesses in depositions. Significantly, no witness has agreed with Morgan Stanley's assertion that the merger agreements themselves gave CPH the contractual right to obtain the March 19 and March 25 comfort letters. Even Morgan Stanley's expert on this topic has not opined that the merger agreement gave CPH that right. To permit Morgan Stanley to continue to pursue this improper argument would serve no purpose other than to confuse the jury.

In sum, neither the Holdings Merger Agreement nor the Public Merger Agreement mentioned the March 19 and March 25 comfort letters. These agreements referred instead to different comfort letters issued long after the ones provided to Morgan Stanley on March 19 and 25. Morgan Stanley should not be allowed to confuse the jury by suggesting otherwise.

CONCLUSION

For the foregoing reasons, this Court should enter an Order barring Morgan Stanley from introducing any evidence or argument that the "comfort letters" referred to in the Public Merger Agreement or the Holdings Merger Agreement include the March 19, 1998 and March 25, 1998 "comfort letters" that Arthur Andersen prepared for Morgan Stanley in connection with Morgan Stanley's underwriting of Sunbeam's subordinated debenture offering.

Dated: January 10, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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16div-009543

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 10th day of _____, 2005.

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

CASE NO: CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.
_____/

MORGAN STANLEY & CO. INCORPORATED'S RESPONSES AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC.'S THIRD SET OF REQUESTS FOR ADMISSION

Defendant Morgan Stanley & Co. Incorporated ("MS & Co."), by its attorneys and pursuant to Florida Rule of Civil Procedure 1.370, hereby responds and objects to Coleman (Parent) Holdings Inc.'s ("CPH") Third Set of Requests for Admission.

INITIAL OBJECTIONS

1. MS & Co. objects to CPH's Third Set of Requests for Admission, including all Definitions, to the extent that they purport to impose upon MS & Co. any requirements that exceed or are otherwise inconsistent with the Florida Rules of Civil Procedure or any other applicable rule or court order.

2. MS & Co. objects to CPH's Third Set of Requests for Admission to the extent that they seek information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable privilege, doctrine, immunity or rule.

EXHIBIT
tabbies
F

3. MS & Co. objects to the definition of "Morgan Stanley" to the extent that it includes MS & Co.'s counsel in this litigation and entities not a party to this action. Specifically, MS & Co. interprets these definitions to exclude Kirkland & Ellis LLP, Carlton Fields, P.A., Kellogg Huber, Hansen, Todd & Evans, PLLC and affiliates, parents, and others not a party to this action.

4. MS & Co. objects to the Requests for Admission as unduly burdensome, abusive, and vexatious, since many of them are duplicative and constitute an unnecessary waste of time and concern factual allegations uniquely within the possession of CPH, MAFCO, or third parties, which could be confirmed with less expense and burden on the parties through other techniques of discovery.

5. MS & Co. incorporates, as though fully set forth therein, these General Objections into each of the Responses set forth below.

RESPONSES

1. The Section 14(f) Information Statement is not the "Information Statement" referred to in Section 7.3(b) of the Public Merger Agreement.

RESPONSE: Admitted.

2. The Coleman Company, Inc. notice of Merger and Appraisal Rights and Information Statement is the "Information Statement" referred to in Section 7.3(b) of the Public Merger Agreement.

RESPONSE: Admitted

3. The "Information Statement" referred to in Section 7.3(b) of the Public Merger Agreement was mailed to Coleman's stockholders on or about December 7, 1999.

RESPONSE: Morgan Stanley has made reasonable inquiry into the documents and information in its possession, however, Morgan Stanley lacks information or knowledge sufficient to answer this request, and therefore denies this request.

4. The Sunbeam Form S-4 is the "Registration Statement" referred to in Section 7.3(b) of the Public Merger Agreement.

RESPONSE: Admitted.

5. The "Registration Statement" referred to in Section 7.3(b) of the Public Merger Agreement became effective on December 6, 1999.

RESPONSE: Morgan Stanley has made reasonable inquiry into the documents and information in its possession, however, Morgan Stanley lacks information or knowledge sufficient to answer this request, and therefore denies this request.

6. As of March 30, 1998, CLN Holdings' debt consisted solely of the CLN Holding Notes.

RESPONSE: Morgan Stanley has made reasonable inquiry into the documents and information in its possession, however, Morgan Stanley lacks information or knowledge sufficient to answer this request, and therefore denies this request.

7. The consideration paid to CPH in connection with Sunbeam's acquisition of CPH's interest in Coleman did not include Sunbeam's assumption of Coleman's debt.

RESPONSE: Denied.

8. The consideration paid to CPH in connection with Sunbeam's acquisition of CPH's interest in Coleman did not include Sunbeam's assumption of Coleman Worldwide's debt.

RESPONSE: Denied.

9. The Long-Tem Debt reflected in CLN Holdings' 1997 consolidated financial statements consists of CLN Holding debt, Coleman Worldwide debt, and Coleman debt.

RESPONSE: Morgan Stanley has made reasonable inquiry into the documents and information in its possession, however, Morgan Stanley lacks information or knowledge sufficient to answer this request, and therefore denies this request.

10. In exchange for its interest in Coleman, CPH received consideration consisting solely of (a) $159,958,756; [sic] (b) 14,099,749 shares of Sunbeam stock; and (3) the assumption of the CLN Holdings Notes.

RESPONSE: Denied.

11. CPH Exhibit 9 is a true and correct copy of the "Sunbeam Corporation Discussion Materials' provided to CPH on or about February 23, 1998.

RESPONSE: Admitted.

12. Morgan Stanley prepared CPH Exhibit 9.

RESPONSE: Morgan Stanley denies that it "prepared" CPH Exhibit 9. Morgan Stanley admits that Sunbeam provided Morgan Stanley certain information contained in Exhibit 9, that other information in Exhibit 9 was obtained from public records, and that Morgan Stanley assisted Sunbeam in the formatting and organization of such information.

13. CPH Exhibit 187A is a true and correct copy of the "Sunbeam Long Range Strategic Plan" provided to CPH on or about February 23, 1998.

RESPONSE: Admitted.

14. Morgan Stanley was involved in the preparation of CPH Exhibit 187A.

RESPONSE: Denied.

15. Morgan Stanley received one or more drafts of the March 19, 1998 comfort letter before the March 19, 1998 press release was issued.

RESPONSE: Denied.

16. On March 17, 1998, Morgan Stanley received at least one draft of the March 19, 1998 comfort letter.

RESPONSE: Denied.

17. On March 18, 1998, Morgan Stanley received at least one draft of the March 19, 1998 comfort letter

RESPONSE: Denied.

18. Before the March 19, 1998 press release was issued, Morgan Stanley knew that Sunbeam's sales in January and February 1998 were $72,018,000.

RESPONSE: Denied.

19. Before the March 19, 1998 press release was issued, Morgan Stanley knew that Sunbeam's net income for January 1998 was a loss of $9,510,000.

RESPONSE: Denied.

20. Before the March 19, 1998 press release was issued, Morgan Stanley knew that Sunbeam's sales shortfall was caused by Sunbeam's "early buy" program.

RESPONSE: Denied.

21. The February 23, 1998 Letter was not signed by or on behalf of Coleman.

RESPONSE: Denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 13th day of September, 2004.

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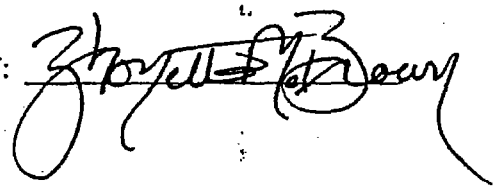
BY: 

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

CASE NO.: 2003 CA 005045 AI

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,
_____/

COLEMAN (PARENT) HOLDINGS INC.'S TRIAL EXHIBIT LIST

Plaintiff, Coleman (Parent) Holdings Inc. ("CPH") hereby submits its Trial Exhibit List, which is attached hereto as Exhibit A. In connection with its Trial Exhibit List, CPH reserves its rights as follows:

1. In addition to the documents set forth on the attached Trial Exhibit List, CPH reserves its right to use additional exhibits that it identifies in connection with the ongoing expert discovery.

2. CPH reserves its right to use at trial duplicate copies and/or original versions of any of the documents listed on the attached Trial Exhibit List.

3. CPH reserves its right to use additional documents at trial that are not contained on its exhibit list for purposes of cross-examination and/or rebuttal.

4. CPH reserves the right to use and/or introduce at trial any proposed trial exhibit identified by Morgan Stanley.

5. CPH reserves its right to submit and introduce summary documents based upon the information included in documents identified in the attached Trial Exhibit List or in the documents identified as exhibits by Morgan Stanley, as well as demonstrative exhibits.

6. By listing documents on the attached Trial Exhibit List, CPH is not conceding the relevance, foundation, and/or admissibility of any of those documents. CPH reserves the right not to offer at trial any of its proposed trial exhibits identified in the attached list. In compiling the attached list, CPH endeavored to identify and disclose documents that it may use to rebut arguments that might be advanced by Morgan Stanley at trial. Furthermore, CPH identified documents on the attached Trial Exhibit List subject to the Court's upcoming decisions on the pending motions in limine.

I HEREBY CERTIFY that a true and correct copy of the foregoing and its attachment has been sent by Federal Express and facsimile to the individuals of the attached service list on this 10th day of January, 2005.

Dated: January 10, 2005

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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Coleman Holdings, Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Exhibit List

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EXHIBIT A

CPH TRIAL EXHIBIT LIST
Coleman (Parent) Holdings v. Morgan Stanley

CPH Trial Ex. #	Dep. Ex. #.	BATES RANGE	Def. Objection
001	CPH Ex. 002	N/A	
002	CPH Ex. 003	MSC 0080435 - 0080437	
003	CPH Ex. 004	MSC 0031171 - 0031176	
004	CPH Ex. 005	MSC 0031177 - 0031220	
005	CPH Ex. 006	MSC 0080438 - 0080439	
006	CPH Ex. 009	CP 026286 - 026370	
007	CPH Ex. 010	CP 033169 - 033240	
008	CPH Ex. 011	SASMF 10699 - 10705	
009	CPH Ex. 012	CPH 0012526 - 0012527	
010	CPH Ex. 013	CPH 0635991 - 0635992	
011	CPH Ex. 014	MSC 0016944 - 0016945	
012	CPH Ex. 015	N/A	
013	CPH Ex. 016	MSC 0028858	
014	CPH Ex. 017	MS 00375 - 00381	
015	CPH Ex. 018	CPH 0015111 - 0015113	
016	CPH Ex. 019	CPH 0125693 - 0125698	
017	CPH Ex. 020	CPH 0129292 - 0129296	
018	CPH Ex. 021	CPH 0062489 - 0062733	
019	CPH Ex. 022	CPH 0084462 - 0084532	
020	CPH Ex. 023	CPH 1184885 - 1184905	
021	CPH Ex. 024	DPW 000001 - 000002	
022	CPH Ex. 025	N/A	
023	CPH Ex. 026	CPH 1412961 - 1413007	
024	CPH Ex. 027	MS 01560	
025	CPH Ex. 028	N/A	
026	CPH Ex. 029	MSC 0080440 - 0081556	
027	CPH Ex. 030	CPH 1122102 - 1122103	
028	CPH Ex. 031	CPH 0635893	
029	CPH Ex. 032	CPH 0635894 - 0635895	
030	CPH Ex. 033	MSC 0029176	
031	CPH Ex. 034	CPH 0520973 - 0520974	

CPH TRIAL EXHIBIT LIST
Coleman (Parent) Holdings v. Morgan Stanley

CPH Trial Ex. #	Dep. Ex. #.	BATES RANGE	Def. Objection
032	CPH Ex. 035	CPH 1257351	
033	CPH Ex. 036	CPH 0639323 - 0639327	
034	CPH Ex. 037	MSC 0045317 - 0045318	
035	CPH Ex. 038	MSC 0041766 - 0041858	
036	CPH Ex. 039	CPH 0322353 - 0322354	
037	CPH Ex. 040	CPH 043025	
038	CPH Ex. 041	CPH 0305634	
039	CPH Ex. 042	SB 047885	
040	CPH Ex. 043	SB 074537	
041	CPH Ex. 044	CPH 0281904 - 0281905	
042	CPH Ex. 045	CPH 318209 - 0318211	
043	CPH Ex. 046	CPH 0465217 - 0465220	
044	CPH Ex. 047	CPH 0465213 - 0465216	
045	CPH Ex. 048	CPH 0465209 - 0465212	
046	CPH Ex. 049	CPH 0282128 - 0282135	
047	CPH Ex. 050	CPH 0507461 - 0507465	
048	CPH Ex. 051	CPH 0286990 - 0286993	
049	CPH Ex. 052	CPH 0280722	
050	CPH Ex. 053	CPH 0507527 - 0507531	
051	CPH Ex. 054	CPH 0281413 - 0281414	
052	CPH Ex. 055	CPH 0281412	
053	CPH Ex. 056	CPH 0291685 - CPH 0291730	
054	CPH Ex. 057	CPH 0131143 - 0131148	
055	CPH Ex. 058	SB 050134 - 050144	
056	CPH Ex. 059	SB 050136	
057	CPH Ex. 060	SB 050145 - 050146	
058	CPH Ex. 061	CPH 0284977 - 0285008	
059	CPH Ex. 062	CPH 0283484	
060	CPH Ex. 063	CPH 0287277 - 0287281	
061	CPH Ex. 064	MSC 0028423	
062	CPH Ex. 065	CPH 0088703	

CPH TRIAL EXHIBIT LIST
Coleman (Parent) Holdings v. Morgan Stanley

CPH Trial Ex. #	Dep. Ex. #.	BATES RANGE	Def. Objection
063	CPH Ex. 066	CPH 0038717	
064	CPH Ex. 067	CPH 0063827 - 0063833	
065	CPH Ex. 068	MSC 0003995 - 0004001	
066	CPH Ex. 069	MSC 0003894 - 0003930	
067	CPH Ex. 070	SB 237825 - 237830	
068	CPH Ex. 071	MSC 0005984 - 0005995	
069	CPH Ex. 072	MSC 0064865 - 0064866	
070	CPH Ex. 073	CPH 0586913 - 0586914	
071	CPH Ex. 074	MSC 0080356 - 0080358	
072	CPH Ex. 075	SB 0018202 - 0018288	
073	CPH Ex. 076	MSC 0025829 - 0025886	
074	CPH Ex. 077	CPH 1046497	
075	CPH Ex. 078	MSC 0039543	
076	CPH Ex. 080	CPH 0465134	
077	CPH Ex. 081	MSC 0036393 - 0036395	
078	CPH Ex. 081-A	N/A	
079	CPH Ex. 082	CPH 0469477 - 0469581	
080	CPH Ex. 083	N/A	
081	CPH Ex. 084	MSC 0033255 - 033263	
082	CPH Ex. 084-A	N/A	
083	CPH Ex. 085	MSC 0036347 - 0036349	
084	CPH Ex. 086	MSC 0045112 - 0045113	
085	CPH Ex. 087	MSC 0035967 - 0035968	
086	CPH Ex. 088	MSC 0031791 - 0031799	
087	CPH Ex. 089	MSC 0083960 - 0084026	
088	CPH Ex. 090	CPH 1332631 - 1335633	
089	CPH Ex. 091	N/A	
090	CPH Ex. 092	MSC 0003389 - 0003415	
091	CPH Ex. 093	N/A	
092	CPH Ex. 094	N/A	
093	CPH Ex. 095	MSC 0036112 - 0036113	

CPH TRIAL EXHIBIT LIST
Coleman (Parent) Holdings v. Morgan Stanley

CPH Trial Ex. #	Dep. Ex. #.	BATES RANGE	Def. Objection
094	CPH Ex. 096	CPH 0472488 - 0472496	
095	CPH Ex. 097	MSC 0033910 - 0033911	
096	CPH Ex. 098	CPH 0482089 - 0482098	
097	CPH Ex. 099	N/A	
098	CPH Ex. 100	MSC 0062860 - 0062896	
099	CPH Ex. 101	CPH 0062693 - 0062697	
100	CPH Ex. 102	CPH 0062688 - 0062691	
101	CPH Ex. 103	CPH 0062672 - 0062677	
102	CPH Ex. 104	CPH 0062685 - 0062686	
103	CPH Ex. 105	CPH 0062606 - 0062610	
104	CPH Ex. 106	CPH 1192163 - 1192164	
105	CPH Ex. 107	CPH 0013023 - 0013027	
106	CPH Ex. 107	CPH 0013023 - 0013027	
107	CPH Ex. 108	CPH 1056006 - 1056010	
108	CPH Ex. 109	CPH 0129926 - 0129936	
109	CPH Ex. 110	CPH 0038670 - 0038676	
110	CPH Ex. 111	CPH 0038670 - 0038676	
111	CPH Ex. 112	CPH 0129613 - 0129616	
112	CPH Ex. 113	CPH 0129271 - 129275	
113	CPH Ex. 114	MSC 0027048 - 0027050	
114	CPH Ex. 115	CPH 0038700 - 0038706	
115	CPH Ex. 116	CPH 1070004 - 10070070	
116	CPH Ex. 117	CPH 0038523 - 0038524	
117	CPH Ex. 118	CPH 0041649	
118	CPH Ex. 119	CPH 0021362 - 0015113	
119	CPH Ex. 120	CPH 0012522 - 0012524	
120	CPH Ex. 121	CPH 1145796	
121	CPH Ex. 122	CPH 0039327, CPH 0038707	
122	CPH Ex. 123	CPH 0021365 - 0021368	
123	CPH Ex. 124	CPH 0012464 - 0012466	
124	CPH Ex. 125	MSC 0004673 - 0004702	

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CPH Trial Ex. #	Dep. Ex. #.	BATES RANGE	Def. Objection
125	CPH Ex. 127	CPH 0021365 - 0021367	
126	CPH Ex. 128	MSC 0029199 - 0029201	
127	CPH Ex. 129	MSC 000513 - 000541	
128	CPH Ex. 130	CPH 0251869 - 0251889	
129	CPH Ex. 131	CPH 0251890 - 0251985	
130	CPH Ex. 132	CPH 0636135 - 0636136	
131	CPH Ex. 133	MSC 0059244 - 0059266	
132	CPH Ex. 134	CPH 0146910 - 00146913	
133	CPH Ex. 135	MSC 0063735 - 0063804	
134	CPH Ex. 138	CPH 1411216 - 1411300	
135	CPH Ex. 139	MSC 0026540 – 0026544	
136	CPH Ex. 140	CPH 0483399 - 483407	
137	CPH Ex. 141	CPH 0483341 - 483350	
138	CPH Ex. 142	CPH 0253547 - 0253555	
139	CPH Ex. 143	CPH 1026942 - 1026953	
140	CPH Ex. 144	MSC 0016944	
141	CPH Ex. 145	MSC 0028214 - 0028271	
142	CPH Ex. 146	MSC 0080325 - 0080333	
143	CPH Ex. 147	CPH 0324856 - 0324887	
144	CPH Ex. 148	MSC 0047892	
145	CPH Ex. 150	CPH 0470006 - 04700016	
146	CPH Ex. 151	MSC 0065651 - 0065784	
147	CPH Ex. 152	LAB 000043	
148	CPH Ex. 154	CPH 1258265 - 1258266	
149	CPH Ex. 155	CPH 1346133 - 1346250	
150	CPH Ex. 156	CPH 1346276 - - 1346342	
151	CPH Ex. 157	MSC 0018702 - - 0018703	
152	CPH Ex. 158	CPH 1392612	
153	CPH Ex. 159	CPH 1392696	
154	CPH Ex. 160	MSC 0003143	
155	CPH Ex. 162	MSC 0026888 - 0026891	

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CPH Trial Ex. #	Dep. Ex. #.	BATES RANGE	Def. Objection
156	CPH Ex. 163	MSC 0080427 - 0080430	
157	CPH Ex. 164	MSC 0045133 - 0045139	
158	CPH Ex. 169	MSC 0044556 - 0044573	
159	CPH Ex. 170	MSC 0042538 - 0042540	
160	CPH Ex. 171	N/A	
161	CPH Ex. 172	MSC 44462	
162	CPH Ex. 173	MSC 0043129	
163	CPH Ex. 174	MSC 0042570	
164	CPH Ex. 175	N/A	
165	CPH Ex. 176	N/A	
166	CPH Ex. 179	CPH 0635892 - 0635895	
167	CPH Ex. 181	MSC 0006284 - 0006335	
168	CPH Ex. 182	MSC 0004703 - 0004723	
169	CPH Ex. 184	N/A	
170	CPH Ex. 187	MSC 0041870 - 0041888	
171	CPH Ex. 187-A	CP 0254621 - 0254640	
172	CPH Ex. 188	CPH 1408952 - 1408956	
173	CPH Ex. 189	CPH 0642933 - 0642937	
174	CPH Ex. 190	N/A	
175	CPH Ex. 191	CP 0483415 - 0483418	
176	CPH Ex. 192	N/A	
177	CPH Ex. 193	CPH 1418971 - 1418974	
178	CPH Ex. 194	N/A	
179	CPH Ex. 195	MSC 0040237 - 0085613	
180	CPH Ex. 198	MSC 0026589 - 0026651	
181	CPH Ex. 199	N/A	
182	CPH Ex. 200	CPH 0472360 - 0472361	
183	CPH Ex. 202	MSC 0003931	
184	CPH Ex. 203	MSC 0042314 - 0042327	
185	CPH Ex. 205	MSC 0004005	
186	CPH Ex. 206	CPH 0648779 - 0648791	

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CPH Trial Ex. #	Dep. Ex. #.	BATES RANGE	Def. Objection
187	CPH Ex. 207	CPH 0471614 - 0471629	
188	CPH Ex. 209	CPH 1348404 - 1348475	
189	CPH Ex. 210	CPH 0632981	
190	CPH Ex. 211	CPH 0633012 - 0633049	
191	CPH Ex. 213	MSC 0029159 - 0029162	
192	CPH Ex. 216	CPH 0632906 - 0632937	
193	CPH Ex. 217	MSC 0045665 - 0045758	
194	CPH Ex. 217A	MSC 0080431- 0080434	
195	CPH Ex. 218	MSC 0004724 - 004728	
196	CPH Ex. 218-A	MSC 0045760 - 0045761	
197	CPH Ex. 219	MSC 0036347 - 0036349	
198	CPH Ex. 220	CPH 0467090 - 0467126	
199	CPH Ex. 221	MSC 0045474 - 0045475	
200	CPH Ex. 222	MSC 0003431 - 0003464	
201	CPH Ex. 223	MSC 0042482 - 0042483	
202	CPH Ex. 224	N/A	
203	CPH Ex. 225	CPH 0147626 - 0147627	
204	CPH Ex. 228	MSC 0085750 - 0085751	
205	CPH Ex. 229	MSC 0085763 - 0085765	
206	CPH Ex. 230	CPH 0635890 - 0635891	
207	CPH Ex. 231	CPH 1398266 - 1398501	
208	CPH Ex. 232	MSC 0085589 - 0085609	
209	CPH Ex. 236	CPH 1121203 - 1121259	
210	CPH Ex. 237	CSFBC 0001623 - 0001648	
211	CPH Ex. 238	CPH 1412552 - 1412570	
212	CPH Ex. 239	CPH 1416194 - 1416213	
213	CPH Ex. 240	CPH 1121275 - 1121332	
214	CPH Ex. 241	N/A	
215	CPH Ex. 242	MSC 0045156	
216	CPH Ex. 245	MSC 0043210	
217	CPH Ex. 246	CPH 0473192 - 0473193	

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CPH Trial Ex. #	Dep. Ex. #.	BATES RANGE	Def. Objection
218	CPH Ex. 249	MSC 0036633 - 0036634	
219	CPH Ex. 253	CPH 1409707 - 1409979	
220	CPH Ex. 254	N/A	
221	CPH Ex. 255	MSC 0045317 - 0045318	
222	CPH Ex. 256	MSC 0019097	
223	CPH Ex. 259	CPH 0488021 - 0488026	
224	CPH Ex. 260	CPH 0485371 - 0485376	
225	CPH Ex. 261	MSC 0024383 - 0024451	
226	CPH Ex. 264	MSC 0024863	
227	CPH Ex. 265	MSC 0024864 - 0024866	
228	CPH Ex. 267	CLN 11731 - 11749	
229	CPH Ex. 268	CLN 11768 - 11782	
230	CPH Ex. 269	CLN 11783 - 11790	
231	CPH Ex. 270	CLN 11791 - 11801	
232	CPH Ex. 271	CLN 11802 - 11814	
233	CPH Ex. 272	CPH 0473148 - 0473165	
234	CPH Ex. 273	MSC 0023225 - 0023229	
235	CPH Ex. 274	MSC 0054921 - 0054925	
236	CPH Ex. 275	MSC 0001575 - 0001579	
237	CPH Ex. 276	CPH 0251099 - 0251122	
238	CPH Ex. 278	MSC 0036700 - 0036720	
239	CPH Ex. 279	MSC 006375 - 006432	
240	CPH Ex. 281	MSC 0059244 - 0059266	
241	CPH Ex. 282	N/A	
242	CPH Ex. 283	CPH 1258269	
243	CPH Ex. 284	MSC 0025887	
244	CPH Ex. 286	MSC 0095550 - 0095551	
245	CPH Ex. 287	MSC 0002572 - 0002586	
246	CPH Ex. 295	MSC 0059312 - 59314	
247	CPH Ex. 296	MSC 0059295 - 59311	
248	CPH Ex. 300	MSC 0024863 - 24864	

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CPH Trial Ex. #	Dep. Ex. #.	BATES RANGE	Def. Objection
249	CPH Ex. 301	MSC 0029198	
250	CPH Ex. 305	MSC 0036457	
251	CPH Ex. 306	MSC 0028209	
252	CPH Ex. 308	MSC 0085403 - 85419	
253	CPH Ex. 309	MSC 0085420 - 85435	
254	CPH Ex. 310	MSC 0085436 - 85452	
255	CPH Ex. 311	MSC 0085453 - 85471	
256	CPH Ex. 314	SASMF 19645 - 19687	
257	CPH Ex. 316	MSC 0027052 - 27086	
258	CPH Ex. 325	CPH 1352836 - 1352838	
259	CPH Ex. 326	MSC 0050370	
260	CPH Ex. 327	MSC 0058876 - 0058877	
261	CPH Ex. 328	MSC 0067374 - 0067381	
262	CPH Ex. 329	CPH 1349725 - 1349727	
263	CPH Ex. 330	CPH 1352801 - 1352808	
264	CPH Ex. 331	MSC 0089539 - 0089572	
265	CPH Ex. 332	MSC 0111941 - 0111942	
266	CPH Ex. 333	MSC 0111576 - 0111795	
267	CPH Ex. 334	N/A	
268	CPH Ex. 335	MSC 01074*	
269	CPH Ex. 336	MSC 0113*	
270	CPH Ex. 337	MSC 0111*	
271	CPH Ex. 338	MSC 01053*	
272	CPH Ex. 339	MSC 01054*	
273	CPH Ex. 340	MSC 0111943	
274	CPH Ex. 341	N/A	
275	CPH Ex. 342	CPH 1030777 - 1030839	
276	CPH Ex. 343	N/A	
277	CPH Ex. 344	N/A	
278	CPH Ex. 360	MSC 0096879 - 0096972	
279	CPH Ex. 361	N/A	

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280	CPH Ex. 362	MSC 0102880 - 0102905	
281	CPH Ex. 363	MSC 0102906 - 0103063	
282	CPH Ex. 364	MSC 0103064 - 0103156	
283	CPH Ex. 365	MSC 0103157 - 0103220	
284	CPH Ex. 366	MSC 0103221 - 0103433	
285	CPH Ex. 367	MSC 0111944 - 0111962	
286	CPH Ex. 368	CPH 0632487 - 0632615	
287	CPH Ex. 369	MSC 0027995 - 0028017	
288	CPH Ex. 370	MSC 0074548	
289	CPH Ex. 371	MSC 0085403 - 85419	
290	CPH Ex. 372	MSC 0085420 - 85435	
291	CPH Ex. 373	MSC 0085436 - 85452	
292	CPH Ex. 374	MSC 0085453 - 85471	
293	CPH Ex. 375	MSC 0085472 - 85493	
294	CPH Ex. 376	MSC 0094016 - 94018	
295	CPH Ex. 377	N/A	
296	CPH Ex. 378	N/A	
297	CPH Ex. 379	CPH 1042288 - 1042317	
298	CPH Ex. 380	CPH 0485991 - 0485993	
299	CPH Ex. 382	N/A	
300	CPH Ex. 383	MSC 0080440	
301	CPH Ex. 384	SASMF 19645 - 19692	
302	CPH Ex. 385	SASMF 19691 - 19692	
303	CPH Ex. 386	CPH 0246430 - 50	
304	CPH Ex. 387	CPH 1026835 - 36	
305	CPH Ex. 388	CPH 1241513 - 1241514	
306	CPH Ex. 389	CPH 1393262 - 63	
307	CPH Ex. 390	CPH 1433301 - 2	
308	CPH Ex. 391	SASMF 19637 - 44	
309	CPH Ex. 392	MSC 0008011 - 008066	
310	CPH Ex. 393	MSC 0014766 - 0014775	

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CPH Trial Ex. #	Dep. Ex. #.	BATES RANGE	Def. Objection
311	MS Ex. 011	MSC 0016944 - 0016945	
312	MS Ex. 013	MSC 0027828 - 0027829	
313	MS Ex. 017	CPH 0100203 - 0100207	
314	MS Ex. 031	CPH 0041641 - 0041648	
315	MS Ex. 032	CPH 0041650 - 0041661	
316	MS Ex. 036	CPH 0021819	
317	MS Ex. 039	CPH 1075408	
318	MS Ex. 040	MSC 0000001 - 0000175	
319	MS Ex. 048	CPH 0041655 - 0041661	
320	MS Ex. 058	CPH 0639323 - 0639327	
321	MS Ex. 074	CPH 1351678 - 1351680	
322	MS Ex. 075	CPH 1401525 - 1401534	
323	MS Ex. 076	CPH 140748 - 1407318	
324	MS Ex. 079	CPH 0467007	
325	MS Ex. 080	CPH 1426289 - 1426296	
326	MS Ex. 081	CPH 1421814 - 1421817	
327	MS Ex. 082	CPH 1406962 - 1406964	
328	MS Ex. 083	CPH 1427250 - 1427253	
329	MS Ex. 085	CPH 1411216 - 1411300	
330	MS Ex. 088	CPH 0634056 - 0634064	
331	MS Ex. 093	MS 0007947 - 0008010	
332	MS Ex. 101	CPH 1421213 - 1421219	
333	MS Ex. 104	CPH 2000144 - 2000149	
334	MS Ex. 105	CPH 1426299 - 1426303	
335	MS Ex. 106	CPH 1425922 - 1425931	
336	MS Ex. 107	CPH 2000086 - 2000095	
337	MS Ex. 112	CPH 1401219 - 1401238	
338	MS Ex. 113	CPH 0634065 - 0634075	
339	MS Ex. 115	MSC 0063805 - 0063811	
340	MS Ex. 117	MSC 0008011 - 0008066	
341	MS Ex. 118	CPH 0634065 - 034085	

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CPH Trial Ex. #	Dep. Ex. #.	BATES RANGE	Def. Objection
342	MS Ex. 120	CPH 100750 - 1400752	
343	MS Ex. 133	CPH 0642925 - 064932	
344	MS Ex. 134	CPH 0642925 - 0642932	
345	MS Ex. 137	CPH 1427533 - 142739	
346	MS Ex. 138	CPH 1327714 - 1327721	
347	MS Ex. 144	CPH 1392480 - 1392484	
348	MS Ex. 166	CPH 1326487 - 1326662	
349	MS Ex. 169	MSC 1402232 - 1402235	
350	MS Ex. 173	MSC 0033256 - 0033263	
351	MS Ex. 175	CPH 0482090 - 0482098	
352	MS Ex. 182	CPH 1412533 - 1412551	
353	MS Ex. 185	CPH1406920 - 1406938	
354	MS Ex. 188	CPH 1316960 - 131962	
355	MS Ex. 189	CPH 1399821 - 1399822	
356	MS Ex. 202	CPH 0468457 - 0468462	
357	MS Ex. 204	CPH 1393144 - 1393147	
358	MS Ex. 210	CPH 1395046	
359	MS Ex. 212	CPH 1393266 - 1393268	
360	MS Ex. 213	CPH 1393266 - 1393268	
361	MS Ex. 214	CPH 1393472 - 1393478	
362	MS Ex. 216	CPH 1393262 - 1393263	
363	MS Ex. 218	CPH 1397652	
364	MS Ex. 219	CPH 1401579 - 1401583	
365	MS Ex. 220	CPH 1267964 - 1267969	
366	MS Ex. 230	CPH 1121260 - 1121271	
367	MS Ex. 233	CPH 1328300 - 1328301	
368	MS Ex. 237	CPH 1325251 - 1144565	
369	MS Ex. 241	CPH 1107884 - 1108079	
370	MS Ex. 277	CPH 1433908 - 1433911	
371	MS Ex. 278	CPH 1094218 - 1094235	
372	MS Ex. 280	CPH 1085101 - 1085124	

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CPH Trial Ex. #	Dep. Ex. #.	BATES RANGE	Def. Objection
373	MS Ex. 281	DPW 0035621 - 0035636	
374	MS Ex. 282	N/A	
375	MS Ex. 307	CPH 1421212 - 1421219	
376	MS Ex. 318	CPH 1408945 - 1408947	
377	MS Ex. 329	CSFBC 0001623 - 0001641	
378	MS Ex. 338	CPH 1350174 - 1350175	
379	MS Ex. 340	WLRK 0010284 - 0010288	
380	MS Ex. 354	CPH 2005706	
381	MS Ex. 355	CPH 1278481 - 1278484	
382	MS Ex. 356	CPH 1120684 - 1120704	
383	MS Ex. 374	WLRK 0003018 - 0003020	
384	MS Ex. 375	DPW 0014137 - 0014140	
385	MS Ex. 520	MSC 007544 - 0007773	
386	MS Ex. 522	CPH 0642890 - 0642891	
387	MS Ex. 543	CPH 0467615	
388	MS Ex. 551	CPH 2011624 - 2011647	
389	MS Ex. 553	CPH 2010695	
390	MS Ex. 564	WLRK 0028233 - 0028235	
391	MS Ex. 565	WLRK 0028230 - 0028232	

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CPH Trial Ex. #	BATES RANGE	Def. Objection
392	BA 01072 - 01105	
393	BA 01106 - 01108	
394	BA 01109 - 01115	
395	BA 01116 - 01118	
396	BA 01124 - 01128	
397	BA 01129	
398	BA 01137	
399	BA 01142 - 01146	
400	BA 01154 - 01158	
401	BA 01165 - 01168	
402	BA 01170 - 01171	
403	BA 01175	
404	BA 01176 - 01177	
405	BA 01183 - 01185	
406	BA 01187 - 01190	
407	BA 01196 - 01200	
408	BA 01201 - 01204	
409	BA 01205 - 01208	
410	BA 01210	
411	BA 01222 - 01223	
412	BA 01230	
413	BA 01239 - 01241	
414	BA 01244 - 01270	
415	BA 01288 - 01289	
416	BA 01328 - 01329	
417	BA 01330 - 01332	
418	BA 01333 - 01334	
419	BA 01337 - 01339	
420	BA 01355 - 01385	
421	BA 01388 - 01389	
422	BA 01393 - 01394	

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423	BA 01399 - 01400	
424	BA 01401 - 01402	
425	BA 01403 - 01405	
426	BA 01406	
427	BA 01407	
428	BA 01417 - 01418	
429	BA 01422 - 01424	
430	BA 01425 - 01431	
431	BA 01434 - 01470	
432	CLN 43510 - 43515	
433	CPH 0003569 - 00003624	
434	CPH 0004988 - 0004991	
435	CPH 0011845 - 0011906	
436	CPH 0012762 - 0012934	
437	CPH 0021370 - 0021372	
438	CPH 0038539 - 0038544	
439	CPH 0145503 - 0145505	
440	CPH 0247313 - 0247317	
441	CPH 0249613	
442	CPH 0251076 - 0251098	
443	CPH 0287279	
444	CPH 0291847 - 0291849	
445	CPH 0306588 - 0306589	
446	CPH 0324025 - 0324073	
447	CPH 0324549	
448	CPH 0324558	
449	CPH 0361142 - 0361148	
450	CPH 0361149 - 0361155	
451	CPH 0461409 - 0461584	
452	CPH 0466399 - 0466401	
453	CPH 0466948 - 0466949	

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CPH Trial Ex. #	BATES RANGE	Def. Objection
454	CPH 0466948 - 0466949	
455	CPH 0468421	
456	CPH 0468623 - 0468625	
457	CPH 0468652 - 0468653	
458	CPH 0472409 - 0472439	
459	CPH 0472533 - 0472535	
460	CPH 0473148 - 0473165	
461	CPH 0476310 - 0476314	
462	CPH 0484931 - 0484932	
463	CPH 0501599 - 0501616	
464	CPH 0586585 - 0586587	
465	CPH 0586586 - 0586587	
466	CPH 0595107 - 0595109	
467	CPH 0626464 - 0626490	
468	CPH 0634024 - 0634025	
469	CPH 1028971 - 1028973	
470	CPH 1039208	
471	CPH 1059072 - 1059074	
472	CPH 1059632 - 1059633	
473	CPH 1059641	
474	CPH 1121260	
475	CPH 1125110 - 1125111	
476	CPH 1125112 - 1125114	
477	CPH 1125115 - 1125117	
478	CPH 1125122 - 1125123	
479	CPH 1125139 - 1125142	
480	CPH 1233505 - 1233507	
481	CPH 1257094 - 1257113	
482	CPH 1267992 - 1267993	
483	CPH 1278476 - 1278479	
484	CPH 1279118 - 1279122	

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CPH Trial Ex. #	BATES RANGE	Def. Objection
485	CPH 1279605 - 1279606	
486	CPH 1287455 - 1287469	
487	CPH 1326304 - 1326476	
488	CPH 1327729 - 1327738	
489	CPH 1351621 - 1351624	
490	CPH 1352691	
491	CPH 1352836 - 01352838	
492	CPH 1391707 - 1391879	
493	CPH 1392529	
494	CPH 1392532 - 1392533	
495	CPH 1393269	
496	CPH 1393270 - 1393271	
497	CPH 1393699 - 1393700	
498	CPH 1407297 - 1407305	
499	CPH 1407306 - 1407314	
500	CPH 1407315 - 1407318	
501	CPH 1411173 - 1411177	
502	CPH 1415366 - 1415373	
503	CPH 1415380 - 1415399	
504	CPH 1415463 - 1415464	
505	CPH 1415568 - 1415573	
506	CPH 1415595 - 1415597	
507	CPH 1415600 - 1415605	
508	CPH 1416183	
509	CPH 1417337 - 1317342	
510	CPH 1424595 - 1424598	
511	CPH 2008292 - 2008303	
512	CPH0075281 - 0075282	
513	CPH0485872 - 0485877	
514	FUNB 004328 - 004331	
515	FUNB 004334 - 004577	

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CPH Trial Ex. #	BATES RANGE	Def. Objection
516	FUNB 005949 - 005952	
517	FUNB 005958 - 005961	
518	FUNB 009344 - 009347	
519	FUNB 009348 - 009351	
520	FUNB 009352 - 009355	
521	FUNB 009858 - 009862	
522	FUNB 009880	
523	FUNB 009909 - 009911	
524	FUNB 010440 - 010559	
525	FUNB 017913 - 017916	
526	FUNB 017917 - 017920	
527	FUNB 017921 - 017924	
528	FUNB 018298 - 018302	
529	FUNB 019200 - 019201	
530	FUNB 019298 - 019299	
531	FUNB 019660 - 019666	
532	FUNB 021900 - 22250	
533	MSC 0020157 - 0020167	
534	MSC 0020169 - 0020181	
535	MSC 0020183 - 0020193	
536	MSC 0020195 - 0020200	
537	MSC 0020202 - 0020257	
538	MSC 0020259 - 0020266	
539	MSC 0020268 - 0020274	
540	MSC 0020276 - 0020281	
541	MSC 0020283 - 0020288	
542	MSC 0020290 - 0020296	
543	MSC 0020298 - 0020303	
544	MSC 0020305 - 0020319	
545	MSC 0020321 - 0020355	
546	MSC 0020357 - 0020369	

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CPH Trial Ex. #	BATES RANGE	Def. Objection
547	MSC 0020371 - 0020377	
548	MSC 0020379 - 0020401	
549	MSC 0054028 - 0054033	
550	MSC 0054034 - 0054045	
551	MSC 0054046 - 0054060	
552	MSC 0059743 - 0059750	
553	MSC 0059753 - 0059758	
554	MSC 0059760 - 0059770	
555	MSC 0059772 - 0059789	
556	MSC 0061818 - 0061823	
557	MSC 0061825 - 0061830	
558	MSC 0061832 - 0061837	
559	MSC 0061839 - 0061844	
560	MSC 0077479 - 0077679	
561	MSC 0083964	
562	MSC 0084026	
563	MSC 0092355 - 0092356	
564	MSC 0095882 - 0095958	
565	MSC 0095983 - 0096020	
566	MSC 0111985	
567	MSC 0111986 - 0112000	
568	MSC 0112001 - 0112015	
569	MSC 0112016 - 0112032	
570	MSC 0112033 - 0112050	
571	MSC 011983 - 011984	
572	WLRK 0004578 - 0004749	

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CPH Trial Ex. #	Description	Date	Def. Objection
573	Complaint (CPH v. MS)	05/08/2003	
574	MSSF Complaint vs. CPH	05/12/2003	
575	MSSF/MS Notice of Voluntary Dismissal of MSSF suit vs. MS	10/22/2004	
576	[MS] Morgan Stanley & Co., Incorporated's Responses and Objections to Coleman (Parent) Holdings Inc.'s First Set of Interrogatories	10/06/2003	
577	[MS] Morgan Stanley & Co., Inc.'s Responses and Objections to Coleman (Parent) Holdings Inc.'s First Set of Requests for Admission	10/27/2003	
578	[MS] Morgan Stanley & Co. Incorporated's Responses and Objections to Coleman (Parent) Holdings Inc.'s Second Set of Interrogatories [CONFIDENTIAL]	12/01/2003	
579	[CPH] Response to MS's Fourth Set of Interrogatories	02/20/2004	
580	[CPH] Response to Morgan Stanley & Co. Inc.'s Second Set of Requests for Admission	03/17/2004	
581	[CPH] Amended Response to MS's Fourth Set of Interrogatories	04/21/2004	
582	[MS] Response and Objections to CPH 's 03/19 Contempt Interrogatories	06/16/2004	
583	[MS] Morgan Stanley's Supplemental Answers and Objections to CPH 's 03/19 Contempt Interrogatories	06/29/2004	
584	[MS] Morgan Stanley's Response to Coleman (Parent) Holdings Inc.'s Further Interrogatories Concerning Its Motion for Contempt	06/30/2004	
585	[MS] Response and Objections to CPH 's Second Set of Requests for Admissions.	08/05/2004	
586	[MS] Responses and Objections to Third Request For Admissions	09/13/2004	
587	[MS] Response and Objections to CPH 's Fourth Requests for Admission	09/15/2004	
588	[MS] Amended Responses and Objections to CPH 's Second Set of Interrogatories	10/25/2004	
589	[MS] Responses and Objections to CPH 's Fifth Set of Interrogatories	10/25/2004	
590	[MS] Responses and Objections to CPH 's Fourth Set of Interrogatories	10/25/2004	
591	[MS] Written Responses to Rule 1.310 Topics (re fees)	10/29/2004	
592	[MS] Objections to Seventh Set of Interrogatories (re: Coleman Escrow Zero Coupon Bonds)	11/04/2004	

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CPH Trial Ex. #	Description	Date	Def. Objection
593	[MS] Objections to CPH 's Eighth Set of Interrogatories to Morgan Stanley & Co. (Seeking compliance with MSSF discovery, post-dismissal)	11/04/2004	
594	[MS] Answers to CPH 's Sixth Set of Interrogatories	11/10/2004	
595	[MS] Response and Objections to CPH 's Fifth Request for Admissions	11/10/2004	
596	[MS] Written Responses to Rule 1.310 Topics (re fees)	11/16/2004	
597	[MS] Written Responses to Rule 1.310 Topics (re fees)	11/19/2004	
598	[MS] Responses & Objections to CPH 's Sixth Set of Requests for Admissions (re: document authentication)	11/22/2004	
599	[MS] Responses and Objections to CPH 's Seventh Set of Interrogatories	11/23/2004	
600	[CPH] Response to MS's Fifth Set of Interrogatories	11/24/2004	
601	[MS] Written Response to Rule 1.310 Inquiry (re: Loan History)	12/02/2004	
602	[CPH] Amended Supplemental Response to MS's Fifth Set of Interrogatories	12/22/2004	
603	[CPH] Supplemental Responses to Interrogatory No. 4 and No. 6 of Morgan Stanley & Co. Inc.'s Second Set of Interrogatories	12/24/2004	
604	[CPH] Supplemental Responses to Morgan Stanley & Co. Inc.'s First Set of Interrogatories	12/24/2004	
605	[MS] Supplemental Answers to CPH's First Set of Interrogatories	12/24/2004	
606	[MS] Supplemental Response to CPH's Second Set of Interrogatories	12/24/2004	
607	Expert Report of Blaine Nye	12/07/2004	
608	Expert Report of Douglas Emery	12/07/2004	
609	Expert Report of Michael Gillfillan	12/07/2004	
610	Expert Report of Michael Wagner	12/07/2004	
611	Expert Report of Samuel Kursh	12/07/2004	
612	Expert Report of William Horton, dated 12/7/2004	12/07/2004	
613	Expert Report of Professor Mark Grinblatt	12/17/2004	
614	Expert Report of William Horton (REBUTTAL)	12/17/2004	
615	Expert Report of Blaine Nye (REBUTTAL)	12/28/2004	
616	Expert Report of Michael Wagner (PUNITIVE DAMAGES)	12/28/2004	
617	Expert Report of Michael Wagner (REBUTTAL)	12/28/2004	
618	Expert Report of William Horton (REBUTTAL)	12/28/2004	

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CPH Trial Ex. #	Description	Date	Def. Objection
619	Prudential Research Report	06/23/1997	
620	Paine Webber Research Report	07/28/1997	
621	HFN: Sunbeam in Pruning: New Chief Replaces Second in Command	07/29/1996	
622	New York Times: For Struggling Sunbeam, Shock Therapy	08/11/1996	
623	Charleston Gazette: Morgan Stanley Settles Investment Suit	08/15/1996	
624	Miami Herald: New Chairman Mixing In	08/20/1996	
625	Palm Beach Post: Are you Tough Enough to Handle Straight Talk from 'Rambo in Pinstripes'?; Cutting through the Bull with Al Dunlap	10/20/1997	
626	Palm Beach Post: Sunbeam's Shine: Sales Jump 25%	10/23/1997	
627	Bloomberg: Sunbeam Has 4th Quarter Profit on Higher Sales, New Products	01/28/1998	
628	Bloomberg: Sunbeam Acquires Three Publicly Traded Consumer Products: Coleman, Signature Brands and First Alert	03/02/1998	
629	Business Wire: Investors Sue Morgan Stanley for Fraud In Connection with Collapse of $120 Million Hedge Fund	03/11/1998	
630	Bloomberg: Sunbeam Corp. Cut to 'Neutral' at Paine Webber	04/03/1998	
631	Bloomberg: Sunbeam Says' 1st Qtr Sales Fell, Fires Executive	04/03/1998	
632	New York Times: A Warning by Sunbeam Stuns Wall St.	04/04/1998	
633	Bloomberg: Sunbeam Cut to 'Market Perform' at Goldman Sachs	04/06/1998	
634	Bloomberg: Sunbeam Cut to 'Neutral' at Bear Stearns	04/06/1998	
635	Sun-Sentinel: Reality Pays a Tough Call on Sunbeam; Purchases Hurt Profits, Stock Price	04/12/1998	
636	Bloomberg: Sunbeam Accused of Masking Sales with 4th Quarter Grill Promotion	04/23/1998	
637	Bloomberg: Sunbeam Reports 1st Quarter Results; Expects 1998 EPS in $1.00	05/11/1998	
638	Bloomberg: Class Action Suit Filed Against Sunbeam Corp. and its Officers	05/15/1998	
639	Bloomberg: Sunbeam Expects Barbeque Grill Sales to Decline in 2nd Qtr.	05/15/1998	
640	Bloomberg: Notice of Filing of Class Action Against Sunbeam	05/22/1998	
641	Bloomberg: Sunbeam Shares Keep Falling, Below Price When Dunlap Arrived	06/19/1998	

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CPH Trial Ex. #	Description	Date	Def. Objection
642	Bloomberg: Sunbeam to Review 1997 Statements and May Restate Results	06/30/1998	
643	St. Petersburg Times: How $8 Million Just Slipped Away	05/16/1999	
644	Sunday Business: Morgan rouble fund sparks $275m suit	01/16/2000	
645	Dow Jones Business News: Sunbeam Seeks Bankruptcy Protection; Hopes to Emerge Within Nine Months	02/06/2001	
646	Los Angeles Times: Morgan Stanley to Pay $23 Million in Bond Case Courts: Settlement is Called a major victory for accident victims whose trust funds had allegedly been looted and depleted	06/29/2001	
647	AP Newswires: Investors Who Lost $24 Million Pleading Case to NYSE Panel	05/28/2002	
648	St. Petersburg Times: Business Today	08/30/2002	
649	St. Petersburg Times: Morgan Agrees to $500,000 SEC Fine	10/02/2002	
650	Tampa Tribune: Morgan Stanley Pays For Broker's Loss	10/02/2002	
651	Dow Jones Corp. Filings Alert: Sunbeam Creditor Panel Says Plan is 'Doomed to Fail'	10/04/2002	
652	Wall Street Journal: Wall Street Fines May Top $1B; Citigroup, CSFB are facing biggest penalties in probe of research practices	11/22/2002	
653	Wall Street Journal: Morgan Stanley Faces Questions on Lost Records Its Clients Need	11/29/2002	
654	Wall Street Journal: NY's Spitzer Lambastes Cos Destruction of Email Records	12/04/2002	
655	Wall Street Journal: IPO 'Laddering' Case Expands; SEC notifies Morgan Stanley that it could face civil charges over its handling of stock sales	02/26/2003	
656	Wall Street Journal: Morgan Stanley is informed by SEC it may face charges	04/14/2003	
657	Wall Street Journal: Evidence In Wall Street Settlement; references various MS emails	04/29/2003	

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CPH Trial Ex. #	Description	Date	Def. Objection
658	Miami Herald: Firefighters Accuse Company of 'Looting' Trust	07/08/2003	
659	New York Times: Morgan Stanley is Accused of Improper Sale Incentives	08/12/2003	
660	New York Times: Market Place; Morgan Stanley Seeks to Change Basis for Award in a Stock Case	08/21/2003	
661	Financial Times: Morgan Stanley hit by $2m fine	09/17/2003	
662	Palm Beach Post: Panel Rules in Favor of Investor	10/04/2003	
663	Wall Street Journal: SEC Could Sanction Morgan Stanley	10/15/2003	
664	Washington Post: U.S. Readies New Fund Complaint; Morgan Stanley to Join Others in Widening Probe	11/15/2003	
665	New York Times: Morgan Stanley is Said to be Ready to Settle with SEC	11/17/2003	
666	Wall Street Journal: Freddie Inquiry Snares Wall Street; Morgan Stanley, Citigroup Face Scrutiny by Regulators for Roles in Transactions	11/18/2003	
667	Washington Post: Morgan Stanley Settles with SEC, NASD; Firm Accused of Failing to Disclose Funds' Payments	11/18/2003	
668	McGraw-Hill Companies: Morgan Stanley, Meet the Irate Investor	12/01/2003	
669	Orlando Sentinel : Arbitrators Award Woman $198,000 For Investment Losses Panel: Morgan Stanley Brokers Invested Her Savings Into the Company's Risky, High-Commission Mutual Funds	12/06/2003	
670	Wall Street Journal: Singapore Investor Wins $250,000 in Research Case	12/22/2003	
671	New York Times: Morgan Stanley ordered to pay LVMH in suit over research	01/13/2004	
672	Wall Street Journal: French Court Fines Morgan Stanley, Saying it Issued Biased Reports on LVMH to Boost Rival Gucci	01/13/2004	
673	Wall Street Journal: SEC Probes Practice of Firms Getting Paid to Tout Investments; a Look at Who does What	01/14/2004	
674	Wall Street Journal: SEC Readies Case on Mutual Funds' Deals with Brokers	01/14/2004	

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CPH Trial Ex. #	Description	Date	Def. Objection
675	Wall Street Journal: Why your Broker Is Pushing that Fund	01/14/2004	
676	AP: Reports - Parmalat Probe Widens to Bank	02/10/2004	
677	Reuters: Seven Banks Probed in Parmalat Scandal	02/10/2004	
678	Wall Street Journal: NASD Disciplines Firms, Individuals	02/25/2004	
679	Dow Jones Business News: Parmalat Seeks as Much as EUR500 Million from US Banks	03/05/2004	
680	Wall Street Journal: MFS to Pay $50 Million in SEC Case; Regulators also consider action against Edward D. Jones & Co. As Mutual-fund Probe Widens	03/31/2004	
681	Wall Street Journal: Bond Research Facing Probes Over Conflicts	04/05/2004	
682	Wall Street Journal: Morgan Stanley Could Face Action by Washington State	05/11/2004	
683	Reuters: NASD Fines 3 Big Wall Street Banks $15M	05/18/2004	
684	Wall Street Journal: Morgan Stanley to Face Civil Charges for Sales Incentives	06/18/2004	
685	Wall Street Journal: Ahead of the Tape, Today's Market Forecast: MS 'beating analyst estimates handily when they report earnings today'	06/22/2004	
686	Wall Street Journal: Firms Close in on Settlement of IPO Inquiry; Goldman Sachs, MS Agree to Pay $40M Each After Accusations of 'Laddering'	06/22/2004	
687	Wall Street Journal: NASD Settles Overcharge Claims; Merrill Lynch, UBs Among Firms to Pay fines and Make Restitution	06/30/2004	
688	Wall Street Journal: Morgan Stanley, SEC in Talks	07/14/2004	
689	Wall Street Journal: What's News In Business and Finance	10/22/2004	
690	Miami Herald: Bankers May Be Key in Parmalat Case	11/23/2004	
691	Wall Sreet Journal: Moving the Market: Claim Says Morgan Stanley Got Kickbacks to Push Some Products	01/07/2005	
692	Five Firms to Pay over $8 Million to Resolve SEC, SRO Charges Over Retention of E-Mails	12/09/2002	
693	NASD Charges Over Fund Sales Contests	09/22/2003	
694	Court Approves $1.4B Settlement of Charges Against Wall Street Analysts	11/10/2003	

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CPH Trial Ex. #	Description	Date	Def. Objection
695	Morgan Stanley Agrees to Pay $50 Million to Settle Charges Over Mutual Fund Sales	11/24/2003	
696	Morgan Stanley France Fined 30 Million Euro for Biased Analysis	01/19/2004	
697	NYSE Disciplines Seven Firms, Six Individuals in Latest Enforcement Round	03/01/2004	
698	Fund Manager MFS Settles SEC Charges Over Nondisclosure of Payments, Pays $50M	04/05/2004	
699	Bear Sterns, Deutche Bank, Morgan Stanley Settle NASD IPO Charges	05/24/2004	
700	Eight Broker-Dealers Settle NASD Charges They Underpaid Customers for Their Bonds	07/05/2004	
701	Citigroup, Merrill, Morgan Stanley Settle NASD Discovery-Failure Charges	07/26/2004	
702	Morgan Stanley Agrees to $2.2M Fine, New Broker Ban Over Late Data Reporting	08/02/2004	
703	NYSE Morgan Stanley to Pay $19M Over NYSE Supervisory, Operational Claims	09/27/2004	
704	Morgan Stanley Fined $100K; Settles NASD Charges Over Muni Bond Disclosures	12/13/2004	
705	Arthur Rosenbloom: Due Diligence for Global Deal Making: The Definitive Guide to Cross-Border Mergers and Acquisitions, Joint Ventures, Financings, and Strategic Alliances (Bloomberg Press 2002)	00/00/2002	
706	CPC International v. McKesson Corp (70 N.Y.2d 268)	09/15/1987	
707	In re Union Carbide Corporation Consumer Products Business Securities Litigation (718 F.Supp. 1099)	07/13/1989	
708	Morgan Stanley v. Texas Oil Company (958 S.W.2d 178)	01/16/1998	
709	Crowell v. Morgan Stanley Dean Witter Servs., Co. (87 F. Supp. 2d 1287 (S.D. Fla. 2000))	01/27/2000	
710	Morgan Stanley v. New England Insurance (225 F.3d 270)	09/12/2000	
711	Twin Fires Investment v. Morgan Stanley (2002 WL 31875204)	12/16/2002	
712	Harold Hicks v. Morgan Stanley (2003 WL 21672085 (S.D.N.Y.))	07/16/2003	
713	PPI Enterprises v. Del Monte Foods Company v. W.R. Huff Asset Management Co. (2003 WL 22118977 (S.D.N.Y.))	09/11/2003	
714	In re Global Crossing (313 F.Supp.2d 189)	12/22/2003	
715	Fogarazzo v. Lehman Bros. (341 F. Supp. 2d 274 (S.D.N.Y. 2004))	05/21/2004	

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CPH Trial Ex. #	Description	Date	Def. Objection
716	Breakaway Solutions v. Morgan Stanley (2004 WL 1949300 (Del.Ch.))	08/27/2004	
717	Shah v. Morgan Stanley (03 Civ. 8761)	10/19/2004	
718	Rosenbloom Report from Gotham v. Hallwood	03/13/2003	
719	NASD Regulation Fines Morgan Stanley $35,000 and Orders $80,000 in Restitution for Failure to Give Best Execution	03/00/1998	
720	NASD Regulation Sanctions Morgan Stanley and Seven Traders	05/00/1998	
721	Morgan Stanley & Co., Inc. submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined $40,000	09/00/1999	
722	NASD's National Adjudicatory Councell Fines Morgan Stanley, Inc. $495,000 for Manipulation and Locked and Crossed Markets; Fines Firm Traders	02/00/2000	
723	The American Stock Exchange, NASD Regulation, and the New York Stock Exchange Jointly Fine Morgan Stanley & Co. Incorporated $200,000	01/00/2001	
724	Morgan Stanley submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined $20,000	05/00/2001	
725	Morgan Stanley submitted a Letter of Acceptance, Waiver and Consent In which the firm was censured and fined $22,500; $25,500	05/00/2002	
726	Ten of Nation's Top Investment Firms Settle Enforcement Actions Involving Conflicts of Interest Between Reasearch and Investment Banking	06/00/2003	
727	NASD Fines Morgan Stanley $2 Million for Prohibited Mutual Fund Sales Contests; Managing Director of Firm's Retail Sales Force Also Fined for Supervisory Violations	10/00/2003	
728	NASD Charges Morgan Stanley with Giving Preferential Treatment to Certain Mutual Funds in Exchange for Brokerage Commission Payments	12/00/2003	
729	Morgan Stanley submitted a Letter of Acceptance, Waiver and Consent In which the firm was censured, fined $25,000, and required to prepare and implement new procedures	01/00/2004	
730	Eight Brokerage Firms Pay over $610,000 to Settle NASD Charges of Municipal Price Violations	07/00/2004	
731	NASD Sanctions Investment Banks for IPO Violations Bear Stearns, Deutsche Bank and Morgan Stanley to Pay Over $15 Million	07/00/2004	
732	NASD Fines Citigroup, Merrill Lynch, and Morgan Stanley a Total of $750,000 for Failing to Comply with Discovery Obligations in Arbitrations	08/00/2004	
733	NASD Fines Morgan Stanley $2.2 Million for Late Reporting, Firm Temporarily Suspended from Registering New Brokers	08/00/2004	

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CPH Trial Ex. #	Description	Date	Def. Objection
734	NASD Fines Morgan Stanley $100,000 for Municipal Bond Disclosure Violations	12/00/2004	
735	NASD BrokerCheck Report re: Morgan Stanley	01/07/2005	
736	Exchange Hearing Panel Decision 99-135	09/23/1999	
737	Exchange Hearing Panel Decision 00-166	09/28/2000	
738	Exchange Hearing Panel Decision 02-223	11/15/2002	
739	Exchange Hearing Panel Decision 03-69	04/22/2003	
740	Exchange Hearing Panel Decision 03-224	12/18/2003	
741	Exchange Hearing Panel Decision 04-66	04/27/2004	
742	Ehling v. Morgan Stanley	03/04/1998	
743	Bear Sterns v. Morgan Stanley Dean Witter	09/28/1998	
744	Blattman v. Morgan Stanley Dean Witter	08/13/1999	
745	Liloia v. Morgan Stanley Dean Witter	08/08/2001	
746	Consalvo v. Morgan Stanley Dean Witter	06/18/2002	
747	Bauer v. Morgan Stanley Dean Witter	08/14/2002	
748	Giuliano v. Morgan Stanley Dean Witter	10/25/2002	
749	Freed v. Morgan Stanley Dean Witter	12/11/2002	
750	Kohanim v. Morgan Stanley Dean Witter	12/19/2002	
751	Gonzalez v. Morgan Stanley Dean Witter	01/27/2003	
752	Cone v. Morgan Stanley	02/20/2003	
753	Monninger v. Morgan Stanley Dean Witter	03/24/2003	
754	Aufses v. Morgan Stanley	05/16/2003	
755	Hatchitt v. Morgan Stanley Dean Witter	06/25/2003	
756	Hoover v. Morgan Stanley	10/16/2003	
757	Anderson v. Morgan Stanley Dean Witter	10/23/2003	
758	Phillippi v. Morgan Stanley Dean Witter	10/29/2003	
759	Henochowicz v. Morgan Stanley Dean Witter	11/13/2003	
760	Arena v. Morgan Stanley Dean Witter	11/21/2003	
761	Marshall Realty v. Morgan Stanley Dean Witter	12/03/2003	
762	Alber v. Morgan Stanley Dean Witter	12/05/2003	
763	Martin-Hume v. Morgan Stanley	12/10/2003	

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CPH Trial Ex. #	Description	Date	Def. Objection
764	Bomer v. Morgan Stanley	12/11/2003	
765	Marshall v. Morgan Stanley Dean Witter	03/19/2004	
766	Wiedemann v. Morgan Stanley Dean Witter	04/01/2004	
767	Quality Mold, Inc. v. Morgan Stanley Dean Witter	04/29/2004	
768	Pasymowski v. Morgan Stanley Dean Witter	05/14/2004	
769	Douglas Trust v. Morgan Stanley Dean Witter	05/21/2004	
770	Goldin v. Morgan Stanley Dean Witter	06/21/2004	
771	Gordon v. Morgan Stanley Dean Witter	06/24/2004	
772	Knight v. Morgan Stanley Dean Witter	07/06/2004	
773	Caris v. Morgan Stanley Dean Witter	07/14/2004	
774	Lee v. Morgan Stanley Dean Witter	07/25/2004	
775	Curenton v. Morgan Stanley Dean Witter	11/03/2004	
776	Adams v. Morgan Stanley Dean Witter	11/24/2004	
777	Gardner v. Morgan Stanley Dean Witter	11/29/2004	
778	NYSE Daily Stock Price Record for Coleman Inc. (January 1996-March 1996)	03/00/1996	
779	NYSE Daily Stock Price Record for Coleman (April 1996-June 1996)	06/00/1996	
780	NYSE Daily Stock Price Record for Coleman (July 1996-September 1996)	09/00/1996	
781	NYSE Daily Stock Price Record for Coleman (October 1996-December 1996)	12/00/1996	
782	NYSE Daily Stock Price Record for Coleman (January 1997-March 1997)	03/00/1997	
783	NYSE Daily Stock Price Record for Sunbeam Corporation (January 1997-March 1997)	03/00/1997	
784	NYSE Daily Stock Price Record for Coleman (April 1997-June 1997)	06/00/1997	
785	NYSE Daily Stock Price Record for Sunbeam Corporation (April 1997-June 1997)	06/00/1997	
786	NYSE Daily Stock Price Record for Coleman (July 1997-September 1997)	09/00/1997	
787	NYSE Daily Stock Price Record for Sunbeam Corporation (July 1997-September 1997)	09/00/1997	
788	NYSE Daily Stock Price Record for Coleman (October 1997-December 1997)	12/00/1997	

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CPH Trial Ex. #	Description	Date	Def. Objection
789	NYSE Daily Stock Price Record for Sunbeam Corporation (October 1997-December 1997)	12/00/1997	
790	NYSE Daily Stock Price Record for Coleman (January 1998-March 1998)	03/00/1998	
791	NYSE Daily Stock Price Record for Sunbeam Corporation (January 1998-March 1998)	03/00/1998	
792	NYSE Daily Stock Price Record for Coleman (April 1998-June 1998)	06/00/1998	
793	NYSE Daily Stock Price Record for Sunbeam Corporation (April 1998-June 1998)	06/00/1998	
794	NYSE Daily Stock Price Record for Sunbeam Corporation (July 1998-September 1998)	09/00/1998	
795	NYSE Daily Stock Price Record for Sunbeam Corporation (October 1998-December 1998)	12/00/1998	
796	Adversary (SB Bankruptcy) Proceeding: Amended Complaint	09/06/2001	
797	Adversary (SB Bankruptcy) Proceeding: MS Memo in Support of Motion to Dismiss Amended Complaint	10/01/2001	
798	Adversary (SB Bankruptcy) Proceeding: MS Reply in Further Support of Motion to Dismiss Amended Complaint	11/09/2001	
799	Adversary (SB Bankruptcy) Proceeding: Memorandum Decision Granting Motions to Dismiss Amended Complaint	10/18/2002	
800	Complaint (MS v. AA)	03/01/2004	
801	Amended Complaint (MS v. AA)	08/06/2004	
802	Opinion of Justice Jack Jacobs (re fair value of CLN) (Delaware Appraisal action)	09/08/2004	
803	In re Worldcom decision	12/15/2004	
804	SEC News Digest, Enforcement Proceedings in the Matter of Dean Witter Reynolds Inc., File No. 3-10905, 2002 WL 10535496	10/02/2002	
805	Press Release, Moet Hennessy Louis Vuitton ("LVMH"), Paris Commercial Court establishes principle of analyst independence as requested by LVMH; Upholds LVMH's Claims Against Morgan Stanley available at http://www.lvmh.com.	01/12/2004	
806	Fourth Quarter Earnings Press Release (MS)	12/21/2004	
807	SEC Cease and Desist Order	05/15/2001	

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CPH Trial Ex. #	Description	Date	Def. Objection
808	In re Deutche Bank Securities, Inc., Goldman, Sachs & Co., Morgan Stanley & Co. Incorporated, Salomon Smith Barney Inc., and U.S. Bancorp Piper Jaffray Inc. (3-10957)	12/03/2002	
809	In re Morgan Stanley and Co. Incorporated	00/00/2003	
810	In re Morgan Stanley DW, Inc. (3-11335)	11/17/2003	
811	In re Morgan Stanley (3-11725)	11/04/2004	
812	Sunbeam 10-Q for quarter ended 06/30/1996	08/06/1996	
813	Sunbeam 10-Q for quarter ended 09/29/1996	10/29/1996	
814	Sunbeam 10-Q for quarter ended 10/27/1996	12/11/1996	
815	Sunbeam 10-K for year ended December 29, 1996	03/31/1997	
816	Sunbeam 10-Q/A for quarter ended 03/30/1997	05/28/1997	
817	Sunbeam 10-Q for quarter ended 06/29/1997	07/23/1997	
818	Sunbeam 10-Q for quarter ended 09/28/1997	10/24/1997	
819	Coleman 10-K for year ended 12/31/1997	03/18/1998	
820	Sunbeam 10-Q for Q1 1998	05/11/1998	
821	Sunbeam 10-K/A for fiscal year ended 12/28/1997	11/12/1998	
822	Sunbeam 10-K for year ended 12/31/1998	05/11/1999	
823	Coleman 10-K/A, for year ended 12/31/1998	10/11/1999	
824	Sunbeam Form S-4/A	12/06/1999	
825	Morgan Stanley form 10-Q	02/28/2003	
826	Morgan Stanley form 10-Q	05/31/2003	
827	Morgan Stanley form 10-Q	08/31/2003	
828	Morgan Stanley form 10-K/A	11/30/2003	
829	Morgan Stanley form 10-Q/A	02/29/2004	
830	Morgan Stanley form 10-Q/A	05/31/2004	
831	Morgan Stanley form 10-Q	08/31/2004	
832	Morgan Stanley form 8-K	10/28/2004	
833	SEC Fines 28 Brokerage Firms $26 Million and Suspends 51 Individual Traders for Fraudulent Market-Making Activities in the Nasdaq Market	01/11/1999	
834	SEC Settles with Ten Brokerage Firms As Part of Global Resolution of Yield Burning Claims	04/06/2000	
835	SEC, NYSE, NASD Fine Five Firms Total of $8.25 Million for Failure to Preserve E-Mail Communications	12/03/2002	

CPH TRIAL EXHIBIT LIST
Coleman (Parent) Holdings v. Morgan Stanley

CPH Trial Ex. #	Description	Date	Def. Objection
836	SEC, NY Attorney General, NASD, NASAA, NYSE and State Regulators Announce Historic Agreement to Reform Investment Practices	12/20/2002	
837	SEC Fact Sheet on Global Analyst Research Settlements	04/28/2003	
838	SEC Sues Morgan Stanley for Research Analyst Conflicts of Interest Firm to Settle with SEC, NASD, NYSE, NY Attorney General, and State Regulators	04/28/2003	
839	Ten of Nation's Top Investment Firms Settle Enforcement Actions Involving Conflicts of interest Between Research and Investment Banking	04/28/2003	
840	SEC Charges Morgan Stanley With Inadequate Disclosure in Mutual Fund Sales	11/17/2003	
841	Administrative Action, N.Y. Attorney Gen., In the Matter of: Morgan Stanley & Co., Inc., Assurance of Discontinuance Pursuant to Executive Law § 63(15)	04/24/2003	
842	Administrative Action, Commonwealth of Mass., In the Matter of: Morgan Stanley DW, Inc., No. E-2003-31	08/11/2003	
843	N.Y. Attorney Gen., Conflict Probes Resolved at Citigroup and Morgan-Stanley	04/28/2003	
844	Sec. of the Commonwealth of Mass., Gavin, Spitzer Announce Joint Inquiry Into Sale of Mutual Funds by Morgan Stanley	07/14/2003	
845	N.Y. Attorney Gen., New York Signs Historic Agreements With the Nation's Leading Brokerage Firms	08/25/2003	
846	Bornstein deposition testimony	10/13/1999	
847	Hearing Transcript (CPH v. MS)	12/12/2003	
848	Sunbeam Corporate website (http:www.sunbeam.com/history.asp)	12/00/2004	
849	A Message from Philip J. Purcell, Chairman and Chief Executive Officer, and Robert G. Scott, President and Chief Operating Officer, to Employees, Officers and Directors about the Code of Ethics and Business Conduct (http://www.morganstanley.com/about/inside/governance/msg_ethics.html?page=about)	00/00/0000	
850	Morgan Stanley Code of Ethics and Business Conduct	00/00/0000	

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Date: January 10, 2005

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO: 2003 CA 005045 AI

Plaintiff, Elizabeth T. Maass

vs.

MORGAN STANLEY & CO., INC.

Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S WITNESS LIST FOR TRIAL

COMES NOW the Plaintiff, COLEMAN (PARENT) HOLDINGS INC. ("CPH"), by and through the undersigned attorneys, and hereby lists non-expert witnesses for trial as follows:

Abdel-Meguid, Tarek.
Amorison, Alison
Boone, Shani
Bornstein, Lawrence
Brockelman, Mark
Chang, Tyrone
Clark, Karen
Conway, Andrew
Dean, Alan
Denkhaus, Donald
Dickes, Glenn
Drapkin, Donald
Duffy, Robert
Eltrich, Karen
Emmerich, Adam
Engelman, Irwin
Esterson, Robin
Fannin, David
Fasman, Steven
Ferraro, Joseph
Fiedorek, Bruce
Fogg, Finn
Foley, Jake

Fuchs, Alexandre
Ginstling, Norman
Gittis, Howard
Groeller, Johannes
Harlow, Phil
Harris, Brooks
Hart, Michael
Jordan, Ann
Kitts, Robert
Kourakos, William
Kunreuther, Jason
Lurie, James
Maher, James
Moran, John
Nesbitt, William
Page, Joseph
Pastrana, Dennis
Perella, Joseph
Perelman, Ronald
Petrick, Mitch
Porat, Ruth
Pruitt, William
Rafii, Lily
Rankin, Simon
Rankowitz, Michael
Reid, William
Salig, Joram
Savarie, Andrew
Schwartz, Barry
Scott, Robert
Seth, Ishaan
Shapiro, Paul
Sipprelle, Dwight
Slotkin, Todd
Slovin, Bruce
Smith, R. Bram
Stack, Heather
Strong, William
Tyree, John
Webber, Joshua
Whelan, Christopher
Winoker, Laurence
Wright, William
Yales, Scott
Yoo, Eugene

In addition to the witnesses set forth above, CPH reserves its right to call:

A. All witnesses listed by Morgan Stanley on Morgan Stanley's witness list;

B. All experts previously identified by CPH and Morgan Stanley;

C. Any and all witnesses listed by CPH and Morgan Stanley in the Answers to Interrogatories, Responses to Requests for Production, Responses to Requests for Admissions, identified in deposition and/or exhibits thereto (however, by listing these witnesses, CPH does not waive any objections to their testimony at trial if offered by Morgan Stanley); and

D. Impeachment and rebuttal witnesses as necessary, without waiving any objections thereto.

CPH reserves the right not to call each witness identified on its list. Further, CPH reserves its right to call its witnesses live or by deposition. Finally, CPH reserves its right to amend this list prior to trial upon proper notice to Morgan Stanley.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by Federal Express and facsimile to the individuals of the attached service list on this 10th day of January, 2005.

Dated: January 10, 2005

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed Morgan Stanley & Co. Incorporated's Motion in Limine No. 1 to Exclude Performance Evaluations or Other Propensity Evidence under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the service list below by facsimile and Federal Express on this 10th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

MORGAN STANLEY'S MOTION IN LIMINE NO. 2
TO EXCLUDE SECURITIES
AND EXCHANGE COMMISSION PROCEEDINGS

Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") respectfully requests that this Court enter an order precluding Coleman (Parent) Holdings Inc. ("CPH") from introducing or using at trial any and all testimony and records reflecting allegations and determinations made by the Securities and Exchange Commission ("SEC") as part of its investigation of and litigation concerning Sunbeam Corporation ("Sunbeam"). These allegations and determinations are inadmissible hearsay under the Florida Evidence Code.

In support of this Motion, Morgan Stanley States as follows:

1. In May 2001, as the result of an intensive fact investigation, the SEC initiated proceedings against Sunbeam, certain Sunbeam officers and directors,[1] and Phillip Harlow, the Arthur Andersen partner responsible for the Sunbeam audit. As part of these proceedings, the SEC issued press releases, filed complaints, and ultimately settled with the parties in public documents containing factual allegations and determinations regarding the events that transpired

at Sunbeam under the chairmanship of Albert Dunlap, Sunbeam's former Chairman and Chief Executive Officer, and his management team. *See, e.g.*, May 15, 2001 SEC Litigation Release No. 17001, "SEC Sues Former Top Officers of Sunbeam Corporation and Arthur Andersen Auditor in Connection with Massive Financial Fraud" (Ex. 1). These press releases, complaints, and settlements were derived from the documents, witness interviews, and deposition testimony collected by the SEC from outside sources during its factual investigation of Sunbeam (examples of these "SEC Materials" are attached at Ex. 2.)

2. The SEC Materials are hearsay under Florida Evidence Code § 90.801(c) (defining hearsay as "a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted"). Hearsay is not admissible. Fla. Evid. Code § 90.802.

3. There are only two exceptions to the hearsay rule that might apply to the SEC Materials — the "Public Records" exception, codified in section 90.803(8), and to a lesser extent the "Business Record" exception, codified in section 90.803(6). Neither exception is applicable here.

4. Modeled on Federal Rule of Evidence 803(8), section 90.803(8) of the Florida Evidence Code establishes the guidelines for the admissibility of the records or reports of a public agency. In Florida, there are only two types of public records and reports that are admissible into evidence under this exception: (1) records "setting forth the activities of the office or agency;" and (2) records of a public office or agency that set forth "matters observed

---

[1]Specifically, the SEC initiated proceedings against Albert Dunlap, Russell Kersh, Robert Gluck, Donald Uzzi, and Lee Griffith. The SEC simultaneously entered into a settlement with David Fannin, former General Counsel of Sunbeam.

pursuant to duty imposed by law as to matters which there was a duty to report." Fla. Evid. Code § 90.803(8).

5. Unlike its federal counterpart, however, section 90.803(8) specifically excludes a third type of public record that is admissible under the corresponding federal rule — namely, "a record setting forth factual findings resulting from an investigation made pursuant to authority granted by law." *Lee v. Dep't. of Health & Rehabilitative Servs.*, 698 So. 2d 1194, 1201 (Fla. 1997). Instead, the Florida Supreme Court held that "[r]ecords that rely on information supplied by outside sources or that contain evaluations or statements of opinion by a public official are inadmissible." *Id.*

6. The SEC Materials do not meet the standard for the type of evidence that is admissible in Florida under section 90.803(8). They are not setting forth the activities of an office or agency, and they are not matters observed pursuant to a duty imposed by law. Rather, the SEC Materials rely heavily on information supplied by outside sources and contain evaluations and statements of SEC findings and opinions that were made when the SEC was acting in its quasi-adjudicative role as investigator and as a party to litigation. Thus, they are simply a "record setting forth factual findings resulting from an investigation," and specifically excluded under the Florida Evidence Code. *See Lee*, 698 So. 2d at 1201.

7. Likewise, the business record exception does not apply to the SEC Materials. Section 90.803(6), provides that an otherwise inadmissible "memorandum, report, record, or data compilation … of acts [or] events" may be admitted where the document was "made at or near the time" of the act or event "***by, a person with knowledge***, if kept in the course of a regularly conducted business activity." Fla. Evid. Code § 90.803(6)(a) (emphasis added). The SEC Materials do not qualify as business records because the factual allegations and determinations

were not reported based on first-hand knowledge of an SEC official, but rather compiled and reported based on the testimony and documents provided by outside parties, such as Arthur Andersen employees, Albert Dunlap, and other Sunbeam officers who were present during the alleged events. Moreover, these litigation-generated documents are not the sort of records that are created in the routine course of business for the purpose of operating that business and which therefore have a measure of reliability justifying an exception to the hearsay rule.

8. In the alternative, if CPH is permitted to introduce into evidence select portions of the SEC Materials, the Court must apply the "rule of completeness." The section provides that "[w]hen a writing or recorded statement or part thereof is introduced by a party, ***an adverse party may require him or her at that time to introduce any other part or any other writing or recorded statement that in fairness ought to be considered contemporaneously***." Fla. Evid. Code § 90.108 (emphasis added). This section — which is fundamentally a rule of fairness — is intended to preclude the cherry-picking of evidence, and to permit the trier of fact to hear the facts in a fair and not misleading manner. *Mendoza v. State*, 700 So. 2d 670, 673 (Fla. 1997) ("When one party presents part of a prior written or recorded statement, an adverse party may have the remainder of the statement introduced into evidence in the interest of fairness.") (citing Fla. Evid. Code § 90.108).

9. By invoking the rule of completeness, the Court will ensure that CPH's cherry-picked portions of the SEC Materials are fairly counter-balanced by other contemporaneous SEC allegations or determinations. For example, the fact finder will also be able to hear that the SEC alleged that:

- On or about March 18, Sunbeam's investment banker, lender, loan arranger, and syndications manager ("banker"), learned that the Company's sales were about half of what they had been in the same period of the prior year. ***In response to the banker's request for further***

information, Uzzi faxed it a document that included a schedule of quarterly sales to that date and of projected sales for the remainder of March. ***It forecast that, at a minimum, there would be a slight increase in sales over the same quarter of the previous year … Uzzi recklessly disregarded facts indicating that the information he provided to the banker was materially false and misleading***." Jan. 27, 2003 Second Amend. Compl. ¶ ¶ 125-26, *S.E.C. v. Uzzi*, No. 01-8437-Civ (S.D. Fla.) (Ex. 3) (emphasis added) .

- Even these inflated numbers, however, indicated a strong possibility that the Company would not meet analysts' expectations for the quarter. The following day, March 19, 1998, ***the Company — under pressure from the professionals involved in preparing the offering memorandum — issued a press release***, ***approved by Dunlap, Kersh, and Uzzi***. *Id*. ¶ 127 (emphasis added).

- As part of its due diligence on Sunbeam's $700 million Zero Coupon debt offering, its lead underwriter learned Sunbeam might not meet analysts' expectations for the first quarter. It therefore proposed that the Company issue a press release to that effect. May 15, 2001 Order, *In re Sunbeam*, Admin. Proceeding No. 3-10481 (S.E.C.) (Ex. 4).

- Management … misrepresented the Company's performance and future prospects in press releases and in meetings with analysts and ***lenders***. *Id.* (emphasis added).

Only through the presentation of complete documentary evidence will a fact finder have a fair, accurate and non-confusing picture of the facts of this case.

WHEREFORE, under the Florida Evidence Code, the SEC Materials are properly excludable because they are merely compilations of information collected by the SEC from outside sources during its factual investigation of Sunbeam. As such, the SEC Materials are inadmissible hearsay and do not fit within Florida's hearsay exceptions. For the foregoing reason, this Court should grant Morgan Stanley's Motion in Limine to Exclude Securities and Exchange Commission Proceedings, and enter an order precluding CPH's use of, or reference to, SEC Materials at trial. Alternatively, under the rule of completeness, Morgan Stanley should be permitted to introduce additional portions of the SEC Materials demonstrating that Sunbeam officers misled Morgan Stanley and that Morgan Stanley was not a target during the SEC's Sunbeam investigation.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 10th day of January, 2005.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed Morgan Stanley & Co. Incorporated's Motion in Limine No. 3 to Exclude Irrelevant and Prejudicial References to Corporate Corruption and Accounting Scandals under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the service list below by facsimile and Federal Express on this 10th day of January, 2005.

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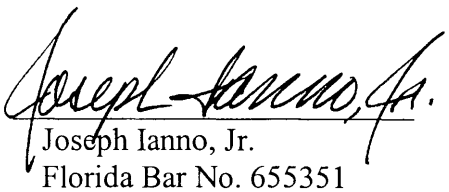
BY: 
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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed Morgan Stanley & Co. Incorporated's Motion in Limine No. 4 to Exclude Evidence and Testimony Regarding Extra-Contractual Representations under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the service list below by facsimile and Federal Express on this 10th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

MORGAN STANLEY'S MOTION IN LIMINE NO. 5 TO EXCLUDE IRRELEVANT AND PREJUDICIAL REFERENCES TO MORGAN STANLEY'S NET WORTH

Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") respectfully requests that this Court enter an order excluding from trial all reference to Morgan Stanley's financial condition, corporate wealth or net worth (collectively "net worth"). Evidence regarding Morgan Stanley's net worth is irrelevant as it would not tend to prove or disprove any material fact in this case. Fla. Evid. Code §§ 90.401, 90.402. More specifically, any comments elicited by counsel during argument or examination regarding the net worth of a large corporation like Morgan Stanley, which is headquartered in New York, is likely to be misused by the jury to express a bias against big out-of-state business and inflate a punitive damages award beyond the constitutional maximum. *See State Farm Mutual Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 417 (2003) ("[T]he presentation of evidence of a defendant's net worth creates the potential that juries will use their verdicts to express biases against big business, particularly those without strong local presences.") (internal quotations & citation omitted); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 591 (1996) (Breyer, J. concurring) ("[Wealth] provides an open-ended basis for inflating awards when the defendant is wealthy ...."). Such comments and evidence should therefore be excluded under Florida Evidence Code section 90.403, and any reference to Morgan

Stanley's finances should be limited to its gains or losses related to the particular transaction at issue in this case.

In support of this Motion, Morgan Stanley states as follows:

1. Plaintiff CPH, through its discovery requests, has made clear that it will attempt to introduce evidence of Morgan Stanley's net worth in support of its punitive damages claim. Assuming CPH can even establish its entitlement to punitive damages — which Morgan Stanley vigorously contests — CPH should not be permitted to introduce evidence of Morgan Stanley's net worth to justify an award of punitive damages.

2. The sole question presented to this Court in this motion is whether evidence of Morgan Stanley's net worth is relevant and admissible to the issue of punitive damages after the United States Supreme Court's recent decision in *State Farm*, 538 U.S. 408 (2003) and under the facts of this case.

3. Morgan Stanley acknowledges that there is law in Florida and elsewhere suggesting that the wealth of a defendant is relevant in determining the amount of punitive damages. *See, e.g., Rinaldi v. Aaron*, 314 So. 2d 762 (Fla. 1975); Fla. Std. Jury Instr. P.D. 1. Morgan Stanley submits, however, that this law cannot survive scrutiny after the United States Supreme Court's decision in *State Farm*, which addressed the issue of the constitutional limitations on a punitive damages award. After *State Farm*, a plaintiff should not be permitted to introduce evidence of a corporate defendant's net worth in support of an increased punitive award.

4. Morgan Stanley submits that net worth evidence is irrelevant and inadmissible for four separate and distinct reasons: ***first,*** the use of net worth evidence to justify punitive damages violates the constitutional requirements of proportionality and fair notice; ***second,*** the use of net

worth evidence for this purpose evidence would impermissibly punish Morgan Stanley for its lawful business conduct in Florida and other states and countries; ***third,*** net worth evidence is irrelevant to the purposes of punishment and deterrence; and ***fourth,*** any probative value such evidence might have is substantially outweighed by the danger of unfair prejudice to the defendant. For these reasons, any reference CPH purports to make to Morgan Stanley's net worth or finances should be strictly limited to the gains or losses Morgan Stanley realized in connection with the specific transaction at issue in this case.

I. Introduction Of Evidence Concerning Morgan Stanley's Net Worth Violates The Constitutional Requirements Of Proportionality And Fair Notice.

5. In *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), the Supreme Court identified three specific guideposts for evaluating whether a punitive damages award is proportional to the wrong and whether defendant received "fair notice" of the punitive sanction to be imposed: (1) the degree of reprehensibility of the conduct; (2) the relationship between the punitive damages and the harm to the plaintiff; and (3) the disparity between the punitive damages and the legislatively-established fine for comparable conduct. All three guideposts are meant to ensure the constitutionally-required fair notice to defendants subject to punitive damages, and reasonable proportionality between the wrong and the punishment.

6. Notably, the Court did ***not*** include net worth or corporate wealth as a guidepost.[1] To the contrary, in *State Farm*, the Court noted that the lower court's reliance on State Farm's wealth was a "departure from the well-established constraints on punitive damages." 538 U.S. at

[1]Several federal courts have noted this omission from the Supreme Court's analysis. *See, e.g., Pivot Point Int'l, Inc. v. Charlene Prods., Inc.*, 932 F. Supp. 220, 223 (N.D. Ill. 1996) (holding that defendant's wealth inadmissible to establish amount of punitive damages in part because, "even when considering punitive damages based on state law, the Supreme Court did not treat the defendant's wealth as relevant"); *Florez v. Delbovo,* 939 F. Supp. 1341, 1345 (N.D. Ill. 1996) ("the Supreme Court's recent decision in [*Gore*] appears to disfavor consideration of the defendant's financial worth and condition in deciding on what level of punitive damages to award").

427. The Court stated unequivocally that "[t]he wealth of the defendant cannot justify an otherwise unconstitutional punitive damages award," *id.*, and reiterated its earlier pronouncement in *Gore* that "[t]he fact that BMW is a large corporation rather than an impecunious individual does not diminish its entitlement to fair notice of the demands that the several States impose on the conduct of its business." *Id.* (quoting *Gore*, 517 U.S. at 585). These decisions, as they relate to constitutional due process considerations, are binding on this Court.

7. For the same reasons as in *State Farm* and *Gore*, in this case, Morgan Stanley's wealth is not relevant to any of the three established guideposts. The company's net worth has nothing to do with degree of reprehensibility of its purported conduct related to the Sunbeam-Coleman merger. Nor does the net worth of Morgan Stanley have any bearing on the proportionality of punitive damages to the harm allegedly suffered by CPH. *See State Farm*, 538 U.S. at 426-27 (noting that "State Farm's enormous wealth … bear[s] no relation to the award's reasonableness or proportionality to the harm.") Morgan Stanley's wealth or net worth is likewise irrelevant to the "comparable fines" guidepost, because any relevant civil or criminal fine that CPH may attempt to use as an benchmark for punitives — like those considered in *Campbell* and *Gore* — would not vary with the wealth of the defendant. *See Kemezy v. Peters*, 79 F.3d 33, 36 (7th Cir. 1996) ("[t]he usual practice with respect to fines is not to proportion the fine to the defendant's wealth").

8. Moreover, an award of punitive damages based on the defendant's wealth violates the constitutional mandate of fair notice. An award based on wealth allows the jury unfettered discretion to redistribute wealth and leaves the jury's discretion unchecked by any articulated principle. By creating unpredictability, arbitrariness and uncertainty, the introduction of wealth evidence inevitably undermines the constitutional requirement that a defendant have reasonable

notice of the punishment that can be imposed for particular wrongful conduct. *See Gore*, 517 U.S. at 588 (Breyer, J. concurring) ("Legal standards … must offer some kind of constraint upon a jury or court's discretion and thus protection against purely arbitrary behavior.").

9. In the present case, the arbitrariness of any award of punitive damages based upon the net worth of the company is heightened given the fact that Morgan Stanley's bottom-line "net worth" changes radically over time. If a punitive damages award is based on the financial condition of this defendant, the size of the award would vary greatly depending on the ever-fluctuating wealth of the company at the time of trial. This result, again, would deprive Morgan Stanley of the constitutionally-mandated reasonable notice of the punishment that can be imposed for particular wrongful conduct, and should not be permitted.

II. An Award Based On Corporate Wealth Would Impermissibly Punish Morgan Stanley For Conduct That Did Not Harm Plaintiff, That Was Lawful, And That Occurred Out Of State.

10. The law is well settled that an award of punitive damages must serve the state's interest in punishing and deterring the conduct that harmed the plaintiff in that particular state. *State Farm*, 538 U.S. at 422-23; *Gore*, 517 U.S. at 572-73. The Court made clear in *State Farm* that "defendant's dissimilar acts, independent from the acts upon which liability was premised, may not serve as the basis for punitive damages." *State Farm*, 538 U.S. at 422. In addition, the Supreme Court has mandated that "[a] defendant should be punished for the conduct that harmed the plaintiff, not for being an unsavory individual or business." *Id.* at 423. Further, a defendant may not be punished at all for conduct that was lawful, either in the same state or in other states. *See id.* at 421 ("A state cannot punish a defendant for conduct that may have been lawful where it occurred."); *Gore*, 517 U.S. at 573, n.19 ("To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basis sort.") (internal quotations & citation omitted).

11. Evidence of Morgan Stanley's overall wealth, whether presented as net worth, revenues, profits, cash on hand, assets, or other measures, reflects the sum total of all of the company's activities in every place that it does business. Allowing a jury to increase the amount of punitive damages awarded based on its total corporate wealth improperly allows punishment of both lawful activities and extraterritorial activities that the state has no right to punish and that have no connection to this plaintiff. *See Zazu Designs v. L'Oreal, S.A.*, 979 F.2d 499, 508 (7th Cir. 1992) ("Corporate assets finance ongoing operations and are unrelated to either the injury done to the victim or the size of the award needed to cause corporate managers to obey the law.").

12. If a jury is permitted to base its punitive damages award on the entire financial net worth of Morgan Stanley — as opposed to the fees and revenues generated by this particular transaction — it would be punishing the company for both lawful and unrelated activities throughout the United States and other countries in direct contravention of the Supreme Court's mandates in *State Farm* and *Gore*.

III. Evidence Concerning Morgan Stanley's Net Worth Is Irrelevant To Punishment And Deterrence.

13. Before *State Farm,* courts that allowed net worth evidence did so on the grounds that such evidence was relevant to the amount necessary to punish and deter similar behavior in the future. *See, e.g., Lassiter v. International Union of Operating Engineers*, 349 So. 2d 622, 626 (Fla. 1977) (greater punitive damages needed "to get [the] attention" of wealthier defendants). As the *Gore* and *Campbell* courts recognized, however, when the defendant is a large corporate entity, net worth evidence is not relevant to the punitive damages determination. *See State Farm*, 538 U.S. at 426-27 (noting that "State Farm's enormous wealth … bear[s] no relation to the award's reasonableness or proportionality to the harm."); *Gore,* 517 U.S. at 591

(Breyer, J., concurring) (recognizing that wealth is "not necessarily [relevant] to [the state's] interest in deterrence, given the more distant relation between a defendant's wealth and its responses to economic incentives").

14. In the case of a large publicly-held corporate defendant, the Seventh Circuit held that the belief that imposing punitive damages based on the net worth of the entire corporation results in punishment of the wrongdoer or deterrence from future wrong is a fiction:

> For natural persons the marginal utility of money decreases as wealth increases, so that higher fines may be needed to deter those possessing great wealth … Corporations, however, are not wealthy in the sense that persons are. Corporations are abstractions; investors own the net worth of the business. These investors pay any punitive awards (the value of their shares decreases), and they may be of average wealth. Pension trusts and mutual funds, aggregating the investments of millions of average persons, own the bulk of many large corporations. Seeing the corporation as wealthy is an illusion, which like other mirages frequently leads people astray. Corporate assets finance ongoing operations and are unrelated to either the injury done to the victim or the size of the award needed to cause corporate managers to obey the law. Net worth is a measure of profits that have not yet been distributed to the investors. Why should damages increase because the firm reinvested its earnings?

Zazu Designs, 979 F.2d at 508.

15. The management of a for-profit corporation, regardless of its size, is deterred from engaging in conduct that is not profitable. Thus, in cases such as this, a punitive award that deprives the corporation of any additional profit or cost savings gained by the wrongful conduct is all that is necessary to deter that conduct. *See* 2 A.L.I. *Reporter's Study: Enterprise Responsibility for Personal Injury*, 254 (1991) ("In determining the size of the award that is sufficient for [deterrence], what is relevant is not the defendant's overall wealth, but rather profit it realized from the particular tortuous activity in question."); *see also, Johansen v. Combustion Eng'g, Inc.*, 170 F.3d 1320, 1338-39 (11th Cir. 1999) (recognizing that it is not necessary to send a message to the board of directors of a large corporation to deter particular conduct).

16. The constitutional mandate that punitive damages be reasonable in relation to the degree of reprehensibility cannot be squared with imposing punishment based on the wealth of the corporation. The punishment must fit the offense, not the wealth of the defendant. *See Zazu Designs,* 979 F.2d at 508 (having a large net worth is not the wrong to be deterred). Thus, in accordance with the most recent Supreme Court precedent on this issue and its progeny, a corporation's total wealth is not relevant to the amount necessary to punish or deter particular conduct and should be excluded.

IV. Any Purported Relevance Of Net Worth Evidence Is Outweighed By The Potential For Prejudice.

17. Even if this Court were to find that Morgan Stanley's wealth has some relevance to the appropriate amount of punitive damages, such evidence is nevertheless more prejudicial than probative and should be excluded pursuant to Florida Code of Evidence sections 90.401-90.403. The relevance of overall corporate wealth to the appropriate amount of punitive damages, particularly when there is no dispute about Morgan Stanley's ability to pay a judgment up to the constitutional maximum, is marginal at best. The potential for prejudice resulting from such evidence, by contrast, is great.

18. The Supreme Court and Florida courts recognize that corporate wealth or net worth evidence carries with it serious risk of jury bias and unconstitutional deprivation on property:

> We have admonished that [p]unitive damages pose an acute danger of arbitrary deprivation of property. Jury instructions typically leave the jury with wide discretion in choosing amounts, and ***the presentation of evidence of a defendant's net worth creates the potential that juries will use their verdicts to express biases against big businesses***, particularly those without strong local presences.

State Farm, 538 U.S. at 417 (quotations omitted; emphasis added); *see also, Gore*, 517 U.S. at 591 (Breyer, J. concurring) ("[Wealth] provides an open-ended basis for inflating awards when

the defendant is wealthy."); *TXO Prod. Corp. v. Alliance Resources Corp.,* 509 U.S. 443, 464 (1993) ("the emphasis on the wealth of the wrongdoer increased the risk that the award may have been influenced by prejudice against large corporations, a risk that is of special concern when the defendant is a nonresident"); *Liggett Group Inc. v. Engle,* 853 So. 2d 434, 459 n.32 (Fla. 3d DCA 2003) (The "danger of a punitive award resulting in an arbitrary deprivation of property is heightened where a jury is presented with evidence of net worth or evidence that has little bearing as to the amount of punitive damages that should be awarded."), *rev. granted,* 873 So. 2d 1222 (Fla. 2004).

19. Because of the wide recognition that the introduction of evidence related to the overall wealth of a large corporation is likely to be misused by the jury to express a bias against big business, improperly skew the jury's assessment of reprehensibility and harm to the plaintiff, and inflate a punitive damages award beyond the constitutional maximum, evidence of Morgan Stanley's wealth or net worth in this case is more prejudicial than probative and should be excluded.

WHEREFORE, Morgan Stanley respectfully requests that the Court enter an order excluding from trial all reference to its wealth or net worth, and that any reference CPH purports to make to Morgan Stanley's finances should be strictly limited to the gains or losses Morgan Stanley realized in connection with the specific transaction at issue in this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 10th day of January, 2005.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed Morgan Stanley & Co. Incorporated's Motion in Limine No. 6 to Exclude Irrelevant and Prejudicial References to Morgan Stanley Employees Discarding Engagement Materials in the Normal Course of Business Before this Action was Filed under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the service list below by facsimile and Federal Express on this 10th day of January, 2005.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed Morgan Stanley & Co. Incorporated's Motion in Limine No. 7 to Exclude Evidence and Testimony Conflating Sunbeam and Morgan Stanley under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the service list below by facsimile and Federal Express on this 10th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

MORGAN STANLEY'S MOTION IN LIMINE NO. 8
TO ESTABLISH PROCEDURE FOR USE OF DEPOSITIONS AT TRIAL

Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley"), pursuant to Fla. R. Civ. P. 1.330 (Use of depositions in court proceedings), Fla. Evid. Code § 90.612 (Mode and order of interrogation and presentation), and Fla. Evid. Code § 90.108 (Introduction of related writings or recorded statements), respectfully requests that this Court enter an order providing for the procedure governing the introduction of deposition testimony at trial.

In support of this Motion, Morgan Stanley states as follows:

1. The overwhelming majority of witnesses in this action will testify by deposition because the witnesses reside outside the state of Florida. Morgan Stanley and Coleman (Parent) Holdings Inc. ("CPH") have each designated portions of depositions that they intend to present at trial in the event that a witness is unavailable to testify in person for one or more of the reasons enunciated in Fla. R. Civ. P. 1.330(a)(3).

2. To date, the parties have designated 77 witnesses to testify by designation. The parties will likewise counter-designate testimony for each witness designated by the other party. In total, the parties have to date designated over 1,500 pages of testimony and exhibits from 77 separate depositions, to be "read" to the jury. To further complicate matters, in most instances,

this testimony will be presented by videotape that will have to be edited after the pretrial conference between February 14 and 17, 2005, at which time the Court will have to rule on objections to this "testimony."

3. Pursuant to Fla. R. Civ. P. 1.330(a)(4), when a party offers deposition testimony at trial, the adverse party can require that party to introduce any part of the deposition that in fairness ought to be introduced. This portion of rule 1.330(a)(4) is consistent with section 90.108(1) of the Florida Evidence Code, which is commonly referred to as "the rule of completeness." *See, e.g., Eberhardt v. State,* 550 So. 2d 102, 105 (Fla. 1st DCA 1989) (holding that "the 'rule of completeness' generally allows admission of the balance of the conversation as well as other related conversations that in fairness are necessary for the jury to accurately perceive the whole context of what has transpired").

4. Rule 1.330(a)(4) also provides that the opposing party can, at the same time, introduce any other parts of the deposition. The obvious reason for this rule is the fair presentation of the evidence such that the "interrogation" by deposition results in truth rather than confusion. Fla. Evid. Code § 90.612(1); *see also Kaminsky v. Travelers Indem. Co.*, 474 So. 2d 287, 288 (Fla. 3d DCA 1985) (holding when one party reads selected portions of a deposition "it is error to prohibit opposing counsel from reading other portions of that same deposition in an effort to demonstrate the 'whole truth'").

5. In the interests of presenting the evidence in a manner most consistent with the objectives of section 90.612 of the Florida Evidence Code, Morgan Stanley requests that the Court enter an order that all designated portions of each deposition be read at one time, unless the opponent of the deposition designation intends to call the witness live during that party's case-in-chief. In that case, the Court should permit, but not require, the opposing party's

counter-designations to be read to the jury, with the caveat that the same testimony may not, absent leave of Court, be presented a second time when the deponent testifies live at trial.

6. Reading the designated portions of each deposition will provide a streamlined presentation of the relevant deposition testimony in a manner that will make the testimony of each deponent understandable to the jury, while at the same time preserving the opponent's right to present live testimony at trial during its case-in-chief.

7. The procedure suggested by Morgan Stanley is consistent with Fla. R. Civ. P. 1.310(c), which provides that deposition testimony proceeds "as permitted at trial." The obvious purpose is to permit a deposition to be used at trial as though the deponent were present to give live testimony. At trial, the testimony of live witnesses (with the exception of adverse witnesses) is generally given at one time rather that having the witness return days or weeks later to give piecemeal testimony during later parts of the case. Morgan Stanley submits that testimony by deposition should proceed in the same manner.

8. If the deposition testimony is presented piecemeal, the jury may hear the testimony at intervals that are weeks apart. When that happens — and it will — the later testimony will appear to be unrelated to the original testimony absent curative action by the proponent of the testimony. This will require multiple introductions of each deponent-witness and the re-reading of testimony to place the separate deposition pieces in their proper context. This duplication, though essential, is a waste of time for everyone concerned and contributes nothing to the jurors' ability to determine the truth from the mass of videotape that they will have to listen to over the weeks.

9. Finally, piecemeal testimony would be particularly prejudicial to Morgan Stanley because its designations would be the designations presented in a piecemeal or duplicative

manner. CPH, on the other hand, can and will present its designations without any fragmentation. To allow this method and order of proof would be contrary to Fla. Evid. Code § 90.612(1), as well as Morgan Stanley's right to a fair trial.

WHEREFORE, Morgan Stanley respectfully requests that this Court enter an order that all designated portions of each deposition be read at one time, unless the opponent of the deposition designation intends to call the witness live during that party's case-in-chief. In that case, the opposing party's counter-designations, may be read to the jury, with the caveat that the same testimony may not be presented a second time when the deponent testifies live at trial absent leave of Court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 10th day of January, 2005.

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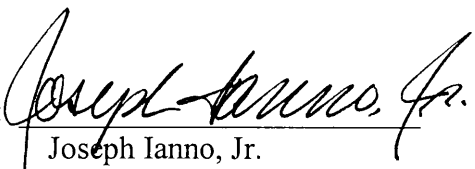
BY: 
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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

MORGAN STANLEY'S MOTION IN LIMINE NO. 9
TO EXCLUDE IRRELEVANT AND PREJUDICIAL REFERENCES TO
THE PRIOR MORGAN STANLEY SENIOR FUNDING INC. LITIGATION

Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") respectfully requests that this Court enter an order excluding from trial all references by Coleman (Parent) Holdings Inc. ("CPH") to the prior lawsuit, styled *Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.*, No. CA 03-5165 AI ("MSSF Litigation"), which Morgan Stanley Senior Funding, Inc. ("MSSF") voluntarily dismissed. Any references to the MSSF Litigation in this action would be irrelevant to the issues this action, Fla. Evid. Code §§ 90.401-403.

In support of this Motion, Morgan Stanley states as follows:

1. On November 19, 2004, MSSF voluntarily dismissed its lawsuit against CPH and MacAndrews & Forbes Holdings Inc. ("MAFCO"). (*See* Nov. 19, 2004 Notice of Voluntary Dismissal.)

2. In CPH's deposition designations, CPH revealed its intention to offer the testimony of Morgan Stanley employees regarding MSSF's allegations in the MSSF Litigation.

For example, CPH designated the following line of questions and answers from the deposition transcript of Mr. Michael Hart,[1] a vice president of MSSF:

> Q. Paragraph 21 alleges that Coleman Parent Holdings and MacAndrews & Forbes Holdings, "made a series of false statements to Sunbeam and its financial team (including MS & Co.) regarding the post-closing synergies that Sunbeam would achieve annually if it proceeded with the proposed acquisition of Coleman." Do you see that statement?
> A. Um-hum.
> Q. My question to you, sir is: Do you have any information, as you sit here today, to support that allegation?
> A. I'm not in possession of that information.
>
> * * *
>
> Q. Do you have any knowledge, sir, or information to support that allegation, that the defendants, my clients, MacAndrews & Forbes Holdings, Inc. and Coleman Parent Holdings, Inc. have admitted that the $2.2 billion purchase price referenced in paragraph 32 was, in some manner, fraudulently inflated?
> A. I wasn't party to either the creation — the creation of this document, nor did I have any conversations to that effect. So, I'm in no position to render an opinion.
> Q. You don't have any knowledge, sir, information to support that allegation, do you?
> A. I do not have — I don't recall having any knowledge. I don't have any knowledge today.

(May 19, 2004 Hart Dep. at 30, 59-60 (Ex. 1).) To protect Morgan Stanley's right to a fair and impartial trial, the Court should bar counsel for CPH from referencing the MSSF Litigation and presenting this irrelevant testimony to the jury.

3. Florida Evidence Code section 90.401 defines as relevant "evidence tending to prove or disprove a material fact." Section 90.402 provides that "[a]ll relevant evidence is admissible, except as provided by law." Thus, "[c]onversely, irrelevant evidence is inadmissible." *Stano v. State*, 473 So. 2d 1282, 1286 (Fla. 1985). This case concerns whether Morgan Stanley — not MSSF — is liable to CPH for the alleged damages it sustained as a result

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[1] Mr. Hart was also the MSSF officer who verified MSSF's interrogatory responses in the MSSF Litigation.

of the sale of its interest in The Coleman Company to Sunbeam. The fact that MSSF brought and voluntarily dismissed claims against CPH and MAFCO has absolutely no tendency to prove or disprove a material fact in this case. Because "irrelevant evidence is inadmissible," *id.*, references to, and testimony regarding, the MSSF Litigation should be excluded.

4. Furthermore, CPH has not alleged that Morgan Stanley misused the civil process in any way through the MSSF Litigation. Yet, CPH seeks to introduce testimony intended to persuade the jury that Morgan Stanley acted in bad faith by filing and prosecuting the MSSF complaint and by responding to discovery requests. CPH's testimonial "support" for its argument regarding MSSF's pre-trial conduct is not relevant to the issues in this case and has no basis being submitted to the jury. *See Strasser v. Yalamanchi*, 783 So. 2d 1087, 1093 (Fla. 4th DCA 2001) ("'Evidence related to the history of pre-trial discovery conduct should normally not be a matter submitted for the jury's consideration on the issues of liability.'") (quoting *Amlan, Inc. v. Detroit Diesel Corp.*, 651 So. 2d 701, 703 (Fla. 4th DCA 1995)).

5. Assuming, *arguendo*, that references to, or testimony regarding, the impetus for Morgan Stanley's sister company to file and then voluntarily dismiss its lawsuit against CPH and MAFCO are at all relevant to a determination of Morgan Stanley's liability in this case — which they are not — such references and testimony should nonetheless be excluded under Florida Evidence Code section 90.403. "Relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence." Fla. Evid. Code § 90.403; *see Morowitz v. Vistaview Apartments, Ltd.*, 613 So. 2d 493 (Fla. 3d DCA 1993), *review denied*, 626 So. 2d 210 (Fla. 1993). Through deposition designations, CPH has demonstrated that it seeks to improperly conflate the veracity of the allegations in the MSSF Litigation with the strength of

Morgan Stanley's legal and factual defense in this case. By offering testimony CPH perceives to undermine the basis of MSSF's allegations in the MSSF Litigation, CPH hopes to do what it cannot otherwise do with non-prejudicial evidence — confuse the jury into believing that Morgan Stanley's defenses are unsupported in this case.

6. Thus, CPH's purpose in referencing the MSSF Litigation and designating related testimony is to confuse the legal and factual issues before the jury and obliquely attack the credibility of Morgan Stanley's employees and defenses. This is improper, and thus the references should be excluded. *See Perper v. Edell*, 44 So. 2d 78, 80 (Fla. 1949) ("[I]f the introduction of the evidence tends in actual operation to produce a confusion in the minds of the jurors in excess of the legitimate probative effect of such evidence — if it tends to obscure rather than illuminate the true issue before the jury — then such evidence should be excluded.").

WHEREFORE, Morgan Stanley respectfully requests that this Court enter an order excluding from trial all references to, and testimony regarding, the MSSF Litigation.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 10th day of January, 2005.

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BY: Joseph Ianno Jr.
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Michael Brody
JENNER & BLOCK, LLC
One IBM Plaza, Suite 400
Chicago, IL 60611

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed Morgan Stanley & Co. Incorporated's Exhibits to its Motion in Limine No. 10 to Exclude Restatement Interview Notes of Non-Party Arthur Andersen and Non-Party Skadden under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the service list below by facsimile and Federal Express on this 10th day of January, 2005.

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BY: _____
Joseph Ianno, Jr.
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Michael Brody
JENNER & BLOCK, LLC
One IBM Plaza, Suite 400
Chicago, IL 60611

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,
Defendant.

MORGAN STANLEY'S MOTION IN LIMINE NO. 10 TO EXCLUDE RESTATEMENT INTERVIEW NOTES OF NON-PARTY ARTHUR ANDERSEN AND NON-PARTY SKADDEN

Morgan Stanley & Co. Incorporated ("Morgan Stanley") respectfully requests that this Court enter an order excluding from trial any use of the restatement interview notes of Arthur Andersen LLP ("Arthur Andersen") and Skadden, Arps, Slate, Meagher & Flom, LLP ("Skadden") — both non-parties to this action. These documents are hearsay and do not fall within any hearsay exception delineated by the Florida Evidence Code.

In support of this Motion, Morgan Stanley states as follows:

1. Following the June 1998 firing of Mr. Albert Dunlap, former CEO and Chairman of Sunbeam, the Audit Committee of Sunbeam's Board of Directors requested that the company's outside auditors and legal counsel — Arthur Andersen and Skadden, respectively — initiate an investigation into the internal accounting procedures at Sunbeam prior to the restatement of its financials in November 1998.

2. As part of this investigation, Arthur Andersen and Skadden interviewed several Sunbeam employees, memorializing these interviews in memoranda to the file. (*See, e.g.*, CPH 101 (Ex. 1), CPH 102 (Ex. 2).)

3. On November 24, 2004, CPH filed a Motion To Compel Non-Party Arthur Andersen LLP To Comply With Subpoena For Custodian Of Records Deposition ("Motion to Compel") requesting that the Court order non-party Arthur Andersen to produce its custodian of records to authenticate a set of approximately fifty Arthur Andersen documents. The set included, *inter alia*, the interview notes of Arthur Andersen employees who participated in the investigation of Sunbeam at the request of the company's Audit Committee. (*See* Nov. 24 2004 Motion to Compel.)

4. The restatement interview notes of non-party Arthur Andersen and non-party Skadden are pure hearsay and should be excluded as such. In order for these documents to be admissible at trial, CPH would have to overcome two evidentiary hurdles. First, CPH would have to demonstrate that the documents containing the interview notes of Arthur Andersen employees fall within the business records exception of the Florida Evidence Code. Second, CPH would have to demonstrate that the out-of-court statements *within* the documents do not constitute hearsay. CPH can do neither, and as a result, the documents should be excluded in their entirety.

5. Florida Evidence Code section 90.803(6)(a) excepts from the hearsay rule records of regularly conducted business activity:

> A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinion, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity and if it was the regular practice of that business activity to make such memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or as shown by a certification or declaration that complies with paragraph (c) and s. 90.902(11), unless the sources of information or other circumstances show lack of trustworthiness. The term "business" as used in this paragraph includes a business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

Fla. Evid. Code § 90.803(6)(a). First, the special investigation of Sunbeam's internal accounting practices at the request of the company's Auditing Committee — by definition — is not a "regularly conducted business activity." While — as with any business — it is the regular practice of Arthur Andersen and Skadden employees to draft various memoranda, it cannot be said that it was the regular practice of Arthur Andersen and Skadden to draft *this type* of memoranda. The Audit Committee of Sunbeam requested that Arthur Andersen and Skadden perform a special investigation — and the two firms complied — but neither Arthur Andersen nor Skadden "regularly conduct" such investigations; it is not part of their core business activities to do so.

6. Allowing the introduction of Arthur Andersen and Skadden interview notes into evidence would be inconsistent with the inherent nature of the business records exception to the hearsay rule. The United States Supreme Court has distinguished ad hoc records, such as accident reports from general business records in that "[a]n accident report may affect that business in the sense that it affords information on which the management may act. It is not, however, typical of entries made systematically or as a matter of routine to record events or occurrences, to reflect transactions with others, or to provide internal controls." *Palmer v. Hoffman*, 318 U.S. 109, 113 (1943). Even if CPH could argue that the interview memoranda were regularly created, if they are not comprised of a "necessary component" of the company's "daily operation," then they are not "inherently trustworthy as the product of a necessary habit of accuracy," whereby inaccuracies would be readily detected as a result of the constant reliance on the data. *Owens-Illinois v. Armstrong*, 591 A.2d 544, 550 (Md. Ct. Spec. App. 1991), *aff'd in part, rev'd in part on other grounds*, 604 A.2d 47 (Md. 1992) (further identifying, among other,

payrolls, accounts receivable and payable, and bills of lading as examples of the types of records admitted pursuant to the business records exception).[1]

7. Section 90.803(6) excepts records of regularly conducted business activity from the hearsay rule "unless the sources of information or other circumstances show lack of trustworthiness." Fla. Evid. Code § 90.803(6). The simple fact that the authors of the memoranda at issue were employees of Arthur Andersen and Skadden is enough to remove the interview accounts from the category of "trustworthy" in this circumstance. Arthur Andersen, the primary author of the interview notes, served as the auditor for the financial statements that were being investigated and both Arthur Andersen *and* Skadden worked significantly on the Sunbeam/Coleman transaction. In light of the role of Arthur Andersen and Skadden in the underlying events, their employees' motives to record the interview notes as they did — to either

---

[1] *See also* 5 *Wigmore on Evidence* § 1522 (Chadbourne rev. 1974), which attributes the inherent guarantee of trustworthiness and credibility of a business record to the following:

> (1) The habit and system of making such a record with regularity calls for accuracy through the interest and purpose of the entrant; and the influence of habit may be relied on, by very inertia, to prevent casual inaccuracies and to counteract the possible temptation to misstatements.
>
> (2) Since the entries record a regular course of business transactions, an error or misstatement is almost certain to be detected and the result disputed by those dealing with the entrant; misstatements cannot safely be made, if at all, except by a systematic and comprehensive plan of falsification. As a rule, this fact (if no motive of honest obtained) would deter all but the most daring and unscrupulous from attempting the task; the ordinary man may be assumed to decline to undertake it. In the long run this operates with fair effect to secure accuracy.
>
> (3) If, in addition to this, the entrant makes the record under a duty to an employer or other superior, there is the additional risk of censure and disgrace from the superior, in case of inaccuracies — a motive on the whole the most powerful and most palpable of the three.

include or exclude certain facts that may have been elicited — certainly casts doubt on the credibility of the resulting accounts.[2]

8. Even if CPH were able to establish that the interview notes of Arthur Andersen and Skadden employees were business records under section 90.803(6) of the Florida Evidence Code, the notes are riddled with "double-hearsay." Section 90.805 of the Florida Evidence Code provides that "[h]earsay within hearsay is not excluded under s. 90.802, provided each part of the combined statements conforms with an exception to the hearsay rule as provided in s. 90.803 or s. 90.804." Fla. Evid. Code § 90.805. CPH simply cannot overcome both hurdles. The restatement interview notes that Morgan Stanley seeks to exclude are just that — interview notes. Arthur Andersen and Skadden employees spoke with Sunbeam employees and recorded an account of the Sunbeam employee's comments. These comments are pure hearsay that fall within no imaginable exception to the hearsay rule. Such statements would be inadmissible if sought through a live witness; they are no more admissible because presented in document form.

[2]Documents prepared in anticipation of litigation are certainly excludable from the business records exception. *See Stambor v. One Hundred Seventy-Second Collins Corp.*, 465 So. 2d 1296 (Fla. 3d DCA 1985) (holding in a slip-and-fall case that an accident report prepared by a restaurant manager immediately after the accident was inadmissible, not because it was "not kept in the regular course of … business," but because such reports lack the necessary trustworthiness). In addition, it is important to note that the interviews in question formed the basis for the Skadden report, which was the subject of a Morgan Stanley motion to compel, that was subsequently denied.

WHEREFORE, the Court should exclude any use of the restatement interview notes of non-parties Arthur Andersen and Skadden. These documents are hearsay and fall within no exception to the hearsay rule.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 10th day of January, 2005.

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COPY

CAUSE NO. 05-00275-J

FILED
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CLERK
DALLAS CO., TEXAS
DEPUTY

COLEMAN (PARENT) HOLDINGS INC.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	___ JUDICIAL DISTRICT
	§	
MORGAN STANLEY & CO. INCORPORATED,	§	
	§	
Defendant.	§	DALLAS COUNTY, TEXAS
	§	

MORGAN STANLEY & CO. INCORPORATED'S MOTION FOR SUBSTITUTED SERVICE

Morgan Stanley & Co. Incorporated. ("Morgan Stanley") asks this Court to authorize substituted service of a deposition subpoena on third-party witness Donald R. Uzzi ("Uzzi") and will respectfully show the Court as follows:

I.

MOTION

1. Coleman (Parent) Holdings Inc. and Morgan Stanley are currently parties to a lawsuit pending in Palm Beach County, Florida, under cause number CA 03-5045 in the Circuit Court of the Fifteenth Judicial District (the "Florida Lawsuit").

2. The court in the Florida Lawsuit entered an order styled "Agreed Order Appointing Commissioners and Commissions," allowing Morgan Stanley to take the deposition of Uzzi in connection with that lawsuit; a true and correct copy of that order is attached hereto as Exhibit "A" and is herein incorporated by reference for all purposes. Although discovery is closed in the Florida Lawsuit, the court in that lawsuit has provided Morgan Stanley special dispensation to take Uzzi's deposition by January 19, 2005, a true and correct copy of that order is attached hereto as Exhibit "B."

3. Morgan Stanley has diligently but unsuccessfully sought to serve a deposition subpoena duces tecum on Uzzi. A copy of the current subpoena duces tecum that Morgan Stanley has unsuccessfully attempted to serve on Uzzi is attached hereto as Exhibit "C" and is herein incorporated herein by reference for all purposes.

4. The Affidavit of T. A. Pérez, attached as Exhibit "D" and herein incorporated by reference for all purposes, demonstrates that Morgan Stanley has diligently attempted to serve Donald R. Uzzi with a subpoena duces tecum (including the subpoena attached as Exhibit "C") pursuant to (a) the Agreed Order Appointing Commissioners and Commissions and (b) the applicable Texas rules.

5. Uzzi's Texas residence has been located and confirmed. Uzzi's usual place of abode is 4201 Lomo Alto Drive, Unit 307, Dallas County, Texas 75219-1515.

II.

REQUEST FOR RELIEF

6. For these reasons, Morgan Stanley respectfully requests that it be authorized to serve and execute this Court's order for substituted service along with the Deposition Subpoena Duces Tecum by substituted service in any of the following ways:

(1) by leaving a true copy of the subpoena with anyone over sixteen years of age at Uzzi's usual place of abode in Dallas County, Texas;

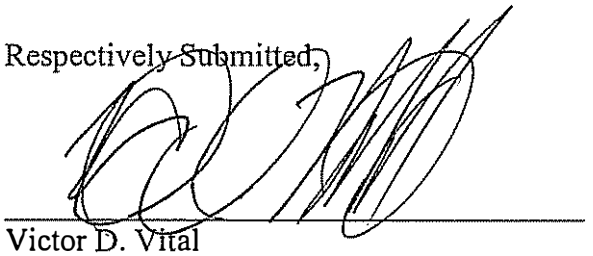
(2) by attaching a copy of the subpoena to the door of Uzzi's confirmed and usual place of adobe in Dallas County, Texas; or

(3) in any other manner that Exhibit "D" or other evidence before this Court shows will be reasonably effective to give Uzzi notice of the subpoena.

Morgan Stanley further seeks all other such relief to which it may be justly entitled.

Dated: January 10, 2005.

Respectively Submitted,



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Altresha Q. Burchett
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901 Main Street, Suite 3100
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Facsimile: 214-651-5940

ATTORNEYS FOR
MORGAN STANLEY & CO., INC.

EXHIBIT A

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

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

AGREED ORDER APPOINTING COMMISSIONERS AND COMMISSIONS

THIS CAUSE, having come before the Circuit Court in and for Pahn Beach County, State of Florida, on the agreement of the parties, and

WHEREAS, it appears to the Court that:

1. Defendant Morgan Stanley & Co. Incorporated ("MS & Co.") desires to take the videotaped depositions of and obtain documents from the following witnesses who reside in California, Connecticut, Kansas, Minnesota, New York, Texas, and the District of Columbia and who have knowledge of facts relevant to this case:

Karen Kay Clark
1674 Amarelle Street
Newbury Park, CA 91320

Frank N. Gifford
126 Taconic Road
Greenwich, CT 06831-3139

Robert J. Duffy
16 Saint Nicholas Road
Darien, CT 06820-2823

16div-009655

Joseph P. Page
921 Sheridan Street, Apt. 119
Wichita, KS 67213-1363

William H. Spoor
622 West Ferndale Road
Wayzata, MN 55391

Adam Emmerich
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Steven Cohen
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Steven K. Geller
301 East 79th Street, Apt. 4H
New York, NY 10021-0932

Donald Uzzi
4209 Beverly Dr.
Dallas, TX 75205-3020

Ann Dibble Jordan
2940 Benton Place NW
Washington, DC 20008

2. You are hereby appointed as commissioners to take the videotaped testimony (and obtain the requested documentation) of the above witnesses and other witnesses whose discovery is sought in the commissions' jurisdiction under oath and on oral examination in accordance with the applicable Florida Statutes and Rules of Civil Procedure:

Esquire Santa Ana
2100 North Broadway, Second Floor
Santa Ana, CA 97206

Del Vecchio Reporting
117 Randi Drive
Madison, CT 06443

Harper Court Reporting
P.O. Box 3008
Wichita, KS 67201

Kirby Kennedy & Associates
5200 Wilson Road #219
Minneapolis, MN 55424

Esquire Deposition Services
216 E. 45th Street, 8th FL
New York, New York 10017-3304

Esquire Deposition Services
703 McKinney Avenue #320
Dallas, Texas 75202

Esquire Deposition Services
1020 19th Street NW, #621
Washington, DC 20036

or any person able to administer oaths pursuant to the laws of California, Connecticut, Kansas, Minnesota, New York, Texas, and the District of Columbia and duly authorized by him.

3. This order does not purport to grant the power of the commissioners appointed to subpoena witnesses or documents, but simply the power to administer oaths and transcribe deposition testimony.

DONE AND ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida this ____ day of January, 2004.

SIGNED AND DATED

ELIZABETH T. MAASS
Circuit Court Judge

ELIZABETH T. MAASS

Copies furnished to:

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Facsimile: (312) 527-0484

16div-009658

EXHIBIT B

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

ORDER GRANTING MORGAN STANLEY'S
MOTION FOR LEAVE TO TAKE DEPOSITION OF DONALD R. UZZI

THIS CAUSE having come before the Court on December 22, 2004 upon Morgan Stanley's Motion for Leave to Take Deposition of Donald R. Uzzi, and the Court having heard argument of counsel, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that:

1. Morgan Stanley's Motion for Leave to Take Deposition of Donald R. Uzzi is GRANTED, in part.

2. Morgan Stanley shall have until Jan. 19, 2005 to take Mr. Uzzi's deposition, which shall be without prejudice to Plaintiff's right to seek to bar the testimony on grounds of unfair surprise or prejudice, as well as the usual evidentiary grounds.*

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 22 day of December, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

* Defendant shall serve on Plaintiff by email a copy of each subpoena directed to Mr. Uzzi.

WPB#587529.6

Copies furnished to:

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EXHIBIT C

THE STATE OF TEXAS

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.
MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

DEPOSITION SUBPOENA DUCES TECUM

TO: Any sheriff or constable of the State of Texas or other person authorized to serve and execute subpoenas as provided in Texas Rule of Civil Procedure 176.5.

You are commanded to summon **Donald R. Uzzi**, 4201 Lomo Alto Drive, Apt. 307, Dallas, TX 75219, to appear at the principal offices of HAYNES AND BOONE, LLP, 901 Main Street Suite 3100, Dallas, Texas 75202, on **Wednesday, January 19, 2005 at 9:30 a.m.** to give testimony at a videotaped oral deposition and to permit inspection and copying of documents or tangible things to be used as evidence in this case.

Donald R. Uzzi is commanded to attend the oral deposition and to produce and permit inspection and copying of the following documents or tangible things described in the attached Exhibit 1. These documents and materials shall be brought with the witness and produced prior to the deposition on January 19, 2005, at HAYNES AND BOONE, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202.

Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both. TEX. R. CIV. P. 176.8(a).

DO NOT FAIL to return this writ to the Circuit Court of the Fifteenth Judicial Circuit In and For Palm Beach County, Florida with either the attached officer's return showing the manner of execution or the witness's signed memorandum showing that the witness accepted the subpoena.

ISSUED on December 27, 2004.

By: _____

Sean Trende
Texas State Bar No. 24034176
KIRKLAND & ELLIS LLP,
655 15th Street, N.W., Suite 1200,
Washington, D.C. 20005

This subpoena was issued pursuant to Texas Rule of Civil Procedure 201.2, the Order of the Circuit Court of the Fifteenth Judicial Circuit In and For Palm Beach County, Florida entered on January 21, 2004 and attached hereto as Exhibit 2, and at the request of Defendants' attorneys of record Thomas D. Yannucci, P.C., Lawrence P. Bemis (FL Bar No. 618349), and Thomas A. Clare of KIRKLAND & ELLIS LLP, 655 15th Street, N.W., Suite 1200, Washington, D.C. 20005; Mark C. Hansen, James M. Webster, III, Rebecca A. Beynon of KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C., Sumner Square, 1615 M Street, N.W., Suite 400, Washington, D.C. 20036; Joseph Ianno, Jr. (FL Bar No. 655351), CARLTON FIELDS, P.A., 222 Lakeview Ave., Suite 1400, West Palm Beach, FL 33401.

EXHIBIT 1

DEPOSITION SUBPOENA DUCES TECUM

You are hereby requested to produced the following documents pursuant to the definitions and instructions contained herein:

DOCUMENTS REQUESTED

1. All documents concerning the Coleman Transaction.

2. All documents concerning the Subordinated Debenture Offering.

3. All documents concerning the Bank Facility, or the Credit Agreement.

4. All documents reflecting or concerning any communications between or among any of Sunbeam, CPH, MAFCO, CSFB, Arthur Andersen, MS & Co., MSSF, Davis Polk, Wachtell, or Skadden in 1997 or 1998.

5. All documents provided by you in any Litigation or SEC Administrative Proceeding.

6. All calendars, diaries, timekeeping sheets or records maintained by you concerning any activities related to Coleman Transaction, the Subordinated Debenture Offering, the Bank Facility, the Credit Agreement.

7. All documents related to Sunbeam's Financial Information for all or any portion of 1996, 1997, and 1998, including but not limited to Financial Statements and documents concerning Sunbeam's forecasts and plans for revenue or earnings.

8. All documents related or referring to any cost-reduction or sales program or policy in place at Sunbeam during 1997 and 1998, including but not limited to documents concerning the "early buy" program, "Initiatives for Success", and "bill and hold" sales and the "no returns" policy.

9. All documents concerning returns of Sunbeam goods or product in 1997 and 1998, including but not limited to documents regarding the "no returns" policy and conversations or communications regarding the deletion of return authorizations from the J.D. Edwards system.

10. All documents pertaining to negotiations concerning the acquisition of Coleman, Signature Brands, and First Alert, including but not limited to documents concerning conversations or communications of any kind between or among any of MS & Co., MSSF, CPH or MAFCO personnel or representatives.

11. All documents concerning Synergies that might be achieved from a business combination of Sunbeam, Coleman, Signature Brands, and First Alert, or any combination thereof.

12. All documents related to or supporting the March 16, 1998 Representation Letter provided to Arthur Anderson, including but not limited to any drafts of such letter and any Financial Information used or referenced in writing the letter or drafts.

13. All documents concerning any "comfort letter" pertaining to the Subordinated Debenture offering or the Credit Agreement, including but not limited to Arthur Andersen's letters dated March 19, 1998 and March 25, 1998 and any drafts of such letters.

14. All documents concerning any investigation, analysis, or due diligence conducted by Sunbeam or its Advisors pertaining to the Coleman Transaction, including but not limited to documents and Financial Information pertaining to March 18, 1998 and March 24, 1998 conference calls.

15. All documents related to Sunbeam's March 19, 1998 press release, including but not limited to documents pertaining to the contents or drafting of the press release, the decision to issue the press release, and the decision to include the press release in the Offering memorandum.

16. All documents concerning the March 19, 1998 drafting session and/or meeting that took place at Global Financial Press concerning the Offering Memorandum, including but not limited to documents concerning any conversations or communications of any kind involving MS & Co. or Arthur Andersen personnel.

17. All documents related to the sale of the Subordinated Debenture, including but not limited to documents pertaining to roadshows or other communications with investors or analysts.

DEFINITIONS

1. "Advisors" shall mean financial advisors, legal advisors, accountants, consultants and any other third-party advising or assisting Sunbeam in any way with the Coleman Transaction, including but not limited to Arthur Anderson, Coopers & Lybrand, Llama Company, MS& Co., MSSF, and Skadden.

2. "Arbitrations" shall mean *Albert J. Dunlap and Sunbeam Corporation*, No. 32 160 00088 99 (AAA); and *Russell A. Kersh and Sunbeam Corporation*, No. 32 160 00091 99 (AAA).

3. "Arthur Andersen" shall mean Arthur Andersen LLP and any of its former or present partners, officers, directors, employees, representatives and agents.

4. "Bank Facility" shall mean the Credit Agreement, including amendments, and all funds extended by Lenders to Sunbeam pursuant to the Credit Agreement, including but not limited to Tranche A, Tranche B, and the Revolving Credit Facility.

5. "Communication" shall mean any exchange or transmittal of information by any means of transmission, including, without limitation, face-to-face conversation, mail, overnight delivery, Internet, telephone, electronic mail, or facsimile.

6. The term "concerning" shall mean relating to, referring to, describing, evidencing, or constituting.

7. "Coleman" shall mean Coleman Company, Inc. and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

8. "Coleman Transaction" shall mean Sunbeam's acquisition of Coleman Company, Inc. from CPH and all related communications, agreements, and transactions, including the February 27, 1998 Agreements and the March 30, 1998 closing.

9. "Cooper & Lybrand" shall mean the former Coopers & Lybrand LLP, and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents.

10. "CPH" shall mean Coleman (Parent) Holdings Inc. and any of its former or present officers, directors, employees, representatives and agents.

11. "Credit Agreement" shall mean the agreement entered into by Sunbeam, as borrower with Lenders, dated March 30, 1998 and all amendments thereto.

12. "CSFB" shall mean Credit Suisse First Boston LLC and any of its former or present officers, directors, employees, representatives and agents.

13. "Davis Polk" shall mean Davis Polk & Wardwell and any of its former or present partners, officers, directors, employees, representatives and agents.

14. "Document" shall mean any recording in any tangible form of any information, whether handwritten, typed, printed, stored on computer disks, tapes, or databases, or otherwise reproduced. "Document" or "documents" also includes electronic documents whether stored on

servers or hard drives, e-mail, backup tapes, voicemail and video and audio recordings. A draft or non-identical copy is a separate document within the meaning of this term.

15. "Financial Information" shall mean information concerning the past or present financial condition of Sunbeam or Sunbeam securities.

16. "Financial Statements" shall mean documents reflecting Financial Information, including without limitation quarterly reports, yearly reports, balance sheets, statements of income, earnings, cash flow projections, and sources and applications of funds.

17. "First Alert" shall mean First Alert, Inc., and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

18. The term "identify" (with respect to documents) shall mean to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).

19. "Lenders" shall mean the entities listed on Schedule 2.01 of the Credit Agreement under the heading "Lenders" and any other person that shall have become a party to the Credit Agreement as a Lender pursuant to an assignment and acceptance.

20. "Litigations" shall mean *In re Sunbeam Securities Litigation*, 98-8258-Civ.-Middlebrooks (S.D. Fla); *Camden Asset Management L.P. v. Sunbeam Corporation*, 98-8773-Civ.-Middlebroks and 98-8275-Civ.-Middlebrooks (S.D. Fla); *Krim v. Dunlap*, No. CL 983168AD (15th Jud. Cir., Fla.); *Stapleton v. Sunbeam Corp.*, No. 98-1676-Civ.-King (S.D. Fla); *Sunbeam Corp. v. PricewaterhouseCoopers LLP*, No. CL 005444AN (15th Jud. Cir., Fla.); *In re Sunbeam Corp., Inc.*, No. 01-40291 (AJG) (Bankr. S.D.N.Y.) and any adversary proceedings therein; *SEC v. Dunlap*, No. 01-8437-Civ.-Middlebrooks (S.D. Fla.); *Oaktree Capital Management LLC v. Arthur Andersen LLP*,

No. BC257177 (L.A. Cty., CA); and *Coleman (Parent) Holdings Inc. v. Arthur Andersen LLP*, No. CA 01-06062AN (15th Jud. Cir., Fla.), or other litigation concerning the Coleman Transaction.

21. "Llama Company" shall mean Llama Company and any of its former or present partners, officers, directors, employees, representatives and agents.

22. "MAFCO" shall mean MacAndrews & Forbes Holdings, Inc. and any of its officers, directors, former or present employees, representatives and agents.

23. The "March 19, 1998 Press Release" shall mean the press release issued by Sunbeam on March 19, 1998 concerning the shortfall of first quarter 1998 sales numbers and the reasons for such shortfall.

24. "MS & Co." shall mean Morgan Stanley & Co. Inc. and any of its former or present officers, directors, employees, representatives and agents.

25. "MSSF" shall mean Morgan Stanley Senior Funding, Inc. and any of its former or present officers, directors, employees, representatives and agents.

26. The term "person" shall mean any natural person or any business, legal or governmental entity or association.

27. The term "relating to" shall mean concerning, evidencing, referring to, or constituting.

28. The "Relevant Period," unless otherwise indicated, shall be from January 1, 1996 through the date of service of this subpoena.

29. "SEC" shall mean the Securities and Exchange Commission.

30. "SEC Administrative Proceedings" shall mean *In the Matter of Sunbeam Corp.*, SEC Administrative Proceeding File No. 3-10481, and *In the Matter of David C. Fannin*, SEC Administrative Proceeding File No. 3-10482.

31. "Signature brands" shall mean Signature Brands USA, Inc. and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

32. "Skadden" shall mean Skadden, Arps, Slate, Meagher & Flom, LLP and any of its former or present partners, officers, directors, employees, representatives and agents.

33. "Subordinated Debentures" shall mean the Sunbeam's Zero Coupon Convertible Senior Subordinated Debentures Due 2018.

34. "Subordinated Debenture Offering" shall mean the offering of Sunbeam's Subordinated Debentures.

35. "Sunbeam" shall mean Sunbeam Corporation and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents.

36. "Synergies" shall mean post-acquisition gains through increased revenue and/or decreased cost.

37. "Wachtell" shall mean Wachtell Lipton Rosen & Katz and any of its former or present partners, officers, directors, employees, representatives and agents.

38. The terms "you" or "your" shall mean Donald R. Uzzi and any of Donald R. Uzzi's present and former representatives and agents.

INSTRUCTIONS

1. Documents shall be produced as they are kept in the usual course of business, or organized and labeled to correspond to the categories in this Request. Documents attached to each other should not be separated. Documents consisting of items previously produced in the Litigations, Arbitrations, and/or SEC Administrative Proceedings with Bates numbering shall be produced in Bates number order.

2. All documents shall be produced in the file folder, envelope or other container in which the documents are kept or maintained by you. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks.

3. The relevant period, unless otherwise indicated, shall be from January 1, 1996 through the date of service of this subpoena, and shall include all documents and information which relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received prior or subsequent to that period. Please supplement or correct your responses to these requests if, at any time, you become aware that your responses are incomplete or incorrect in any request.

4. If you claim the attorney-client privilege, or any other privilege or work-product protection for all or any portion of a document, you shall provide a privilege log that describes the withheld material sufficiently to allow Morgan Stanley to test the privilege or protection asserted.

5. The following rules of construction apply:

1. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be outside their scope;

2. The term "including" shall be construed to mean "without limitation"; and

3. The use of the singular form of any word include the plural and vice versa.

EXHIBIT D

AFFIDAVIT OF AGUSTIN M. PÉREZ

STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned Notary Public, on this day personally appeared Agustin M. Pérez, who, being by me duly sworn on oath deposed and said:

1. My name is Agustin M. Pérez, I am over the age of 18 years and am fully competent to testify to the matters stated in this affidavit. I have personal knowledge of the facts and statements contained in this affidavit and each of them is true and correct.

2. I am in all things competent to make oath of the facts stated in this affidavit.

3. I am a licensed Texas Private Investigator working with Verasys L.L.C., a Global Intelligence and Consulting Firm based in Miami, Florida.

4. I am a person wholly disinterested in the cause described in the attached documents, and I am not related by blood or marriage to any of the parties to this suit.

5. On September 22, 2004, I was assigned to serve process in cause No. CA 03-5045 AI, styled *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co. Incorporated*, In the Fifteenth Judicial Circuit In and For Palm Beach County, Florida.

6. I was instructed to attempt service on witness, Donald R. Uzzi, at 4201 Lomo Alto Drive, Unit 307, Highland Park, Texas, 75219-1515, which is the witness's usual place of abode.

7. I made over 17 attempts to obtain personal service of process on the witness, Donald R. Uzzi, at 4201 Lomo Alto Drive, Unit 307, Highland Park, Texas, the witness's usual place of abode, on the following dates: September 27, 2004, September 28, 2004, September 30, 2004, October 1, 2004, October 2, 2004, October 4, 2004, October 15, 2004, October 21, 2004, October 22, 2004, November 30, 2004, December 17, 2004, December 18, 2004, December 20, 2004, December 22, 2004, December 27, 2004, December 28, 2004, and January 3, 2005.

8. In addition to my attempts to obtain personal service of process, I directed an associate to attempt service of process on: November 22, 2004, November 23, 2004, December 22, 2004, and December 28, 2004. Upon information and belief, these attempts occurred but were unsuccessful.

9. Further, on December 1, 2004, I contacted the Office of Constable Rick Richardson, Precinct 3, Dallas County, and requested that his office attempt service of the subpoena. I provided Constable Richardson's office with a valid subpoena and, upon information and belief, his office made several unsuccessful attempts.

10. On October 5, 2004, I spoke with Meaghan Uzzi, the witness's daughter, near her high school. Ms. Uzzi informed me that she knew someone was trying to reach her father, but she was told by her mother not to answer the phone. She explained that her father was out of town at their summer home for some reason, but her parents had purposely kept her in the dark about why someone was trying to reach him. I asked if she would contact her father for me and provided my business card.

11. Despite Ms. Uzzi's statement that the family was purposely not answering the phone, I tried to reach the witness, Donald R. Uzzi, by telephone on the following dates: October

18, 2004, October 22, 2004, and December 18, 2004. On each occasion the call was answered by a machine.

12. On December 6, 2004, I spoke with the property manager for the witness's apartment. During this conversation the property manager revealed that Meaghan Uzzi, the witness's daughter, had told the property manager that her father was in hiding.

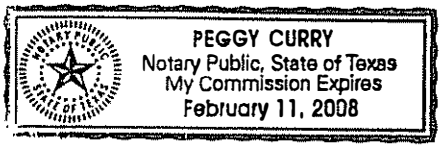
13. On the dates listed in Paragraph 7, I attempted service at the witness's usual place of abode and either buzzed the intercom or entered the complex and rang the doorbell. On all but one occasion, my efforts to contact the occupants were met with silence and no one answered the door. On December 17, 2004, I made a service attempt where the door was answered by Sally Hummel-Uzzi, the witness's legal spouse, but I was informed that the witness, Donald R. Uzzi, was not at home.

14. I have left my business card with a note to call me on two occasions (October 5, 2004, and November 30, 2004), but received no response.

15. The foregoing attempts to obtain personal service on witness, Donald R. Uzzi, have been unsuccessful to date. I advised defendant Morgan Stanley & Co. Incorporated's attorney of my attempts, and he requested that I provide an affidavit detailing my service attempts.

16. I believe that the witness, Donald R. Uzzi, will be given effective notice of this deposition by serving a true copy of the subpoena on anyone over 16 years of age at 4201 Lomo Alto Drive, Unit 307, Highland Park, Texas, the witness's usual place of abode, or by attaching it to the door at the above address, pursuant to the provisions of Texas Rules of Civil Procedure.

SUBSCRIBED AND SWORN TO BEFORE ME on the 12th day of January, 2005, to certify which witness my hand and official seal.



Notary Public in and for the State of Texas
My commission expires:
02-11, 2008

#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiffs,

CASE NO: 2003 CA 005045 AI

vs.

MORGAN STANLEY & CO., INC.
Defendant.
_____/

NOTICE OF FILING PLEADING UNDER SEAL

COLEMAN (PARENT) HOLDINGS INC. hereby gives notice of the filing of COLEMAN (PARENT) HOLDINGS INC.'S Supplemental Appendix to Coleman (Parent) Holdings Inc.'s Summary Judgment Filing Volumes 1-8, Filed under Seal on this date.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 11th day of JAN, 2005.

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Attorneys for Plaintiffs

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Notice Of Filing Pleading Under Seal
Case No.: 2003 CA 005045 AI

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#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiffs,

CASE NO: 2003 CA 005045 AI

vs.

MORGAN STANLEY & CO., INC.
Defendant.
_____/

NOTICE OF FILING PLEADING UNDER SEAL

COLEMAN (PARENT) HOLDINGS INC. hereby gives notice of the filing of COLEMAN (PARENT) HOLDINGS INC.'S Response to Morgan Stanley's Proposed Findings of Fact and Conclusions of Law In Support of Its Motion for Summary Judgment, Filed under Seal on this date.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 11th day of JAN., 2005.

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Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Notice Of Filing Pleading Under Seal
Case No.: 2003 CA 005045 AI

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE TO MORGAN STANLEY'S MOTION TO COMPEL A "BETTER" ANSWER TO INTERROGATORY NO. 2 OF MORGAN STANLEY'S FIFTH SET OF INTERROGATORIES

Morgan Stanley once again has challenged CPH's answer to Interrogatory No. 2 in its Fifth Set of Interrogatories — contending that CPH should be required to provide a "better" answer than the one provided pursuant to this Court's December 15 Order. CPH has complied with this Court's directions and should not be required to answer Interrogatory No. 2 again notwithstanding the supposed "deficiencies" identified by Morgan Stanley.

First, Morgan Stanley twice complains (¶¶ 5, 9) that the amended response is inadequate because it refers to deposition testimony, without providing page and line designations. Had Morgan Stanley raised this issue with CPH in a discovery conference before filing its motion — which Morgan Stanley did not do — the matter would have been resolved without further motion practice. In any event, to avoid additional unnecessary proceedings on this issue, CPH hereby provides the following page and line designations for the depositions referenced in the amended response:

James Maher Deposition:	Pages 353:25-356:7, 357:19-358:9
William Nesbitt Deposition:	Pages 431:14-433:24, 441:17-23, 442:24-443:7
Ronald Perelman Deposition:	Pages 129:24-130:10, 131:19-132:9, 133:18-134:12, 135:8-136:25, 137:16-139:10

Paul Shapiro Deposition:	Pages 140:24-141:15, 142:24-144:12
Barry Schwartz Deposition:	Pages 185:22-186:8, 186:17-20
Howard Gittis Deposition:	Pages 105:24-106:22, 107:1-8
Donald Drapkin Deposition:	Pages 120:5-122:18

Second, Morgan Stanley complains (at ¶ 6) that the amended response refers to Gordon Rich, the senior Credit Suisse First Boston investment banker who worked with Coleman on the transaction. Morgan Stanley insists that references to Mr. Rich must be "removed" unless CPH can confirm whether Mr. Rich had conversations with Morgan Stanley regarding the March 19 press release. As stated in the amended response, however, Mr. Rich is deceased. Morgan Stanley cites no authority for the proposition that references to individuals in interrogatories must be "removed" if their roles cannot be verified due to their death.

Third, Morgan Stanley claims (at ¶ 7) that the amended response "indefinitely refers" to communications with William Nesbitt, without providing adequate details about those communications. Morgan Stanley apparently is referring to the portion of the amended response which states that Mr. Nesbitt "examined analyst reaction to the March 19, 1998 press release and advised representatives of CPH and Coleman that analysts were reporting the same information that those individuals recall was provided directly to CPH and Coleman by Sunbeam and Morgan Stanley." *See* MS Mot. Ex. B at 2. Mr. Nesbitt testified at his deposition that when he canvassed analyst reactions to the March 19 press release, he initially "canvassed the institutional research community electronically" and "gathered whatever was available on the wire for our benefit to see what their response was to this release." *See* Ex. A at 433:5-15. Mr. Nesbitt thus learned of analyst reaction from his electronic database search. Mr. Nesbitt also testified that after he conducted that search, he later spoke to analysts directly. Mr. Nesbitt did not recall further details concerning those conversations. *See id.*

Although Morgan Stanley complains (at ¶¶ 4, 8) about the generality of the descriptions of the identified conversations concerning the March 19 press release, that complaint is not well-taken. CPH has complied with this Court's direction in its December 15 Order. For the foregoing reasons, CPH respectfully requests that this Court deny Morgan Stanley's motion to compel a "better" answer to Interrogatory No. 2 in Morgan Stanley's Fifth Set of Interrogatories.

Dated: January 11, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 11th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S MOTION FOR TEMPORARY RELIEF FROM PROVISION IN SEPTEMBER 15, 2004 ORDER

Coleman (Parent) Holdings Inc. ("CPH") respectfully requests that this Court grant CPH temporary relief from the provision in the Court's September 15, 2004 Order requiring the parties to simultaneously file redacted and unredacted versions of pleadings. In support of this motion, CPH states as follows:

1. On January 10, 2005, CPH is filing a voluminous response to Morgan Stanley's proposed findings of fact and conclusions of law and the supporting materials for that response are contained in a multi-volume appendix. Because those filings contain documents that have been designated as confidential, CPH is filing those documents under seal.

2. Under this Court's September 15 Order, a redacted version of these filings also is to be filed. But given the vast amount of materials involved, and the short amount of time in which CPH has had to prepare its summary judgment filings, CPH respectfully requests that this Court temporarily relieve it of that obligation. CPH also requests this relief because many of the documents that are designated as confidential probably need not be, and thus, it would be more efficient to file the redacted version after this Court resolves any confidentiality disputes to which the parties cannot reach agreement.

For the foregoing reasons, CPH respectfully requests temporary relief from the provision

of the Court's September 15 Order requiring the filing of a redacted version of CPH's response to Morgan Stanley's proposed findings and supporting materials, until after any confidentiality disputes concerning those papers are resolved by this Court.

Dated: January 11, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 11th day of January, 2005.

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON DEFENDANT'S MOTION TO STAY PROCEEDINGS PENDING APPEAL

THIS CAUSE came before the Court January 11, 2005 on Defendant's Motion to Stay Proceedings Pending Appeal, with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Defendant's Motion to Stay Proceedings Pending Appeal is Denied, without prejudice to renewal if the appellate court issues an order to show cause, and without prejudice to Plaintiff's right to continue to oppose a stay.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 11 day of January, 2005.

ELIZABETH T. MAASS
Circuit Court Judge

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

AGREED ORDER GRANTING VERIFIED MOTION TO ADMIT JEFFREY S. DAVIDSON, PRO HAC VICE

THIS CAUSE having come before the Court upon Morgan Stanley & Co. Incorporated's Verified Motion to Admit Jeffrey S. Davidson Pro Hac Vice, and the Court having been advised of an agreement of the parties, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that:

Morgan Stanley & Co. Incorporated's Verified Motion to Admit Jeffrey S. Davidson Pro Hac Vice is GRANTED. Mr. Davidson is admitted for the purpose of this case, on payment of the Clerk's fees.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 12 day of January, 2005.

ELIZABETH T. MAASS
Circuit Court Judge

WPB#576507.4

16div-009693

Copies furnished to:

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INC.,

Defendant.
_____/

MORGAN STANLEY & CO. INCORPORATED'S MOTION TO COMPEL PRODUCTION OF COLEMAN (PARENT) HOLDINGS INC.'S TRIAL EXHIBITS

Defendant, Morgan Stanley & Co. Incorporated ("Morgan Stanley"), by and through its undersigned attorneys, respectfully requests that this Court enter an order compelling Coleman (Parent) Holdings Inc. ("CPH") to provide a copy of its trial exhibits to Morgan Stanley. In support of this Motion, Morgan Stanley states as follows:

1. This Court entered an Order Concerning Pretrial Schedule and Following Case Management Conference ("Order") on October 14, 2004. The Order requires the parties to ***exchange*** their Trial Exhibits on January 10, 2005 (emphasis added). A copy of the Order is attached as Exhibit "A."

2. Morgan Stanley provided a copy of all of its trial exhibits to CPH via overnight courier on January 10, 2005.

3. Counsel for CPH advised Morgan Stanley that it does not believe it should be subjected to the time and expense of providing all of its trial exhibits to Morgan Stanley, and that it will only provide copies of trial exhibits that are not Bates-labeled, deposition exhibits,

pleadings and discovery responses, or expert reports. A copy of Michael Brody's correspondence to Thomas Clare regarding production of CPH's trial exhibits is attached as Exhibit "B."

4. Counsel for CPH argues that because Morgan Stanley did not provide copies of depositions filed in connection with its Motion for Summary Judgment to CPH, CPH has no obligation to provide all of its exhibits for trial to Morgan Stanley. The documents that counsel for CPH refers to were deposition transcripts, filed with the Court under a Notice of Filing. Morgan Stanley served the Notice of Filing on counsel for CPH and made the transcripts available for inspection and copying if CPH so desired. CPH chose not to inspect or copy the transcripts. Since the depositions are either original or certified copies that are already in CPH's possession, there was no need to incur the expense of copying those depositions.

5. However, trial exhibits are very different from depositions. Morgan Stanley is entitled, at the very least, to have CPH's actual trial exhibits exchanged pursuant to this Court's order. The trial exhibits may differ from the originally produced exhibit. For example, the exhibits could be highlighted, enlarged, enhanced, redacted, or altered, and under such circumstances a lack of access to CPH's trial exhibits will prejudice Morgan Stanley. Furthermore, this Court has ordered CPH to exchange its trial exhibits with Morgan Stanley.

6. A court may preclude presentation of a party's trial exhibits where the party fails to exchange those exhibits with opposing counsel. *Ham v. Dunmire*, 2004 WL 2973857, *6 (Fla. 2004) (noting that court has discretion to "exercise sanctions as a means to discourage stonewalling between opposing counsel and assure compliance with court orders").

WHEREFORE, Morgan Stanley respectfully requests that this Court enter an order compelling CPH to provide a copy of its trial exhibits to Morgan Stanley and award such other and further relief as is just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 12th day of January, 2005.

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EXHIBIT A

16/14

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC..,
Defendant(s).
_____/

ORDER CONCERNING PRETRIAL SCHEDULE AND FOLLOWING CASE MANAGEMENT CONFERENCE

THIS CAUSE came before the Court October 14, 2004 for a case management conference, with all parties well represented by counsel. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that objections to all discovery served on or after October 14, 2004 shall be served within 14 days. It is further

ORDERED AND ADJUDGED that this action is specially set for jury trial commencing February 18, 2004. It is further

ORDERED AND ADJUDGED that the proceedings relating to summary judgment will take place on the following schedule:

Summary Judgment Briefs	December 6, 2004
Summary Judgment Response Briefs	December 17, 2004

Summary Judgment Replies	December 31, 2004
Summary Judgment Hearing	January 21, 2005

It is further

ORDERED AND ADJUDGED that the proceedings relating to mediation will take place on the following schedule:

Mediator Selected	December 1, 2004
Mediation	January 24, 2005

It is further

ORDERED AND ADJUDGED that the proceedings relating to expert discovery will take place on the following schedule:

Initial Expert Disclosures	December 1, 2004
Responsive Expert Disclosures	December 13, 2004
Rebuttal Expert Disclosures	December 20, 2004
Depositions of Experts	December 21, 2004 - January 7, 2005

The parties agree, and the Court orders, that expert witness disclosures shall include: (a) the name and business address of the witness; (b) the subject matter about which the expert will testify; (c) the substance of the facts and opinions to which the expert will testify; (d) a summary of the grounds for each opinion; (e) a copy of any written reports issued by the expert regarding this case; (f) a copy of the expert's curriculum vitae; (g) a list of all cases in which the expert has testified during the past five years; (h) a list of all produced documents relied on by the expert; and (i) copies of all non-produced documents relied on by the expert. Expert witnesses will not be permitted to testify as to opinions, or the bases therefore, unless the opinions or bases were disclosed with particularity in accordance with this Order. It is further

ORDERED AND ADJUDGED that the remaining pretrial proceedings will take place on the following schedule:

Supplemental Interrogatory Responses Due	December 24, 2004

Completion of Fact Discovery	November 24, 2004
Deposition Designations Exchanged-Fact Witnesses	December 20, 2004
Deposition Designations Exchanged-Expert Witnesses	January 14, 2004
Deposition Counter-Designations and Initial Objections Exchanged-Fact Witnesses	January 17, 2005
Deposition Counter-Designations and Initial Objections Exchanged-Expert Witness	January 21, 2005
Motions in Limine	January 10, 2005
Witness Lists and Trial Exhibits Exchanged	January 10, 2005
Motion in Limine Oppositions	January 18, 2005
Objections to Counter-Designations Exchanged-Fact Witnesses	January 24, 2005
Objections to Counter-Designations Exchanged-Expert Witnesses	January 28, 2005
Meet-and-Confer re: Deposition Designations	February 4, 2005
Joint Pretrial Stipulation (in the form directed by the Court's Uniform Pretrial Procedure)	February 9, 2005
Deposition Designations, Counter-Designations, and Objections to Designations and Counter-Designations Provided to the Court	February 11, 2005
Pretrial Conference (3 days)	February 14, 15, and 16, 2004
Final Pretrial Conference	February 17, 2005
Jury Instructions and Verdict Forms Exchanged	February 18, 2005
Initial Jury Screening	February 18, 2005
Jury Trial Begins (15 trial days)	February 22, 2005

The Court will receive objections to instructions and verdict forms, and the parties'

counter-instructions on a date to be determined during trial. It is further

ORDERED AND ADJUDGED that hearing on Motions in Limine and objections to deposition designations set December 20 - 22, 2004 is canceled, to be reset after the deadlines established by this Order.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 14 day of October, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

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EXHIBIT B

JENNER&BLOCK

January 10, 2005

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By Telecopy

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Zhonette Brown, Esq.
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Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Tom and Zhonette:

I write in response to Zhonette's email of today concerning the disclosure of trial exhibits.

We disagree with your statement that our position with regard to trial exhibits is not in accordance with the Court's Order. As we explained to you, we are serving an exhibit list today that identifies most of CPH's trial exhibits by Bates-number. CPH's trial exhibit list also contains certain pleadings, expert reports, and discovery responses that both parties currently possess. As to those documents, CPH's trial exhibit list identifies them by date and title. We do not believe that CPH is required to incur the time and expense of copying deposition exhibits, production documents, discovery responses, and expert reports that Morgan Stanley already has within its possession. As we previously informed you, we are sending by Federal Express today (for delivery tomorrow) copies of all documents contained on our exhibit list that are neither Bates-labeled documents, prior deposition exhibits, pleadings and discovery responses from this case, nor expert reports served in connection with the present matter. Further, if there is any confusion about the identity of particular documents disclosed on our exhibit list, we stand ready to clear up any confusion.

CPH's position is particularly appropriate given Morgan Stanley's recent refusal to provide us with copies of documents that it filed in connection with its motion for summary judgment. *See* J. Ianno email to M. Brody dated 12/30/2004 (stating that "[i]f you insist on copies of documents that are already in your possession, please arrange for a copy service to pick up the documents for copying"). Indeed, Mr. Ianno informed us that we would have to pay approximately $2,000 if we wanted copies of materials that Morgan Stanley filed with the Court.

Therefore, CPH stands by its decision to supply Morgan Stanley only with copies of trial exhibits that it does not already have within its possession.

Very truly yours,

Michael T. Brody

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INC.,

Defendant.
_____/

MORGAN STANLEY & CO. INCORPORATED'S
MOTION FOR PROTECTIVE ORDER

Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") requests that this Court enter a Protective Order pursuant to Fla. R. Civ. P. 1.280(c) concerning the Notice of Taking Videotaped Deposition of a Morgan Stanley representative concerning punitive damages. In support of this Motion, Morgan Stanley states as follows:

1. On January 4, 2005, Coleman (Parent) Holdings Inc., ("CPH") served its Amended Notice of Taking Videotaped Deposition of a Morgan Stanley representative to testify as to Morgan Stanley's net worth, income, revenue, profits, losses, and global holdings for each fiscal year between and including 1998 – 2004 ("Topic 2"). Additionally, the deponent is to testify as to Morgan Stanley's ability to satisfy a punitive damages judgment ("Topic 3"). A copy of the deposition notice is attached hereto as Exhibit "A."

2. This Court has previously ruled that a Morgan Stanley representative may testify on Topic 2. A copy of the Court's Order is attached as Exhibit "B."

3. The scope of Topic 3 is vague, overbroad, and not reasonably calculated to lead to the discovery of admissible evidence. Morgan Stanley is unable to designate a representative

who can testify as to their ability to satisfy a punitive damages judgment when it is impossible to determine what a punitive damage judgment, if it is even awarded, might be. A deponent cannot testify as to Morgan Stanley's ability to satisfy a potential judgment without an indication of, *inter alia*, the amount of the judgment, the date of the judgment, the terms of the judgment, and the scope of the judgment.

4. Morgan Stanley also requests that this Court eliminate Topic 2 from the deposition notice. Since the hearing in early December, Morgan Stanley has produced its financial information. Morgan Stanley has stipulated to the admissibility of the documents subject to certain objections, such as relevance, motions in limine, and the pending petition for writ of certiorari. To require a deponent to testify as to matters contained within the documents would subject Morgan Stanley to annoyance, harassment and unnecessary expense.

WHEREFORE, Morgan Stanley respectfully requests that this Court enter Protective Order pursuant to Fla. R. Civ. P. 1.280(c) concerning the Notice of Taking Videotaped Deposition of a Morgan Stanley representative concerning punitive damages, and award such other and further relief as is just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 12th day of January, 2005.

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EXHIBIT A

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.
MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

AMENDED NOTICE OF TAKING VIDEOTAPED DEPOSITION

To:
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Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following party pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co., Inc. on topics identified on Exhibit A.	January 17, 2005 at 9:30 a.m.

The deposition will be conducted at Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017. The deposition will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The deposition will be taken before a person authorized to administer oaths and will continue day to day until completed.

With respect to the deposition identified above, please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List this 4th day of January 2005.

Dated: January 4, 2005

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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Exhibit A

CORPORATE DEPOSITION TOPICS

1. The authenticity, source, use, creation, maintenance and business purpose of documents responsive to Coleman (Parent) Holdings Inc.'s Seventh Request for Production of Documents.

2. Morgan Stanley & Co.'s net worth, income, revenue, profits, losses, cash flow, and global holdings for each fiscal year between and including 2003-2004.

3. Morgan Stanley & Co.'s ability to satisfy a punitive damages judgment.

EXHIBIT B

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON DEFENDANT MORGAN STANLEY & CO., INC.'S MOTION FOR PROTECTIVE ORDER

THIS CAUSE came before the Court December 3, 2004 on Defendant Morgan Stanley & Co., Inc.'s Motion for Protective Order, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that paragraphs I and II of Defendant Morgan Stanley & Co., Inc.'s Motion for Protective Order are Denied, as moot. It is further

ORDERED AND ADJUDGED that paragraph III of Defendant Morgan Stanley & Co., Inc.'s Motion for Protective Order is Denied, except as modified by the Court's December 3, 2004 Order on Coleman (Parent) Holdings, Inc.'s Motion for a Finding of Contempt and for Other Relief due to Morgan Stanley's Disregard of Court Order. It is further

ORDERED AND ADJUDGED that paragraph IV of Defendant Morgan Stanley & Co., Inc.'s Motion for Protective Order is Denied.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 3 day of December, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a hearing has been set in the above-styled case as follows:

DATE:	January 19, 2005
TIME:	8:45 a.m.
PLACE:	Palm Beach County Courthouse, Courtroom 11A 205 North Dixie Highway West Palm Beach, Florida 33401
BEFORE:	Judge Elizabeth T. Maass
CONCERNING:	Morgan Stanley's Motion for Protective Order
	Morgan Stanley's Motion to Compel Production of Coleman's Trial Exhibits
	Morgan Stanley's Motion to Strike Coleman's Response to Morgan Stanley's Proposed Findings of Fact and Conclusions of Law in Support of its Motion for Summary Judgment

KINDLY GOVERN YOURSELVES ACCORDINGLY.

WPB#571076.29

The undersigned counsel hereby certifies that a good faith attempt to resolve the issues contained in the foregoing motions or matters will be made with opposing counsel prior to hearing on these matters on the Court's Motion Calendar.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no costs to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-2431 within two (2) working days of your receipt of this notice; if you are hearing or voice impaired, call 1-800-955-8771.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 12th day of January, 2005.

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BY: [signature] for
Joseph Ianno, Jr.
Florida Bar No. 655351 718947

Counsel for Morgan Stanley & Co. Incorporated

WPB#571076.29

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INC.,

Defendant.
_____/

MORGAN STANLEY & CO. INCORPORATED'S MOTION TO STRIKE COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE TO MORGAN STANLEY & CO. INCORPORATED'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

Defendant, Morgan Stanley & Co. Incorporated ("Morgan Stanley"), by and through its undersigned attorneys, pursuant to Fla. R. Civ. P. 1.080, respectfully requests that this Court enter an order striking Coleman (Parent) Holdings, Inc.'s ("CPH") Response to Morgan Stanley & Co. Incorporated's Proposed Findings of Fact and Conclusions of Law in Support of its Motion for Summary Judgment ("Response"). In support of this Motion, Morgan Stanley states as follows:

1. Morgan Stanley filed its Proposed Findings of Fact and Conclusions of Law in Support of its Motion for Summary Judgment ("Proposed Findings") on December 10, 2004. On December 22, 2004, CPH filed its Motion for Extension of Time to respond to Morgan Stanley's Proposed Findings. This Court, on January 4, 2005, entered an Order granting CPH's Motion for an Extension of Time, allowing CPH "until January 10, 2005, to serve by facsimile transmission or hand delivery its response to those portions of Defendant's Motion

for Summary Judgment which Plaintiff contends asserts facts not necessary to the motion or underlying claims." The Order also provides that Morgan Stanley must serve its reply to CPH's Response on January 17, 2005. A copy of the Order is attached as Exhibit "A."

2. Despite having a full 30 days to respond, CPH served its 246 page Response via facsimile after 8:00 p.m. on January 10, 2005. A proof of receipt of transmission attached as Exhibit "B."

3. "Facsimile service occurs when transmission is complete. Service by delivery after 5:00 p.m. shall be deemed to have been made on the next day." Fla. R. Civ. P. 1.080(b). Service of CPH's Response was not made on January 10, 2005 as ordered by this Court but instead was served the next day, on January 11, 2005.

4. CPH's Response is 246 pages long. It is impossible for Morgan Stanley to formulate an appropriate reply to CPH's overly-lengthy Response in the four business days remaining before Morgan Stanley must file its timely reply. The fact that CPH filed its Response a day late prejudices Morgan Stanley, depletes Morgan Stanley's time to reply, and wastes valuable judicial resources.

WHEREFORE, Morgan Stanley respectfully requests that this Court enter an order striking Coleman (Parent) Holdings, Inc.'s ("CPH") Response to Morgan Stanley & Co. Incorporated's Proposed Findings of Fact and Conclusions of Law in Support of its Motion for Summary Judgment and such further relief as is just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 12th day of January, 2005.

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Counsel for
Morgan Stanley & Co. Incorporated

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EXHIBIT A

#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

/

Case No. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

/

Case No. CA 03-5165 AI

ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION FOR EXTENSION OF TIME IN WHICH TO RESPOND TO MORGAN STANLEY & CO., INC.'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

THIS CAUSE having come to be considered upon Coleman (Parent) Holdings Inc.'s Motion for Extension of Time in Which to Respond to Morgan Stanley & Co., Inc.'s Proposed Findings of Fact and Conclusions of Law in Support of Its Motion for Summary Judgment, and the Court having reviewed the file and being fully advised in the premises, it is hereby,

ORDERED and ADJUDGED: the Motion is granted in part. Plaintiff shall have until Jan. 10, 2005 to serve by facsimile transmission or hand delivery those portions of its response to Defendant's motion for summary judgment which Plaintiff contends asserts facts not necessary to be resolved in order to rule on Defendant's motion for summary judgment on the underlying claims. Defendant shall serve its reply to Plaintiff's response by hand delivery or facsimile transmission by Jan. 13, 2005.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this 4 day of Jan, 2005.

ELIZABETH T. MAASS
CIRCUIT COURT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

16div-009727

EXHIBIT B

7:06 PM 1/10/2005 Transmission Record
Received from remote ID "312 527 0484"
Unique ID: "ADM41E2E3E45324"
Elapsed time: 74 minutes, 50 seconds.
Used channel 0.
No ANI data.
AOC: 0, 0, 0
Resulting status code (0/352; 0/0): Success
Pages sent: 1 - 246

8:22 PM 1/10/2005 Print Record
Printed on printer WPB-P1406 in 2 minutes, 11 seconds.
Successfully printed 246 pages (1 copy) for user ADMINISTRATOR

8:06 AM 1/11/2005 Route Record
Manually routed from ADMINISTRATOR
No notes.

8:06 AM 1/11/2005 Forward Record
Forwarded from JRAMI to BMOJA
No notes.

#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

Case No. CA 03-5045 AI

ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S OBJECTIONS TO THE FILING OF THE AMENDED RESTATED ANSWER

THIS CAUSE having come to be considered upon Coleman (Parent) Holdings Inc.'s Objections to the filing of the Amended Restated Answer by Morgan Stanley, and the Court having reviewed the file and being fully advised in the premises, it is hereby,

ORDERED and ADJUDGED: the Objections are overruled, in part. The Restated Amended Answer attached as Ex. A shall stand as the Answer of Morgan Stanley, and is filed for the administrative convenience of the Court.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this 12 day of Jan., 2005.

ELIZABETH T. MAASS
CIRCUIT COURT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

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16div-009731

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

RESTATED AMENDED ANSWER OF MORGAN STANLEY & CO. INCORPORATED

Defendant Morgan Stanley & Co. Incorporated ("MS & Co.") responds to Plaintiff Coleman (Parent) Holdings, Inc.'s ("CPH") Complaint by denying generally that MS & Co. engaged in any fraudulent or negligent misrepresentations, any conspiracy to defraud, that MS & Co. assisted Sunbeam Corporation ("Sunbeam") or any employee, director or agent of Sunbeam in the commission of a fraudulent scheme, or that MS & Co. otherwise defrauded CPH in any manner. Specifically, MS & Co. responds to CPH's allegations as follows:

Nature of the Action

1. MS & Co. denies the allegations contained in Paragraph 1.

2. MS & Co. admits that, beginning in mid-1997, MS & Co. served as an investment banker for Sunbeam. MS & Co. admits that it attempted to identify a party interested in purchasing Sunbeam, and that those efforts were ultimately unsuccessful. MS & Co. admits that it recommended that Sunbeam's management consider acquiring other companies instead and suggested, as is common in corporate mergers and acquisitions, that Sunbeam consider, among other options, using Sunbeam stock as part of the consideration for such an acquisition. MS & Co. denies that it had any knowledge as to the accuracy of the value of Sunbeam's stock, or that MS & Co. knew (or even suspected) that the value of Sunbeam's stock had been "fraudulently

Exhibit A

inflated." MS & Co. admits that it facilitated communications between Sunbeam and Coleman, but denies that it in any way "persuaded" CPH to sell its interest in Coleman. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 2 and consequently denies them.

3. MS & Co. admits that it agreed to serve as underwriter of a $750 million debenture offering for Sunbeam. MS & Co. admits that, as an advisor to Sunbeam, it had access to certain financial documents, and further states that those same documents were made available to CPH during the acquisition negotiations. Further, in that regard, MS & Co. specifically disclaimed any independent evaluation of Sunbeam's financial records, and expressly stated that it relied solely on documentation and information provided by Sunbeam and Sunbeam's audited financial statements. MS & Co. admits that on March 18, 1998, it learned that Sunbeam's first quarter 1998 sales were "soft." Sunbeam insisted that its sales would meet expectations, but MS & Co. insisted that Sunbeam issue a press release to warn the market of the softening sales. Additionally, MS & Co. received two "comfort letters" from Sunbeam's auditors, Arthur Andersen. MS & Co. performed all of its obligations as an underwriter of Sunbeam securities. MS & Co. denies that it had any role in the accounting judgments described in the complaint, or any obligations to audit or independently examine Sunbeam's accounting records. MS & Co. denies that it owed any duties to CPH. MS & Co. denies that it had any independent knowledge as to the reasons behind Sunbeam's soft sales, that Sunbeam had a "practice of accelerating sales," or that it "materially misrepresent[ed]" information to CPH. Further, MS & Co. specifically denies that it in any manner assisted Sunbeam in concealing its 1998 first quarter sales numbers in order to close the transaction. MS & Co. lacks sufficient knowledge or

information to form a belief as to the truth of any remaining allegations contained in Paragraph 3 and consequently denies them.

4. MS & Co. admits that CPH has brought this action against MS & Co. alleging fraudulent misrepresentation, aiding and abetting, conspiracy, and negligent misrepresentation, but denies that there is any merit to the suit. MS & Co. specifically denies that it made any fraudulent or negligent representations to CPH, that it in any way aided or abetted a fraudulent scheme against CPH, or that it participated in a conspiracy to defraud CPH. MS & Co. denies that any losses that CPH suffered resulted from fraud or any wrongful conduct on the part of MS & Co. MS & Co. denies the remaining allegations contained in Paragraph 4.

5. MS & Co. admits that CPH purports to seek compensatory damages against MS & Co., but denies that such claim is valid, for MS & Co. denies that it was engaged in any wrongful conduct. MS & Co. denies the remaining allegations contained in Paragraph 5.

Jurisdiction and Venue

6. MS & Co. admits the allegations contained in Paragraph 6. MS & Co. further admits that it is incorporated in Delaware and has its principal place of business in New York.

7. MS & Co. denies that venue is proper in this district.

Parties and Other Key Participants

8. MS & Co. admits that CPH represented, in negotiations with Sunbeam, that it owned, directly or indirectly, approximately 82% of Coleman prior to March 30, 1998. MS & Co. admits that on March 30, 1998, Sunbeam acquired CPH's interest in Coleman by paying CPH with 14.1 million shares of Sunbeam common stock and other consideration, including a cash payment by Sunbeam to CPH in the amount of $159,956,756.00. (*See* Feb. 27, 1998 Merger Agmt. § 3.1(a)(i) (Ex. 1).) MS & Co. lacks sufficient knowledge or information to form

a belief as to the truth of any remaining allegations contained in Paragraph 8 and consequently denies them.

9. MS & Co. admits that it is an investment banking firm providing financial and securities services. MS & Co. admits that, as part of its business operations, it at times provides advice on mergers and acquisitions, and raises capital in equity and debt markets, depending on the needs of its clients. MS & Co. admits that it served as Sunbeam's investment banker for certain aspects of Sunbeam's acquisition of Coleman, and served as underwriter of certain securities issued by Sunbeam in connection with the acquisition. MS & Co. denies any remaining allegations contained in Paragraph 9.

10. MS & Co. admits that Sunbeam was a publicly-traded company which manufactures and markets household and specialty consumer products, including outdoor cooking products. MS & Co. admits that Sunbeam marketed these products under several brand names, including Sunbeam and Oster. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 10 and consequently denies them.

11. MS & Co. admits that Albert Dunlap had served as the Chief Executive Officer of Sunbeam. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 11 and consequently denies them.

12. MS & Co. admits that Russell Kersh had served as the Executive Vice President of Sunbeam. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 12 and consequently denies them.

13. MS & Co. admits that Arthur Andersen LLP served as Sunbeam's auditors and provided independent/outside accounting services to Sunbeam. MS & Co. further admits that,

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during the performance of its engagement, it received "comfort letters" from Arthur Andersen. MS & Co. never served as auditor for Sunbeam, and never provided Sunbeam with any accounting or accounting-related services. MS & Co. lacks sufficient knowledge or information to know the location of Lawrence Bornstein or to form a belief as to the truth of any allegations pertaining to him, and consequently denies them. MS & Co. denies any remaining allegations contained in Paragraph 13.

Factual Background

14. MS & Co. admits the allegations contained in Paragraph 14.

15. MS & Co. responds that the allegations contained in Paragraph 15 pertain to publicly available information, and refers to such information for the truth or falsity of such allegations. To the extent that further response is required, MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 15 and consequently denies them.

16. MS & Co. responds that the allegations contained in Paragraph 16 pertain to publicly available information, and refers to such information for the truth or falsity of such allegations. To the extent that further response is required, MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 16 and consequently denies them.

17. MS & Co. admits, on information and belief, that Albert Dunlap was hired as Sunbeam's Chief Executive Officer on or about July 18, 1996. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 17 and consequently denies them.

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18. MS & Co. admits, on information and belief, that Russell Kersh was hired as Sunbeam's Chief Financial Officer. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 18 and consequently denies them.

19. MS & Co. admits, on information and belief, that Albert Dunlap and members of his senior management team entered into employment agreements with Sunbeam. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 19 and consequently denies them.

20. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 20 and consequently denies them.

21. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 21 and consequently denies them.

22. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 22 and consequently denies them.

23. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 23 and consequently denies them.

24. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 24 and consequently denies them.

25. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 25 and consequently denies them.

26. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 26 and consequently denies them.

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27. MS & Co. admits, on information and belief, that Sunbeam reported a loss of $18.1 million in the third quarter of 1996, and that it had a $34.5 million gain in the third quarter 1997. MS & Co. further admits, on information and belief, that Sunbeam reported an increase in profits from $6.5 million in 1996 to $67.7 million in 1997. MS & Co. responds that the allegations contained in Paragraph 27 regarding stock prices pertain to publicly available information and MS & Co. refers to such information for the truth or falsity of such allegations. To the extent that further response is required, MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 27 and consequently denies them.

28. MS & Co. admits that it was engaged by Sunbeam to explore a possible sale of Sunbeam's core business or the initiation of one or more acquisitions. MS & Co. denies that it ever served as Dunlap's "shill." MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 28 and consequently denies them.

29. MS & Co. admits that William Strong and other MS & Co. employees met with Sunbeam in the spring of 1997 to discuss Sunbeam's investment banking requirements. Further, MS & Co. admits that, although it was not engaged in a previous relationship with Sunbeam, William Strong had worked with Dunlap before, during Strong's previous employment with Salomon Brothers. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 29 and consequently denies them.

30. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 30 and consequently denies them.

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31. MS & Co. admits that William Strong and other MS & Co. employees met with Sunbeam in the spring of 1997 to discuss Sunbeam's investment banking requirements. MS & Co. admits that it was engaged by Sunbeam to explore a possible sale of Sunbeam's core business or the initiation of one or more acquisitions. MS & Co. admits that it initially sought a buyer for Sunbeam. To the extent this Paragraph alleges that MS & Co. was motivated to participate in a fraud in order to retain a single client and receive a customary fee, that allegation is foreclosed, among other reasons, by the fact that MS & Co.'s own affiliate lent hundreds of millions of dollars to Sunbeam two days after the Coleman acquisition closed. (June 1998 Credit Facilities Mem. (Ex. 2).) MS & Co. denies any remaining allegations contained in Paragraph 31.

32. MS & Co. admits that it searched for a buyer for Sunbeam. MS & Co. further admits that it assembled marketing materials based on financial documentation and audited financial statements provided to MS & Co. by Sunbeam and Arthur Andersen, for use in meetings with potential acquirers. MS & Co. admits that, despite contacting many companies, it was unable to find a buyer for Sunbeam. MS & Co. specifically denies CPH's allegation that MS & Co. knew that it would not be compensated if "it failed to deliver a major transaction," or that "Davis and Chase were standing by . . . to reclaim their position as Dunlap's investment banker of choice." MS & Co. denies any remaining allegations contained in Paragraph 32.

33. MS & Co. denies that it provided the "solution" to any "problem" alleged in Paragraph 33. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 33 and consequently denies them.

34. MS & Co. admits after its unsuccessful attempts to locate a purchaser for Sunbeam, it suggested that Sunbeam acquire one or more other companies instead. MS & Co. admits that it proposed to Sunbeam, among other options, the possibility of paying for any such

acquisition in part with Sunbeam's stock. MS & Co. specifically denies any knowledge to the effect that a "failure to find a buyer for Sunbeam could prove fatal to [their] relationship." MS & Co. further denies any involvement in or knowledge of fraudulently inflated Sunbeam stock or concealment of any fraud at Sunbeam. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 34 and consequently denies them.

35. MS & Co. admits that, beginning in mid-1997, MS & Co. served as an investment banker for Sunbeam. MS & Co. admits that it attempted to identify a party interested in purchasing Sunbeam, and that those efforts were ultimately unsuccessful. MS & Co. admits that it recommended that Sunbeam's management consider, among other options, acquiring other companies instead and suggested, as is common in corporate mergers and acquisitions, that Sunbeam consider using Sunbeam stock as part of the consideration for such an acquisition. MS & Co. denies that it developed "acquisition strategies" for Sunbeam or that the services or potential transactions it discussed with Sunbeam's management were deceptive or in any way designed to facilitate fraud. MS & Co. specifically denies that it in any way knew of or knowingly assisted Dunlap to "camouflage Sunbeam's results" thereby making it "difficult to detect any shortfall in Sunbeam's performance," or that it knew of or assisted Dunlap in taking "new massive restructuring charges," which thereby created increased "cookie jar reserves." MS & Co. denies any remaining allegations contained in Paragraph 35.

36. MS & Co. admits that, in its capacity as advisor to Sunbeam, it identified Coleman as a potential acquisition candidate. MS & Co. admits that it communicated with representatives of Coleman to discuss a potential acquisition, but denies that it "persuade[d] CPH to sell its interest in Coleman to Sunbeam." MS & Co. admits that CPH represented, in

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negotiations with Sunbeam, that it owned, directly or indirectly, approximately 82% of Coleman prior to March 30, 1998. MS & Co. denies the remaining allegations contained in Paragraph 36.

37. MS & Co. admits that it facilitated a meeting between representatives from Sunbeam and MacAndrews & Forbes Holdings, Inc. ("MAFCO") in December 1997. MS & Co. admits that it prepared Sunbeam's representatives for that meeting. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 37 and consequently denies them.

38. MS & Co. admits that discussions between Sunbeam, MAFCO and CPH resumed in early 1998. MS & Co. further admits that its Managing Directors James Stynes and Robert Kitts worked on MS & Co.'s engagement for Sunbeam. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 38 and consequently denies them.

39. MS & Co. denies that it "persuade[d]" CPH to sell Coleman in exchange for Sunbeam stock. MS & Co. denies that it "prepared" financial information for CPH. There is, in any event, no factual allegation contained in Paragraph 39 or elsewhere that identifies such alleged information at all, let alone with particularity. MS & Co. further denies that it knowingly "provided" CPH with false financial and business information, or otherwise knowingly relayed false information to CPH which created an appearance that "Sunbeam was prospering and that Sunbeam's stock had great value." Specifically, MS & Co. denies that it knowingly provided CPH with false 1996 and 1997 sales and revenue figures or with false projections. MS & Co. denies that it "falsely assured CPH that Sunbeam's 'early buy' sales program would not hurt Sunbeam's future revenues," that "Sunbeam would meet or exceed" first quarter 1998 estimates, that 1998 earnings estimates were accurate, that a plan to earn $2.20/share was attainable or even

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low, or that it "specifically advised CPH that Sunbeam's first quarter 1998 sales were 'tracking fine' and running ahead of analysts' estimates."

In any event CPH could not have relied on such alleged representations in light of (i) the Merger Agreement's representations and warranties (Merger Agmt. §§ 5.1-5.4), none of which refer to any alleged representation contained in this Paragraph, (ii) the representations and warranties in a separate agreement that was executed by Coleman and Sunbeam (Feb. 27, 1998 Company Merger Agmt. § 5.1-5.12 (Ex. 3)), which are expressly incorporated into the Merger Agreement and none of which refer to any alleged representation contained in this Paragraph, and (iii) the Merger Agreement's broad integration clause which forecloses reliance on any alleged representation contained in this Paragraph (Merger Agmt. § 12.5). MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 39 and consequently denies them.

40. MS & Co. admits that CPH agreed to sell its shares in Coleman to Sunbeam, and that CPH agreed to accept Sunbeam stock as partial payment for the sale, but denies that MS & Co. "persuaded" CPH to make the deal. CPH is a sophisticated party and was represented by its own expert advisors and attorneys. (*Id.* §§ 1.1; 4.11.) CPH and its advisors also enjoyed full access to Sunbeam's "books, records, properties, plants and personnel." (*Id.* § 6.7.) CPH also expressly disclaimed reliance on statements allegedly made during negotiations. (*Id.* § 12.5.) MS & Co. responds that the allegations contained in Paragraph 40 regarding stock value pertain to publicly available information, and refers to such information for the truth or falsity of such allegations. To the extent that further response is required, MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 40 and consequently denies them.

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41. MS & Co. admits that on February 27, 1998, Sunbeam's Board of Directors met at Morgan Stanley's New York offices to discuss Sunbeam's possible purchase of Coleman. MS & Co. denies the remaining allegations contained in Paragraph 41.

42. MS & Co. admits it made a presentation during the February 27, 1998 Sunbeam Board of Directors Meeting. MS & Co. further admits that MS & Co. representatives, including William Strong, Robert Kitts, James Stynes and Ruth Porat, were present at this meeting. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 42 and consequently denies them.

43. MS & Co. admits that at that February 27, 1998 New York meeting, it provided Sunbeam with a written "fairness opinion" regarding the fair acquisition price of Coleman. This opinion was based on financial information provided to MS & Co. by Sunbeam, Coleman, and Arthur Andersen~~, and on synergy analyses which MS & Co. received from CPH~~. The written fairness opinion explicitly stated that MS & Co. "[has] not made any independent valuation or appraisal of the assets or liabilities of [Sunbeam]." (Feb. 27, 1998 Fairness Op. at 3 (Ex. 4).) MS & Co. denies any remaining allegations contained in Paragraph 43.

44. MS & Co. admits that the Sunbeam Board of Directors approved the Coleman acquisition at the February 27, 1998 meeting in New York. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 44 and consequently denies them.

45. MS & Co. admits that it continued to provide investment banking services to Sunbeam after the Coleman acquisition was approved. MS & Co. denies any remaining allegations contained in Paragraph 45.

46. MS & Co. admits that the Coleman acquisition was announced on March 2, 1998. MS & Co. responds that the allegations contained in Paragraph 46 regarding stock prices pertain to publicly available information, and refers to such information for the truth or falsity of such allegations. To the extent that further response is required, MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 46 and consequently denies them.

47. MS & Co. admits that it agreed to serve as underwriter for Sunbeam's subordinated debentures. The "cash portion" of the consideration set forth in the Merger Agreement was also financed in part through a $680 million loan made by Morgan Stanley Senior Funding, an affiliate of MS & Co. (*See* Credit Facilities Mem.) MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 47 and consequently denies them.

48. MS & Co. admits that the money raised from the sale of the debentures was used in part to finance Sunbeam's acquisition of Coleman.

49. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 49 and consequently denies them.

50. MS & Co. admits that the convertible debentures were presented to potential investors at a series of "road show" meetings and conference calls. MS & Co. admits that it reviewed and commented on the offering memorandum and other materials used to present the debentures to potential investors. MS & Co. denies that it "misrepresented Sunbeam's financial performance" or "emphasized Dunlap's purported 'turnaround' accomplishments." To the contrary, the offering memorandum expressly stated that MS & Co. assumed no responsibility for the accuracy or completeness of Sunbeam's audited financial information and warned

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investors not to rely on any projections of future performance. (March 19, 1998 Note Offering Mem. at 2-3, 12-17, 72 (Ex. 5).) MS & Co. denies any remaining allegations contained in Paragraph 50.

51. MS & Co. admits that it launched the debenture offering with a presentation to the Morgan Stanley sales force, but denies the remaining allegations contained in Paragraph 51.

52. MS & Co. admits that the debenture offering was increased from $500 million to $750 million. MS & Co. admits that the debentures were offered to investors nationwide. MS & Co. denies any remaining allegations contained in Paragraph 52.

53. MS & Co. admits that its employees traveled on one occasion to Sunbeam's Florida offices. MS & Co. denies the remaining allegations contained in Paragraph 53, except to the extent that they constitute legal conclusions to which no response is required.

54. MS & Co. admits that William Strong worked on MS & Co.'s engagement for Sunbeam. MS & Co. also admits that Strong has provided deposition testimony discussing conversations with Sunbeam officials. MS & Co. denies that Strong or any other MS & Co. employee was accurately apprised of Sunbeam's financial condition because MS & Co. at all times relied on information provided by Sunbeam management and Arthur Andersen, including Sunbeam's audited financial statements. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 54 and consequently denies them.

55. MS & Co. denies CPH's allegation that it was "telling CPH and the investing public . . . that Sunbeam's turnaround was a success, that Sunbeam's sales for the first quarter of 1998 were ahead of expectations of outside analysts, and that Sunbeam was poised for record sales." Furthermore, any information communicated by MS & Co. was based on financial data

and information provided to it by Sunbeam and Arthur Andersen — a fact that MS & Co. regularly publicized through disclaimer statements. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 55 and consequently denies them.

56. MS & Co. denies the allegations contained in Paragraph 56.

57. MS & Co. admits that it received a facsimile schedule regarding Sunbeam's finances on or about March 18, 1998. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 57 and consequently denies them.

58. MS & Co. admits that on or about March 18, 1998, it received a faxed financial schedule which reflected that Sunbeam's January and February 1998 sales were below those of January and February 1997. MS & Co. denies that it made assertions or otherwise disseminated information to CPH or others that it knew to be false. MS & Co. denies any knowledge of the fact that Sunbeam had not undergone a successful turnaround, or that Sunbeam's financial performance had not improved in the manner presented by Sunbeam's management and audited financial statements. MS & Co. admits that on March 18, 1998, it learned that Sunbeam's first quarter 1998 sales were "soft." Sunbeam insisted that its sales would meet expectations, but MS & Co. insisted that Sunbeam issue a press release to warn the market of the softening sales. Additionally, MS & Co. received two "comfort letters" from Sunbeam's auditors, Arthur Andersen. MS & Co. performed all of its obligations as an underwriter of Sunbeam securities. MS & Co. denies that it had any role in the accounting judgments described in the complaint, or any obligations to audit or independently examine Sunbeam's accounting records. MS & Co. denies that it owed any duties to CPH. MS & Co. lacks sufficient knowledge or information to

form a belief as to the truth of any remaining allegations contained in Paragraph 58 and consequently denies them.

59. MS & Co. admits that on March 18, 1998, it learned that Sunbeam's first quarter 1998 sales were "soft." Sunbeam insisted that its sales would meet expectations, but MS & Co. insisted that Sunbeam issue a press release to warn the market of the softening sales. Additionally, MS & Co. received two "comfort letters" from Sunbeam's auditors, Arthur Andersen. MS & Co. performed all of its obligations as an underwriter of Sunbeam securities. MS & Co. denies that it had any role in the accounting judgments described in the Complaint, or any obligations to audit or independently examine Sunbeam's accounting records. MS & Co. denies that it owed any duties to CPH. MS & Co. denies all remaining allegations contained in Paragraph 59.

60. MS & Co. admits that Sunbeam issued a press release on March 19, 1998 that included language selectively quoted in Paragraph 60. MS & Co. further states that the March 19, 1998 press release contained the following additional statement, omitted in the Complaint:

> **Cautionary Statements** - Statements contained in this press release, including statements relating to the Company's expectations regarding anticipated performance in the future, are "forward looking statements," as such term is defined in the Private Securities Litigation Reform act of 1995. Actual results could differ materially from the Company's statements in this release regarding its expectations, goals or projected results, due to various factors, including those set forth in the Company's Cautionary Statements contains in its Annual Report on Form 10-K for its fiscal year ended December 31, 1997 filed with the Securities and Exchange Commission.

(March 19, 1998 Press Release (Ex. 6).)

61. MS & Co. admits that Sunbeam issued a press release on March 19, 1998 that included language selectively quoted in Paragraph 61. MS & Co. further states that the March 19, 1998 press release contained the following additional statement, omitted in the Complaint:

> **Cautionary Statements** - Statements contained in this press release, including statements relating to the Company's expectations regarding anticipated performance in the future, are "forward looking statements," as such term is defined in the Private Securities Litigation Reform act of 1995. Actual results could differ materially from the Company's statements in this release regarding its expectations, goals or projected results, due to various factors, including those set forth in the Company's Cautionary Statements contains in its Annual Report on Form 10-K for its fiscal year ended December 31, 1997 filed with the Securities and Exchange Commission.

(*Id.*) MS & Co. denies all remaining allegations contained in Paragraph 61.

62. MS & Co. denies the allegation that it knew that the "shortfall from analysts' estimates was . . . caused by Sunbeam's acceleration of 1998 sales into the fourth quarter of 1997." MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 62 and consequently denies them.

63. MS & Co. denies the allegations contained in Paragraph 63.

64. MS & Co. specifically denies that it "knew that a full and truthful disclosure . . . would doom the debenture offering," or that it had any knowledge that the press release was untruthful or otherwise misleading. MS & Co. denies the allegations contained in Paragraph 64.

65. MS & Co. denies the allegations contained in Paragraph 65. To the extent that this Paragraph quotes the Merger Agreement, that document speaks for itself and contradicts the allegations contained in the Complaint.

66. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 66 and consequently denies them.

67. MS & Co. denies the allegations contained in Paragraph 67.

68. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 68 and consequently denies them.

69. MS & Co. admits that it continued to serve as Sunbeam's investment banker, and continued to prepare to close the debenture offering and the acquisition of Coleman, but denies

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any knowledge as to the alleged falsity of the March 19, 1998 press release. MS & Co. denies the remaining allegations contained in Paragraph 69.

70. MS & Co. admits that throughout its service to Sunbeam, MS & Co. employees, including Tyree, spoke via telephone with representatives of Sunbeam. MS & Co. denies any knowledge that the press release was untruthful or otherwise misleading. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 70 and consequently denies them.

71. MS & Co. admits that it received "comfort letters" from Arthur Andersen. MS & Co. denies the allegation that it knew that "Sunbeam's earnings for the first quarter of 1998 were going to miss Wall Street analysts' earning expectations." MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 71 and consequently denies them.

72. MS & Co. admits that it continued to prepare to close both the debenture offering and the acquisition of Coleman. MS & Co. denies any allegation of its "having directly participated in misleading CPH and other investors." MS & Co. responds that the allegation that MS & Co. "had a duty to disclose the true facts" to CPH is a legal conclusion to which no response is required. MS & Co. denies the remaining allegations contained in Paragraph 72.

73. MS & Co. admits that it received compensation for investment banking work performed by MS & Co. for Sunbeam. MS & Co. denies the allegation that it facilitated Sunbeam's fraud. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 73 and consequently denies them.

74. MS & Co. admits that on March 19, 1998, Sunbeam issued a press release which stated that "net sales for the first quarter of 1998 may be lower than the range of Wall Street

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analysts' estimates of $285 million to $295 million." MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 74 and consequently denies them.

75. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 75 and consequently denies them.

76. MS & Co. admits that it advocated issuing a press release to warn the market of the softening sales, but denies that it represented that Sunbeam's sales would exceed analysts' projections. MS & Co. denies the remaining allegations contained in Paragraph 76.

77. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 77 and consequently denies them.

Count I -- Fraudulent Misrepresentation

78. MS & Co. repeats and realleges its responses to Paragraphs 1 through 77 as if set forth herein.

79. MS & Co. denies the allegations contained in Paragraph 79.

80. MS & Co. denies the allegations contained in Paragraph 80.

81. MS & Co. denies the allegations contained in Paragraph 81.

82. MS & Co. denies the allegation contained in Paragraph 82.

83. MS & Co. denies the allegation contained in Paragraph 83.

Count II -- Aiding and Abetting Fraud

84. MS & Co. repeats and realleges its responses to Paragraphs 1 through 77 as if set forth herein.

85. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 85 and consequently denies them.

86. MS & Co. denies the allegation contained in Paragraph 86.

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87. MS & Co. admits that, beginning in mid-1997, MS & Co. served as an investment banker and underwriter for Sunbeam. MS & Co. admits that it attempted to identify a party interested in purchasing Sunbeam, and that those efforts were ultimately unsuccessful. MS & Co. admits that it recommended that Sunbeam's management consider acquiring other companies instead and suggested, as is common in corporate mergers and acquisitions, that Sunbeam consider using Sunbeam stock as part of the consideration for such an acquisition. MS & Co. denies that it had any knowledge as to the accuracy of the value of Sunbeam's stock, or that MS & Co. knew (or even suspected) that the value of Sunbeam's stock had been "fraudulently inflated."

MS & Co. admits that it facilitated communications between Sunbeam and Coleman, but denies that it in any way "persuaded" CPH to sell its interest in Coleman.

MS & Co. admits that on March 18, 1998, it learned that Sunbeam's first quarter 1998 sales were "soft." Sunbeam insisted that its sales would meet expectations, but MS & Co. insisted that Sunbeam issue a press release to warn the market of the softening sales. Additionally, MS & Co. received two "comfort letters" from Sunbeam's auditors, Arthur Andersen. MS & Co. performed all of its obligations as an underwriter of Sunbeam securities.

MS & Co. admits that the convertible debentures were presented to potential investors at a series of "road show" meetings and conference calls. MS & Co. admits that it reviewed and commented on the offering memorandum and other materials used to present the debentures to potential investors. MS & Co. denies the remaining allegations contained in Paragraph 87.

88. MS & Co. denies the allegations contained in Paragraph 88.

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Count III -- Conspiracy

89. MS & Co. repeats and realleges its responses to Paragraphs 1 through 77 as if set forth herein.

90. MS & Co. denies the allegations contained in Paragraph 90.

91. MS & Co. admits that it served as a financial advisor to Sunbeam and an underwriter of Sunbeam securities, but denies that it in any way committed "overt acts in furtherance of a conspiracy." MS & Co. denies that it performed an independent financial analysis of Sunbeam; to the contrary, MS & Co. informed CPH that it was relying solely on financial data and information provided to it by Sunbeam and Arthur Andersen. MS & Co. admits that it underwrote the $750 million convertible debenture offering. MS & Co. denies the remaining allegations contained in Paragraph 91.

92. MS & Co. denies the allegations contained in Paragraph 92.

Count IV -- Negligent Misrepresentation

93. MS & Co. repeats and realleges its responses to Paragraphs 1 through 77 as if set forth herein.

94. MS & Co. admits that it served as a financial advisor to Sunbeam and an underwriter of Sunbeam securities. MS & Co. responds that the allegations contained in Paragraph 94 constitute legal conclusions to which no response is required. Alternatively, MS & Co. denies the remaining allegations contained in Paragraph 94.

95. MS & Co. denies the allegations contained in Paragraph 95.

96. MS & Co. denies the allegations contained in Paragraph 96.

DEFENSES AND AFFIRMATIVE DEFENSES

In addition to the foregoing responses, MS & Co. asserts the following defenses and affirmative defenses to the claims stated in CPH's Complaint. MS & Co. does not assume the burden of proof on these defenses when the substantive law provides otherwise.

First Defense

CPH's alleged claims must be dismissed on *forum non conveniens* grounds pursuant to Florida Rule of Civil Procedure 1.061(a).

Second Defense

CPH's alleged claims are barred, in whole or in part, for failure to state a cause of action.

First Affirmative Defense

CPH's alleged claims are barred, in whole or in part, by the doctrine of waiver. In particular, CPH contractually waived its alleged claims when it agreed in Section 12.5 of the Merger Agreement and Section 10.4 of the Company Merger Agreement that the Agreements contained the entire agreement and understanding between CPH and Sunbeam and that the provisions of the Agreements superseded "all prior agreements and understandings, oral or written" with respect to the subject of the Agreements. (Merger Agmt. § 12.5; *see* Company Merger Agmt. § 10.4.)

Additionally, CPH waived its alleged claims when CPH failed to exercise its contractual rights under the Merger Agreement and Company Merger Agreement to examine Sunbeam's books, records, and facilities and then failed to invoke the "material adverse effect" clause of the Merger Agreement. CPH failed to make a reasonable inquiry into information concerning Sunbeam's financial statements, results of operations, projections, facilities, and business plans (hereinafter "Sunbeam Information") after signing the Merger Agreement and Company Merger

Agreement, after Sunbeam issued its March 19, 1998 press release, and before CPH accepted over 14 million shares of Sunbeam common stock as partial consideration for the sale of its interest in Coleman. CPH then failed to invoke Section 8.2(c) of the Merger Agreement, a remedy available solely to CPH, thereby permitting the transaction to close and waiving its alleged claims.

Second Affirmative Defense

CPH's alleged claims are barred, in whole or in part, by the doctrine of estoppel. In particular, CPH, is estopped from asserting its claim for the following reasons.

(a) By virtue of the customs and practices in the New York financial markets observed in connection with the negotiation of mergers and acquisitions among sophisticated parties, CPH as an affiliate of MAFCO, understood and agreed that MS & Co., as Sunbeam's investment banker, did not make any representations or warranties to CPH about the accuracy or completeness of the Sunbeam Information supplied to CPH. CPH further understood and agreed MS & Co. would not have any liability to CPH by reason of CPH's use of the Sunbeam Information that MS & Co. provided to CPH. MS & Co. relied upon CPH's understanding and agreement to the customs and practices in the New York financial markets when MS &Co. provided Sunbeam Information to CPH. CPH is now estopped from claiming to have relied upon Sunbeam Information that MS & Co. supplied to CPH.

(b) By virtue of a letter agreement with Sunbeam dated February 23, 1998, and acknowledged in the Merger and Company Merger Agreements (Merger Agmt. §§ 6.7, 11.2 12.5; Company Merger Agmt. §§ 7.2, 9.2 10.4), CPH, as an affiliate of Coleman, agreed that Sunbeam and its representatives, including MS & Co., did not make any representations or warranties about the accuracy or completeness of the information that they supplied to CPH. CPH further agreed that Sunbeam and its representatives, including MS & Co., would not have

any liability to CPH by virtue of CPH's use of the information that they provided to CPH. MS & Co. relied upon CPH's agreement when it provided Sunbeam Information to CPH, and CPH is estopped from now claiming to have relied upon information supplied to CPH outside of Merger Agreement or the Company Merger Agreement.

(c) By virtue of Section 12.5 of the Merger Agreement and Section 10.4 of the Company Merger Agreement, CPH agreed that the Merger Agreement and the Company Merger Agreement contained the entire agreement and understanding between CPH and Sunbeam and that the provisions of the Agreements superseded "all prior agreements and understandings, oral or written" with respect to the subject of the Agreements. (Merger Agmt. § 12.5; *see* Company Merger Agmt. § 10.4.) MS & Co. relied upon CPH's agreement when MS & Co. provided Sunbeam Information to CPH, and CPH is estopped from now claiming to have relied upon information supplied to CPH outside of the Agreements.

(d) CPH bargained for and received access to Sunbeam Information pursuant to Section 6.7 of the Merger Agreement and to Sections 7.2 and 7.3 of the Company Merger Agreement. When MS & Co. provided Sunbeam Information to CPH, MS & Co. relied upon CPH's contractual undertaking and ability to verify independently all statements that MS & Co. or Sunbeam made to CPH. CPH is estopped from now claiming to have relied upon information supplied to CPH by MS & Co. or Sunbeam when CPH, a sophisticated party, had equal access to Sunbeam Information and equal ability to evaluate Sunbeam Information.

(e) CPH held itself out to be and is a commercially and financially sophisticated party, capable of protecting its own interests. MS & Co. relied upon these representations when it provided Sunbeam Information to CPH, and CPH is estopped from now disclaiming these representations.

(f) CPH represented to Sunbeam and MS & Co. that it had retained and would rely upon its own sophisticated advisors, including an investment banker and a law firm capable of protecting CPH's interests. CPH and its advisors represented that they were doing their own due diligence on CPH's behalf through the meetings and information that they requested from Sunbeam and its advisors. MS & Co. relied upon these representations when it provided Sunbeam Information to CPH, and CPH is estopped from now disclaiming these representations.

Third Affirmative Defense

To the extent that CPH sustained any cognizable damages, the damages claimed by CPH were the result, in whole or in part, of CPH's failure to mitigate its damages. In particular, CPH investigated but failed to pursue reasonable available measures to hedge its position with regard to its ownership of Sunbeam stock. Had CPH implemented the potential hedges available, CPH would not have suffered the loss of the value of Sunbeam stock that occurred during and after June of 1998. In addition, CPH failed to mitigate its damages when it chose to install its own executives at Sunbeam and to accept warrants from Sunbeam to settle its alleged claims against Sunbeam. CPH chose to keep and indeed increase its holdings in Sunbeam, taking its chances that Sunbeam stock would increase in value, rather than selling its Sunbeam stock and reasonably limiting its losses.

Fourth Affirmative Defense

Any future claim by CPH for punitive damages is barred, in whole or in part, because (i) MS & Co. did not engage in intentional misconduct; (ii) the allegedly tortuous conduct is not gross, wanton, willful, reckless or otherwise morally culpable; and (iii) the alleged conduct was not part of a pattern directed at the public generally.

Fifth Affirmative Defense

To the extent that CPH sustained any cognizable damages, the damages claimed by CPH were the result, in whole or in part, of the comparative negligence, fault or culpable conduct of CPH (including its parent corporations and its direct or indirect wholly and majority owned subsidiaries) at the times and places set forth in the Complaint. As a result thereof, MS & Co. is entitled to have its liability to CPH, if any, reduced pursuant to N.Y. C.P.L.R. § 1411 and Florida Statute § 768.81. In particular, fault should be apportioned to CPH for its negligence or fault in failing to request, review or make use of available Sunbeam Information. The negligence of CPH, itself or by or through its agents and advisors, caused or contributed to CPH's damages in the following ways:

(a) CPH was negligent in failing to make a reasonable independent inquiry into Sunbeam Information including but not limited to failure to request access to Sunbeam's books and records, *before* agreeing to accept over 14 million shares of Sunbeam common stock as partial consideration for the sale of its interest in Coleman and signing the Merger Agreement, and directing the signing of the Company Merger Agreement.

(b) CPH was negligent in failing to make a reasonable inquiry into the Sunbeam Information available to CPH *after* signing the Merger Agreement and Company Merger Agreement, including but not limited to information available pursuant to Section 6.7 of the Merger Agreement and to Sections 7.2 and 7.3 of the Company Merger Agreement, and *before* CPH accepted over 14 million shares of Sunbeam common stock as partial consideration for the sale of its interest in Coleman.

(c) CPH was negligent in failing to make a reasonable inquiry into Sunbeam Information *after* Sunbeam issued its March 19, 1998 press release and *before* CPH accepted

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over 14 million shares of Sunbeam common stock as partial consideration for the sale of its interest in Coleman.

(d) CPH was negligent in failing to make a reasonable inquiry concerning the existence or absence of a "material adverse effect" as defined in the Merger Agreement and the Company Merger Agreement *before* the closing of the Merger Agreement at which time CPH accepted over 14 million shares of Sunbeam common stock as partial consideration for the sale of its interest in Coleman.

(e) CPH was negligent in failing to make use of the means available to CPH to investigate or confirm statements about Sunbeam Information made to CPH by Sunbeam or MS & Co. during late 1997 and the first quarter of 1998 before CPH accepted over 14 million shares of Sunbeam common stock as partial consideration for the sale of its interest in Coleman.

Sixth Affirmative Defense

To the extent that CPH sustained any cognizable damages, the damages claimed by CPH were the result, in whole or in part, of the negligence or fault of one or more third parties for whom MS & Co. bears no responsibility and over whom MS & Co. had no dominion, authority, or control. As a result thereof, MS & Co. is entitled to have its liability to CPH, if any, reduced pursuant to N.Y. Gen. Oblig. § 15-108 or Florida Statute § 768.81. More specifically, fault should be apportioned to Sunbeam and its subsidiaries and successors in interest (collectively "Sunbeam") for its negligence or fault in preparing and providing Sunbeam Information to CPH, MS & Co. and third parties, and its negligence in making disclosures required by federal securities laws. Sunbeam's negligence caused or contributed to CPH's damages in the following ways:

(a) Federal laws and regulations imposed upon Sunbeam, a publicly held company, a duty to prepare and publicly file financial statements that present fairly, in all material respects,

the consolidated financial condition of Sunbeam. Sunbeam negligently breached that duty when it filed inaccurate or incomplete financial statements for 1996, 1997, and the first quarter of 1998.

(b) Beginning in the fall of 1997 Sunbeam engaged MS & Co. to serve as its investment banker. As a result of this engagement, MS & Co. acted as an advisor to Sunbeam in certain aspects of Sunbeam's acquisition of Coleman and two other companies. Sunbeam later engaged MS & Co. to purchase for resale ("underwrite") $2,014,000,000 face value of Sunbeam Zero Coupon Convertible Senior Subordinated Debentures, which were issued by Sunbeam in March of 1998. As part of its activities as an investment banker and an underwriter, MS & Co. made inquiries of Sunbeam concerning Sunbeam Information. Sunbeam had a duty to provide MS & Co. with true and accurate Sunbeam Information. In response to MS & Co.'s inquiries and on its own initiative, Sunbeam provided MS & Co. with Sunbeam Information that Sunbeam knew or should have known, in the exercise of reasonable care was inaccurate or incomplete. Sunbeam provided such Sunbeam Information, including but not limited to the publicly filed financial statements identified in subparagraph (a), to MS & Co. with the knowledge and understanding that MS & Co. would provide such Sunbeam Information to third parties, including CPH. Sunbeam failed to use reasonable care in providing MS & Co. with truthful and accurate Sunbeam Information.

(c) On March 18, 1998, MS & Co. made inquiries of Sunbeam concerning Sunbeam's sales to date and total projected sales for the first quarter of 1998. In response to MS & Co.'s inquires, Sunbeam provided Sunbeam Information concerning its first quarter 1998 sales which, in the exercise of reasonable care, Sunbeam knew or should have known was incorrect.

Sunbeam failed to use reasonable care in providing MS & Co. with truthful and accurate Sunbeam Information.

(d) During the course of Sunbeam's negotiations with CPH, Sunbeam provided CPH with Sunbeam Information, which, in the exercise of reasonable care, Sunbeam knew or should have known was incorrect. Sunbeam failed to use reasonable care in providing CPH with truthful and accurate Sunbeam Information.

(e) In June of 1998, a special committee of Sunbeam's board of directors engaged in an investigation of Sunbeam Information for 1996, 1997, and the first quarter of 1998. As a result of this investigation, Sunbeam determined and announced publicly that it would be required to amend its publicly filed financial statements for 1996, 1997 and the first quarter of 1998. Through these restatements Sunbeam acknowledged in October of 1998 that the Sunbeam Information that it had provided to MS & Co., to CPH, and to the public was inaccurate and incomplete.

(f) Sunbeam's negligence in preparing, filing, and providing inaccurate and incomplete Sunbeam Information as aforesaid is the sole proximate cause of CPH's damages.

Seventh Affirmative Defense

To the extent that CPH sustained any cognizable damages, the damages claimed by CPH were the result, in whole or in part, of the negligence or fault of one or more third parties for whom MS & Co. bears no responsibility and over whom MS & Co. had no dominion, authority, or control. As a result thereof, MS & Co. is entitled to have its liability to CPH, if any, reduced pursuant to N.Y. Gen. Oblig. § 15-108 or Florida Statute § 768.81. More specifically, fault should be apportioned to Arthur Andersen LLP, Andersen Worldwide, Société Coopérative, individual partners in Arthur Andersen LLP and members of Andersen Worldwide, Société Coopérative, and member firms in the Andersen Worldwide Organization (collectively

"Andersen"), for their negligence or fault in preparing Sunbeam's financial statements and providing information regarding those statements to CPH, MS & Co., and third parties. Andersen's negligence caused or contributed to CPH's damages in the following ways:

(a) In 1996 and 1997, Andersen was Sunbeam's auditor and issued unqualified audit opinions regarding Sunbeam's financial statements. These audit opinions were included, with Andersen's consent, in Sunbeam's filings with the Securities and Exchange Commission. As Sunbeam's auditor, Andersen knew or should have known that Sunbeam's financial statements were replete with accounting irregularities; that the information in Sunbeam's 1996 and 1997 financial statements was materially false and misleading; and that its 1996 and 1997 unqualified audit opinions were materially false and misleading. Andersen had a duty to those it knew or should have known would rely on the accuracy of its audit opinions.

(b) Andersen was aware that, in the course of Sunbeam's negotiations with CPH, Sunbeam provided CPH with information relating to Sunbeam's financial statements, including Andersen's unqualified opinions of Sunbeam's 1996 and 1997 financial statements. Andersen knew, or should have known in the exercise of reasonable care, that the information that Sunbeam provided CPH was incorrect. In particular, in March 1998 (when Andersen issued its opinion of Sunbeam's 1997 financial statements and consented to the publication of that opinion in Sunbeam's March 1998 10-K filing), Andersen knew that Sunbeam had warranted and represented to CPH that its filings with the Securities and Exchange Commission and audited financial statements, including Andersen's audit opinions, were accurate. Andersen expected that CPH would rely on Andersen's 1997 audit report. Andersen also knew and expected that CPH would rely on Andersen's previously issued 1996 audit report, which Andersen did not retract until long after Sunbeam's acquisition of Coleman closed. Andersen failed to exercise

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reasonable care in obtaining or communicating the information contained in its audit reports regarding Sunbeam's 1996 and 1997 financial statements.

(c) Andersen participated in the investigation of Sunbeam Information undertaken by a special committee of Sunbeam's board of directors in June 1998. In October 1998, Andersen acknowledged that, among other things, a restatement of Sunbeam's financial statements for 1996 and 1997 was necessary, thereby acknowledging that Andersen's 1996 and 1997 audit opinions, which has been provided to and relied upon by CPH and MS & Co., were inaccurate, incomplete, and not in accordance with generally accepted accounting principles or generally accepted auditing principles.

(d) Andersen's negligence in preparing and providing accurate and truthful information regarding Sunbeam's 1996 and 1997 financial statements as aforesaid is the sole proximate cause of CPH's damages.

Eighth Affirmative Defense

MS & Co. is entitled to a set-off for any settlement by any party or non-party to CPH for any claim arising out of the transactions that are the subject of the Complaint pursuant to N.Y. Gen. Oblig. § 15-108 or Florida Statutes § 46.015, 768.31 and 768.041. The basis for such set-off is set forth fully in these Affirmative Defenses. In particular, MS & Co. is entitled to a set-off as a result of the settlement between CPH and Sunbeam dated August 12, 1998 (Ex. 7) and the settlement between CPH and Arthur Andersen dated October 10, 2002 (*see* Dec. 4, 2003 Order on Defendant's Motion to Compel Production of Settlement Agreement).

WHEREFORE, MS & Co. denies that CPH is entitled to any relief whatsoever, and to the extent that CPH should recover any damage award, that award should be offset by CPH's failure to take appropriate steps to mitigate its damages, CPH's own negligence, the comparative fault of third parties, and the settlements that CPH has already received. MS & Co.

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respectfully requests that the Court enter judgment for MS & Co. dismissing the complaint with prejudice, and grant such other and further relief as may be just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this __ day of December, 2004.

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2005 WL 4755541 (Fla.Cir.Ct.) (Trial Motion, Memorandum and Affidavit)
Circuit Court of Florida,
Fifteenth Judicial Circuit.
Palm Beach County

COLEMAN (PARENT) HOLDINGS INC., Plaintiff,
v.
MORGAN STANLEY & CO. INC., Defendant.

Case No: CA 03-5045 AI.
January 12, 2005.

Morgan Stanley & Co. Incorporated's Motion to Strike Coleman (Parent) Holdings Inc.'s Response to Morgan Stanley & Co. Incorporated's Proposed Findings of Fact and Conclusions of Law in Support of Its Motion for Summary Judgment

Defendant, Morgan Stanley & Co. Incorporated ("Morgan Stanley"), by and through its undersigned attorneys, pursuant to Fla. R. Civ. P. 1.080, respectfully requests that this Court enter an order striking Coleman (Parent) Holdings, Inc.'s ("CPH") Response to Morgan Stanley & Co. Incorporated's Proposed Findings of Fact and Conclusions of Law in Support of its Motion for Summary Judgment ("Response"). In support of this Motion, Morgan Stanley states as follows:

1. Morgan Stanley filed its Proposed Findings of Fact and Conclusions of Law in Support of its Motion for Summary Judgment ("Proposed Findings") on December 10, 2004. On December 22, 2004, CPH filed its Motion for Extension of Time to respond to Morgan Stanley's Proposed Findings. This Court, on January 4, 2005, entered an Order granting CPH's Motion for an Extension of Time, allowing CPH "until January 10, 2005, to serve by facsimile transmission or hand delivery its response to those portions of Defendant's Motion for Summary Judgment which Plaintiff contends asserts facts not necessary to the motion or underlying claims." The Order also provides that Morgan Stanley must serve its reply to CPH's Response on January 17, 2005. A copy of the Order is attached as Exhibit "A."

2. Despite having a full 30 days to respond, CPH served its 246 page Response via facsimile after 8:00 p.m. on January 10, 2005. A proof of receipt of transmission attached as Exhibit "B."

3. "Facsimile service occurs when transmission is complete. Service by delivery after 5:00 p.m. shall be deemed to have been made on the next day." Fla. R. Civ. P. 1.080(b). Service of CPH's Response was not made on January 10, 2005 as ordered by this Court but instead was served the next day, on January 11, 2005.

4. CPH's Response is 246 pages long. It is impossible for Morgan Stanley to formulate an appropriate reply to CPH's overly-lengthy Response in the four business days remaining before Morgan Stanley must file its timely reply. The fact that CPH filed its Response a day late prejudices Morgan Stanley, depletes Morgan Stanley's time to reply, and wastes valuable judicial resources.

WHEREFORE, Morgan Stanley respectfully requests that this Court enter an order striking Coleman (Parent) Holdings, Inc.'s ("CPH") Response to Morgan Stanley & Co. Incorporated's Proposed Findings of Fact and Conclusions of Law in Support of its Motion for Summary Judgment and such further relief as is just and proper.

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Appendix not available.

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON DEFENDANT'S MOTION TO COMPEL A BETTER ANSWER TO INTERROGATORY NO. 2 OF MORGAN STANLEY'S FIFTH SET OF INTERROGATORIES TO PLAINTIFF COLEMAN (PARENT) HOLDINGS, INC.

THIS CAUSE came before the Court January 13, 2005 on Defendant's Motion to Compel a Better Answer to Interrogatory No. 2 of Morgan Stanley's Fifth Set of Interrogatories to Plaintiff Coleman (Parent) Holdings, Inc., with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Defendant's Motion to Compel a Better Answer to Interrogatory No. 2 of Morgan Stanley's Fifth Set of Interrogatories to Plaintiff Coleman (Parent) Holdings, Inc., is Granted, in part. CPH shall serve its Second Amended Supplemental Response to Interrogatory 2 of Morgan Stanley & Co., Inc.'s Fifth Set of Interrogatories, within 7 days. If any specific information sought is unknown to CPH, it shall specifically so state.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 13 day of January, 2005.

ELIZABETH T. MAASS
Circuit Court Judge

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER AND NOTICE OF HEARING

This cause having come before the Court, it is

ORDERED AND ADJUDGED that hearing on Defendant's Motion to Compel a Better Answer to Interrogatory No. 2 of Morgan Stanley's Fifth Set of Interrogatories to Plaintiff, Coleman (Parent) Holdings, Inc., and Coleman (Parent) Holdings, Inc.'s Motion to Compel Adequate Answers to Morgan Stanley's Supplemental Responses to CPH's First Set of Interrogatories is hereby set for

January 13, 2005, at 11:00 a.m.

at the West Palm Beach Courthouse, Room 11A, 205 N Dixie Hwy, WPB, FL.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 12th day of January, 2005.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci
655 15th Street, NW, Suite 1200
Washington DC 20005

John Scarola, Esq.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy, Esq.
One IBM Plaza, Suite 4400
Chicago, Il 60611

Rebecca Beynon, Esq.
Sumner Square
1615 M Street, NW, Suite 400
Washington, DC 20036

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-4380 within two (2) working days of your receipt of this [describe notice]; if you are hearing or voice impaired, call 1-800-955-8771.

SPANISH

Si Ud. es una persona incapacitada que necesita de un servicio especial para participar en este proceso, Ud. tiene derecho a que le provean cierta ayuda sin costo alguno. Por favor pongase en contacto con el Coordinador de la Oficina Administrativa de la Corte ADA, situada en el 205 North Dixie Highway, Oficina 5.2500, West Palm Beach, Florida, 33401, teléfono (561) 355-4380, dentro de los dos (2) próximos días hábiles después de recibir esta [describa la notificación]; si tiene incapacidad de oir ó hablar llame al 1-800-955-8771.

CREOLE

Si ou sé yon moun ki Infim, ki bézwen ninpôt akomodasyon pou ka patisipé nan pwosè sa-a, ou gen dwa, san'l pa kouté'w anyin, pou yo ba'w kèk sèvis. Tanpri kontakté koôdinatè ADA ya nan Biro Administratif Tribinal nan cité Palm Beach la, ki nan 205 North Dixie Highway, Cham 5.2500, West Palm Beach, Florida 33401, niméro téléfonn-nan sé (561) 355-4380, rélé dé (2) jou dé lè ou résévwa [notis sa-a]; si ou bèbè ou byen soud rélé 1-800-955-8771.

FRENCH

Si vous êtes infirme, et en besoin de n'importe accommodation pour pouvoir participer á ces procédures, vous pouvez gratuitement recevoir, certains services. S'il-vous-plait contactez le coordinateur du Bureau Administratif du Tribunal de Palm Beach, située à 205 North Dixie Highway, Chambre 5.2500, West Palm Beach, Florida 33401, numéro de téléphone (561) 355-4380 durant deux (2) jours suivant la réception de [cette note]; si vous êtes muets ou sourds, appelez 1-800-955-8771.

January 13, 2005

Via Hand Delivery

Ms. Marsha Sweet
Clerk, 191st District Court
George L. Allen, Sr. Courts Bldg.
600 Commerce St., Suite 343
Dallas, Texas 75202

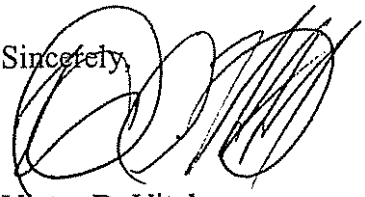
Re: ***Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co. Incorporated;***
Cause No. 05-00275-J

Dear Ms. Sweet:

Please find enclosed for filing an original and two copies of Notice of Filing of Return of Service of Subpoena. Please file the original with the papers in this case and return the file-stamped copies to the waiting courier.

Thank you for your assistance with this matter.

Sincerely,



Victor D. Vital
214.651.5123 (direct number)
214.200.0654 (direct fax)
vitalv@haynesboone.com

VDV:ssj
Enclosures

bcc: Michael C. Occhuizzo

h b

COPY

CAUSE NO. 05-00275-J

2005 JAN 13 AM 11:5
TEXAS
DEPUTY

COLEMAN (PARENT) HOLDINGS INC.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	THE 191st JUDICIAL DISTRICT
	§	
MORGAN STANLEY & CO. INCORPORATED,	§	
	§	
Defendant.	§	DALLAS COUNTY, TEXAS
	§	

NOTICE OF FILING OF RETURN OF SERVICE OF SUBPOENA

On January 10, 2005, this Court heard and granted Morgan Stanley & Co., Incorporated's Motion for Substituted Service of a deposition subpoena on third-party witness Donald R. Uzzi. Defendant served a copy of the subpoena along with the court order authorizing substituted service. A true and correct copy of the return of service of subpoena is attached hereto as Exhibit "A".

Respectively Submitted,

Victor D. Vital
State Bar No. 00794798
Altresha Q. Burchett
State Bar No. 24045582

HAYNES AND BOONE, L.L.P.
901 Main Street, Suite 3100
Dallas, Texas 75202-3780
Telephone: 214-651-5000
Facsimile: 214-651-5940

ATTORNEYS FOR
MORGAN STANLEY & CO., INC.

EXHIBIT A

RETURN OF SERVICE OF SUBPOENA

I, Troy Essink, (1) personally delivered a true copy of the Deposition Subpoena Duces Tecum (along with a court order authorizing substituted service, issued by the 191st Judicial District of Dallas County, Texas) to Sally Hummel-Uzzi, wife to third-party witness Donald R. Uzzi and person over sixteen years of age, at 4201 Lomo Alto Drive, Unit 307, in Dallas County, Texas on January 12, 2005, at approximately 4:30 p.m., and (2) tendered Sally Hummel-Uzzi the witness fee of $10.00 in cash.

By Troy Essink
Troy Essink, Licensed Private Investigator working with Verasys, L.L.C.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.
MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

NOTICE OF DEPOSITION SUBPOENA DUCES TECUM OF DONALD R. UZZI

TO: Donald R. Uzzi, 4201 Lomo Alto Drive, Apt. 307, Dallas, TX 75219.

Please take notice that the Morgan Stanley entities in the above-styled cause of action intend to take the oral deposition of Donald R. Uzzi pursuant to Texas Rule of Civil Procedure 201.2 and the Order of the Circuit Court of the Fifteenth Judicial Circuit In and For Palm Beach County, Florida entered on January 21, 2004 and attached hereto. The deposition will take place at 9:30 a.m. on January 19, 2005, at the offices of HAYNES AND BOONE, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202. The deposition will be videotaped by Esquire Deposition Services, 1700 Pacific Avenue, Suite 4750, Dallas, Texas 75201, and will continue from day to day until completed.

Donald R. Uzzi will also produce documents responsive to the Deposition Subpoena Duces Tecum attached hereto. These documents and materials shall be brought with the witness and produced on January 19, 2005, at HAYNES AND BOONE, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202.

Respectfully submitted,

Michael C. Occhuizzo
KIRKLAND & ELLIS LLP
655 15th Street, N.W. – Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

OF COUNSEL:

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
KIRKLAND & ELLIS LLP
655 15th Street, N.W. – Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999

Joseph Ianno, Jr. (FL Bar # 655351)
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368

Dated: December 27, 2004

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following counsel of record by facsimile and Federal Express on this 27th day of December, 2004:

John Scarola, Esq.
SEARCY, DENNEY, SCAROLA, BARNHARDT & SHIPLEY, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409

Jerold S. Solovy, Esq.
JENNER & BLOCK, LLC
One IBM Plaza
Suite 4400
Chicago, Illinois 60611

Michael C. Occhuizzo

THE STATE OF TEXAS

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.
MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

DEPOSITION SUBPOENA DUCES TECUM

TO: Any sheriff or constable of the State of Texas or other person authorized to serve and execute subpoenas as provided in Texas Rule of Civil Procedure 176.5.

You are commanded to summon **Donald R. Uzzi**, 4201 Lomo Alto Drive, Apt. 307, Dallas, TX 75219, to appear at the principal offices of HAYNES AND BOONE, LLP, 901 Main Street Suite 3100, Dallas, Texas 75202, on **Wednesday, January 19, 2005 at 9:30 a.m.** to give testimony at a videotaped oral deposition and to permit inspection and copying of documents or tangible things to be used as evidence in this case.

Donald R. Uzzi is commanded to attend the oral deposition and to produce and permit inspection and copying of the following documents or tangible things described in the attached Exhibit 1. These documents and materials shall be brought with the witness and produced prior to the deposition on January 19, 2005, at HAYNES AND BOONE, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202.

Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both. TEX. R. CIV. P. 176.8(a).

DO NOT FAIL to return this writ to the Circuit Court of the Fifteenth Judicial Circuit In and For Palm Beach County, Florida with either the attached officer's return showing the manner of execution or the witness's signed memorandum showing that the witness accepted the subpoena.

ISSUED on December 27, 2004.

By: _____

Sean Trende
Texas State Bar No. 24034176
KIRKLAND & ELLIS LLP,
655 15th Street, N.W., Suite 1200,
Washington, D.C. 20005

This subpoena was issued pursuant to Texas Rule of Civil Procedure 201.2, the Order of the Circuit Court of the Fifteenth Judicial Circuit In and For Palm Beach County, Florida entered on January 21, 2004 and attached hereto as Exhibit 2, and at the request of Defendants' attorneys of record Thomas D. Yannucci, P.C., Lawrence P. Bemis (FL Bar No. 618349), and Thomas A. Clare of KIRKLAND & ELLIS LLP, 655 15th Street, N.W., Suite 1200, Washington, D.C. 20005; Mark C. Hansen, James M. Webster, III, Rebecca A. Beynon of KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C., Sumner Square, 1615 M Street, N.W., Suite 400, Washington, D.C. 20036; Joseph Ianno, Jr. (FL Bar No. 655351), CARLTON FIELDS, P.A., 222 Lakeview Ave., Suite 1400, West Palm Beach, FL 33401.

EXHIBIT 1

DEPOSITION SUBPOENA DUCES TECUM

You are hereby requested to produced the following documents pursuant to the definitions and instructions contained herein:

DOCUMENTS REQUESTED

1. All documents concerning the Coleman Transaction.

2. All documents concerning the Subordinated Debenture Offering.

3. All documents concerning the Bank Facility, or the Credit Agreement.

4. All documents reflecting or concerning any communications between or among any of Sunbeam, CPH, MAFCO, CSFB, Arthur Andersen, MS & Co., MSSF, Davis Polk, Wachtell, or Skadden in 1997 or 1998.

5. All documents provided by you in any Litigation or SEC Administrative Proceeding.

6. All calendars, diaries, timekeeping sheets or records maintained by you concerning any activities related to Coleman Transaction, the Subordinated Debenture Offering, the Bank Facility, the Credit Agreement.

7. All documents related to Sunbeam's Financial Information for all or any portion of 1996, 1997, and 1998, including but not limited to Financial Statements and documents concerning Sunbeam's forecasts and plans for revenue or earnings.

8. All documents related or referring to any cost-reduction or sales program or policy in place at Sunbeam during 1997 and 1998, including but not limited to documents concerning the "early buy" program, "Initiatives for Success", and "bill and hold" sales and the "no returns" policy.

9. All documents concerning returns of Sunbeam goods or product in 1997 and 1998, including but not limited to documents regarding the "no returns" policy and conversations or communications regarding the deletion of return authorizations from the J.D. Edwards system.

10. All documents pertaining to negotiations concerning the acquisition of Coleman, Signature Brands, and First Alert, including but not limited to documents concerning conversations or communications of any kind between or among any of MS & Co., MSSF, CPH or MAFCO personnel or representatives.

11. All documents concerning Synergies that might be achieved from a business combination of Sunbeam, Coleman, Signature Brands, and First Alert, or any combination thereof.

12. All documents related to or supporting the March 16, 1998 Representation Letter provided to Arthur Anderson, including but not limited to any drafts of such letter and any Financial Information used or referenced in writing the letter or drafts.

13. All documents concerning any "comfort letter" pertaining to the Subordinated Debenture offering or the Credit Agreement, including but not limited to Arthur Andersen's letters dated March 19, 1998 and March 25, 1998 and any drafts of such letters.

14. All documents concerning any investigation, analysis, or due diligence conducted by Sunbeam or its Advisors pertaining to the Coleman Transaction, including but not limited to documents and Financial Information pertaining to March 18, 1998 and March 24, 1998 conference calls.

15. All documents related to Sunbeam's March 19, 1998 press release, including but not limited to documents pertaining to the contents or drafting of the press release, the decision to issue the press release, and the decision to include the press release in the Offering memorandum.

16. All documents concerning the March 19, 1998 drafting session and/or meeting that took place at Global Financial Press concerning the Offering Memorandum, including but not limited to documents concerning any conversations or communications of any kind involving MS & Co. or Arthur Andersen personnel.

17. All documents related to the sale of the Subordinated Debenture, including but not limited to documents pertaining to roadshows or other communications with investors or analysts.

DEFINITIONS

1. "Advisors" shall mean financial advisors, legal advisors, accountants, consultants and any other third-party advising or assisting Sunbeam in any way with the Coleman Transaction, including but not limited to Arthur Anderson, Coopers & Lybrand, Llama Company, MS& Co., MSSF, and Skadden.

2. "Arbitrations" shall mean *Albert J. Dunlap and Sunbeam Corporation*, No. 32 160 00088 99 (AAA); and *Russell A. Kersh and Sunbeam Corporation*, No. 32 160 00091 99 (AAA).

3. "Arthur Andersen" shall mean Arthur Andersen LLP and any of its former or present partners, officers, directors, employees, representatives and agents.

4. "Bank Facility" shall mean the Credit Agreement, including amendments, and all funds extended by Lenders to Sunbeam pursuant to the Credit Agreement, including but not limited to Tranche A, Tranche B, and the Revolving Credit Facility.

5. "Communication" shall mean any exchange or transmittal of information by any means of transmission, including, without limitation, face-to-face conversation, mail, overnight delivery, Internet, telephone, electronic mail, or facsimile.

6. The term "concerning" shall mean relating to, referring to, describing, evidencing, or constituting.

7. "Coleman" shall mean Coleman Company, Inc. and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

8. "Coleman Transaction" shall mean Sunbeam's acquisition of Coleman Company, Inc. from CPH and all related communications, agreements, and transactions, including the February 27, 1998 Agreements and the March 30, 1998 closing.

9. "Cooper & Lybrand" shall mean the former Coopers & Lybrand LLP, and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents.

10. "CPH" shall mean Coleman (Parent) Holdings Inc. and any of its former or present officers, directors, employees, representatives and agents.

11. "Credit Agreement" shall mean the agreement entered into by Sunbeam, as borrower with Lenders, dated March 30, 1998 and all amendments thereto.

12. "CSFB" shall mean Credit Suisse First Boston LLC and any of its former or present officers, directors, employees, representatives and agents.

13. "Davis Polk" shall mean Davis Polk & Wardwell and any of its former or present partners, officers, directors, employees, representatives and agents.

14. "Document" shall mean any recording in any tangible form of any information, whether handwritten, typed, printed, stored on computer disks, tapes, or databases, or otherwise reproduced. "Document" or "documents" also includes electronic documents whether stored on

servers or hard drives, e-mail, backup tapes, voicemail and video and audio recordings. A draft or non-identical copy is a separate document within the meaning of this term.

15. "Financial Information" shall mean information concerning the past or present financial condition of Sunbeam or Sunbeam securities.

16. "Financial Statements" shall mean documents reflecting Financial Information, including without limitation quarterly reports, yearly reports, balance sheets, statements of income, earnings, cash flow projections, and sources and applications of funds.

17. "First Alert" shall mean First Alert, Inc., and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

18. The term "identify" (with respect to documents) shall mean to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).

19. "Lenders" shall mean the entities listed on Schedule 2.01 of the Credit Agreement under the heading "Lenders" and any other person that shall have become a party to the Credit Agreement as a Lender pursuant to an assignment and acceptance.

20. "Litigations" shall mean *In re Sunbeam Securities Litigation*, 98-8258-Civ.-Middlebrooks (S.D. Fla); *Camden Asset Management L.P. v. Sunbeam Corporation*, 98-8773-Civ.-Middlebroks and 98-8275-Civ.-Middlebrooks (S.D. Fla); *Krim v. Dunlap*, No. CL 983168AD (15th Jud. Cir., Fla.); *Stapleton v. Sunbeam Corp.*, No. 98-1676-Civ.-King (S.D. Fla); *Sunbeam Corp. v. PricewaterhouseCoopers LLP*, No. CL 005444AN (15th Jud. Cir., Fla.); *In re Sunbeam Corp., Inc.*, No. 01-40291 (AJG) (Bankr. S.D.N.Y.) and any adversary proceedings therein; *SEC v. Dunlap*, No. 01-8437-Civ.-Middlebrooks (S.D. Fla.); *Oaktree Capital Management LLC v. Arthur Andersen LLP*,

No. BC257177 (L.A. Cty., CA); and *Coleman (Parent) Holdings Inc. v. Arthur Andersen LLP*, No. CA 01-06062AN (15th Jud. Cir., Fla.), or other litigation concerning the Coleman Transaction.

21. "Llama Company" shall mean Llama Company and any of its former or present partners, officers, directors, employees, representatives and agents.

22. "MAFCO" shall mean MacAndrews & Forbes Holdings, Inc. and any of its officers, directors, former or present employees, representatives and agents.

23. The "March 19, 1998 Press Release" shall mean the press release issued by Sunbeam on March 19, 1998 concerning the shortfall of first quarter 1998 sales numbers and the reasons for such shortfall.

24. "MS & Co." shall mean Morgan Stanley & Co. Inc. and any of its former or present officers, directors, employees, representatives and agents.

25. "MSSF" shall mean Morgan Stanley Senior Funding, Inc. and any of its former or present officers, directors, employees, representatives and agents.

26. The term "person" shall mean any natural person or any business, legal or governmental entity or association.

27. The term "relating to" shall mean concerning, evidencing, referring to, or constituting.

28. The "Relevant Period," unless otherwise indicated, shall be from January 1, 1996 through the date of service of this subpoena.

29. "SEC" shall mean the Securities and Exchange Commission.

30. "SEC Administrative Proceedings" shall mean *In the Matter of Sunbeam Corp.*, SEC Administrative Proceeding File No. 3-10481, and *In the Matter of David C. Fannin*, SEC Administrative Proceeding File No. 3-10482.

31. "Signature brands" shall mean Signature Brands USA, Inc. and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

32. "Skadden" shall mean Skadden, Arps, Slate, Meagher & Flom, LLP and any of its former or present partners, officers, directors, employees, representatives and agents.

33. "Subordinated Debentures" shall mean the Sunbeam's Zero Coupon Convertible Senior Subordinated Debentures Due 2018.

34. "Subordinated Debenture Offering" shall mean the offering of Sunbeam's Subordinated Debentures.

35. "Sunbeam" shall mean Sunbeam Corporation and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents.

36. "Synergies" shall mean post-acquisition gains through increased revenue and/or decreased cost.

37. "Wachtell" shall mean Wachtell Lipton Rosen & Katz and any of its former or present partners, officers, directors, employees, representatives and agents.

38. The terms "you" or "your" shall mean Donald R. Uzzi and any of Donald R. Uzzi's present and former representatives and agents.

INSTRUCTIONS

1. Documents shall be produced as they are kept in the usual course of business, or organized and labeled to correspond to the categories in this Request. Documents attached to each other should not be separated. Documents consisting of items previously produced in the Litigations, Arbitrations, and/or SEC Administrative Proceedings with Bates numbering shall be produced in Bates number order.

2. All documents shall be produced in the file folder, envelope or other container in which the documents are kept or maintained by you. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks.

3. The relevant period, unless otherwise indicated, shall be from January 1, 1996 through the date of service of this subpoena, and shall include all documents and information which relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received prior or subsequent to that period. Please supplement or correct your responses to these requests if, at any time, you become aware that your responses are incomplete or incorrect in any request.

4. If you claim the attorney-client privilege, or any other privilege or work-product protection for all or any portion of a document, you shall provide a privilege log that describes the withheld material sufficiently to allow Morgan Stanley to test the privilege or protection asserted.

5. The following rules of construction apply:

1. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be outside their scope;

2. The term "including" shall be construed to mean "without limitation"; and

3. The use of the singular form of any word include the plural and vice versa.

CAUSE NO. 05-00275-J

COLEMAN (PARENT) HOLDINGS INC.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	THE 191st JUDICIAL DISTRICT
	§	
MORGAN STANLEY & CO. INCORPORATED,	§	
	§	
Defendant.	§	DALLAS COUNTY, TEXAS
	§	

ORDER FOR MORGAN STANLEY & CO. INCORPORATED'S MOTION FOR SUBSTITUTED SERVICE

On January 10, 2005, this Court heard and considered Morgan Stanley & Co., Incorporated's ("Morgan Stanley") Motion for Substituted Service of a deposition subpoena on third-party witness Donald R. Uzzi ("Uzzi"). After considering the Motion and accompanying evidence and having found that Morgan Stanley diligently attempted to serve Uzzi according to the affidavit and other evidence presented with the Motion, but was unsuccessful, it is hereby ORDERED that Morgan Stanley may effectuate substituted service on Uzzi with the subpoena duces tecum:

1. By leaving a true copy of the subpoena (along with this Order) with anyone over sixteen years of age at Uzzi's usual place of abode at 4201 Lomo Alto Drive, Unit 307, Dallas County, Texas 75219-1515;

2. By attaching a copy of the subpoena (along with this Order) to the door of Uzzi's confirmed and usual place of adobe at 4201 Lomo Alto Drive, Unit 307, Dallas County, Texas 75219-1515; or

3. _____

_____

_____

_____.

IT IS FURTHER ORDERED that the return of the person effectuating substituted service of the subpoena be endorsed on or attached to the subpoena, state when and how the subpoena was served, and be signed by the same.

SIGNED on January 10, 2005.

M. Kent Sims
JUDGE PRESIDING

Retired ~~Former~~ Judge 31st Judicial District Court Sitting for Judge 191st Judicial District Court Sitting for Judge 191st Judicial District Court Dallas County, Texas.

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

CIVIL DIVISION

Case No. 03 CA 005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

HEARING BEFORE THE
HONORABLE ELIZABETH T. MAASS

Thursday, January 13, 2005
Palm Beach County Courthouse
Courtroom 11-A
205 N. Dixie Highway
West Palm Beach, Florida 33401
11:07 a.m. - 11:33 a.m.

APPEARANCES:

SEARCY, DENNEY, SCAROLA,
BARNHART & SHIPLEY
2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409
(561) 686-6300
Attorneys for the Plaintiff
BY: JACK SCAROLA, ESQUIRE

CARLTON FIELDS, P.A.
Esperante
222 Lakeview Avenue
Suite 1400
West Palm Beach, Florida 33410
(561) 659-7070
Attorneys for the Defendant
BY: JOSEPH IANNO, JR., ESQUIRE

The Hearing before the HON. ELIZABETH T. MAASS was taken before me, PATTY McCOY, Shorthand Reporter, Notary Public, State of Florida at Large, at the Palm Beach County Courthouse, 205 North Dixie Highway, Courtroom 11-A, West Palm Beach, Florida, on Thursday, January 13, 2005 pursuant to the Notice filed herein, in the above-entitled cause pending before the above-named Court.

P R O C E E D I N G S

THE COURT: Okay, we are back on Coleman and Morgan Stanley, which motion do we want to start with?

MR. SCAROLA: I guess we had actually begun with Coleman's motion to compel, Your Honor. Might as well start there.

THE COURT: Okay.

MR. SCAROLA: I assume that Your Honor has had an opportunity now to have reviewed these documents and there are a few things that I want to focus in on that are of particular concern to me, and let's begin with interrogatory number 1 which asks that

Morgan Stanley identify each individual who conducted due diligence, et cetera.

And if Your Honor takes a look at the response, repeatedly Morgan Stanley responds by giving us the identity of personnel which include but are not limited to. And our concern is that at this stage in the discovery we are entitled to know whether the persons that can be identified by Morgan Stanley are indeed limited to those that they have identified and that language ought to be eliminated.

They ought to tell us who they have identified and we ought not to have the indefiniteness of that phrase repeated throughout their responses.

THE COURT: What would be the response to an argument that we don't know everybody, we have a good faith belief there were other people but we've been unable to identify them?

MR. SCAROLA: Well, by saying including but not limited to, what they are telling us is that indeed there are other

people there without any basis for that statement. If in fact they know that there are additional people there, I think they

ought to say that clearly and unequivocally and tell us that we know there were additional people present but we have been unable to identify them, their identities are unknown. This answer doesn't say that.

THE COURT: Okay, what's the response?

MR. IANNO: Judge, I'm looking at their attachment to the motion, interrogatory number one on page 3, and it doesn't use the words "including but not limited to." It says, The following individuals are known to have conducted due diligence of Sunbeam. It goes on to list from page 25 separate individuals.

Then on page 7, after we say the individuals we know conducted due diligence of Sunbeam, we say subject to, without limiting the foregoing, the following people may have also conducted due diligence. And the reason for that is due diligence is not a defined term. We said at the beginning of this interrogatory due diligence means

different things to different people.

So the next people, on pages 7, 8, 9 and ending on page 10, are people that may

have conducted due diligence depending on what you consider due diligence to be but we have responded to the interrogatory in the first few pages where we list 25 separate people that we know conducted due diligence.

THE COURT: What's the response?

MR. SCAROLA: I accept that response, Your Honor. I think that if that's in fact what is meant by that phrase, then I think that that is a reasonable manner in which to reply. And now that that has been a matter of record, I don't find that response to be vague.

THE COURT: Let's go on to Number 2.

MR. SCAROLA: Actually I think, Your Honor, that the concerns that I have about Number 2 are subsumed within Number 3 and so with the Court's permission we will focus on Number 3, and that interrogatory requests the identification of each discussion, telephone conference, meeting, et cetera

concerning Sunbeam's first quarter 1998 sales or profits, the identity of the individuals participating in the communication, and the substance of each

communication.

The response repeatedly refers to Sunbeam officials without identifying who those individuals are.

If in fact the individuals cannot be identified, then I think we're entitled to know that; but a response that says, quote, A series of telephone conference calls with Sunbeam officials, without either identifying the officials or affirmatively acknowledging that the officials cannot be identified does not properly respond to that interrogatory.

Repeatedly throughout the interrogatory response there's a failure to identify the participants in the communications, multiple communications are lumped together, and no effort is made to meet that portion of the interrogatory which asks that the substance of the communication be identified.

THE COURT: Okay, what's the response?

MR. IANNO: Judge, in looking at the response I think we've complied with each one. We've identified each discussion,

identified to the best of our ability who participated, and it is noted in our response to the motion when the terms are used, quote, Sunbeam management and Sunbeam officials. That's because those were the terms that were used by the deponents themselves who testified about the telephone calls.

As the Court will notice, each one of the responses in response to interrogatory 3 has deposition citations where that information can be derived from.

If the participants in the phone call said we talked with Sunbeam officials and didn't identify them, that's the best information that's available. The response is, as it's drafted and written with all the citations, the best information that's available based on the discovery that's been taken. I think the response is a sufficient

response to the question that is requested.

MR. SCAROLA: We have --

THE COURT: Where? I'm sorry. Go ahead, you can respond.

MR. SCAROLA: Yes, Your Honor. The

fact that an individual deponent did not identify particular individuals participating in a particular communication does not mean that Morgan Stanley doesn't have the knowledge.

Simply referring to a deposition in which a statement is made that I participated in a conference call with Sunbeam officials does not relieve Morgan Stanley of the obligation either to identify those individuals, as requested in the interrogatory, or to affirmatively state that the identity of the individuals participating in that communication is unknown to Sunbeam. Not unknown to a particular deponent but unknown to Sunbeam.

The fact that a particular deponent does not, in the course of his deposition, detail the content of the communication doesn't mean that Morgan Stanley is unable

to detail the content of the communication.

Morgan Stanley must either tell us what it knows about the content of the communication or affirmatively state: This communication took place; all we know about

it is that Sunbeam officials participated, we cannot identify them, and we don't know what the content of the communication is.

We haven't gotten that information in the answer they've given us.

THE COURT: Okay. The next one is Number 4.

MR. SCAROLA: Interrogatory Number 4 asks Morgan Stanley to identify each Morgan Stanley employee or representative, including attorneys, who received, reviewed discussed, and/or commented upon the March 19, 1998 press release.

Morgan Stanley expressly excludes from its response Morgan Stanley employees or representatives who received a draft of the press release prior to its issuance. They expressly tell us that they're not giving that.

I don't know on what basis they can simply ignore a portion of the request. They can tell us they don't know, they don't have the information. They can raise appropriate objections to providing the information and we can deal with the

objections. But they can't simply say we've decided to tell you who reviewed, discussed and/or commented upon it but we're not going to tell you who received it. So we object on that basis.

In addressing who reviewed, discussed or commented on the press release, Morgan Stanley doesn't identify a single individual who did so.

Instead they list individuals who may have reviewed, discussed or commented upon the press release. And again that's the same infirmity we discussed earlier. If they know, we're entitled to know what they know; and if they don't know, we're entitled to have them tell us clearly and unequivocally that this is information that is not available to them in spite of their diligent efforts to obtain it.

THE COURT: Do you want to respond? Oh, I'm sorry.

MR. SCAROLA: No, that's quite all right.

There are also references to unidentified documents that supposedly

indicate various Sunbeam officials that may have discussed and reviewed the press release and, again, the "may have" language is troublesome.

It doesn't tell us whether Morgan Stanley has information that they did or did not. And that's the direction that the interrogatory seeks to take.

MR. IANNO: Working backwards, Judge, on the documents, the interrogatory never asked for identification of documents, so I think the language Mr. Scarola has referred is probably served best in the realm of no good deed goes unpunished. But the individuals that are referenced in that language are Sunbeam employees, therefore they're not even responsive to the interrogatory.

But with regard to the Morgan Stanley employees, I have not seen a case citation that requires a person responding to an a interrogatory to say, I don't have any information, when you do have information that may be responsive. And that's what we have here.

Based on the discovery that's been taken to date this is the best information and knowledge we have. Contrary to what Mr. Scarola says we did not exclude people who received, may have received the press release. This is a press release. It's open to the public in general. So what --

THE COURT: Well, except what was the purpose then of that first paragraph, the response? Was that just inartful drafting?

MR. IANNO: That's what it says but then if you go to the next sentence --

THE COURT: I see that you -- but wouldn't you think it's fair that they say, hey, which is it?

MR. IANNO: Well, I understand but we say these following individuals may have received it, in the second paragraph, we

list people who may have received it.

And the reason for that is because, as we said in our response, when these people were deposed they say I believe I may have seen this or I believe I may have received it. They can't, the people that are actually at issue here can't even tell us

that they actually received the press release.

So what Mr. Scarola is saying, Morgan Stanley, you as a defendant are required to say "A" or "B" but not an accurate response is we think that these people received it based on their testimony. But they can't even tell us for sure. So what are we supposed to do when one of the people or the people that actually are alleged to have received this don't even know? We've given the best response that's possible under these circumstances.

THE COURT: Do you want to respond?

MR. SCAROLA: No further argument.

THE COURT: Okay, let's go on to Number 5.

MR. SCAROLA: Your Honor, Number 5 simply relates back to the arguments with regard to 3 and 4 that we have just addressed, so I don't know that it needs to be dealt with separately.

Number 10 requests that Morgan Stanley identify each instance in which Morgan Stanley employees or representatives --

THE COURT: I'm sorry, we're going from 5 to 10?

MR. SCAROLA: Yes, Your Honor. I'm sorry.

THE COURT: That's okay.

MR. SCAROLA: We've already argued the defects in 5 in addressing the defects in 3 and 4.

THE COURT: Okay, go ahead.

MR. SCAROLA: Interrogatory Number 10 is objected to on the basis that it is unduly burdensome. The Court is well aware that the party raising such an objection must do more than simply recite the formula words. There must be some indication as to why it is unduly burdensome and the nature of the burden that is imposed, and the

Defendant has failed to meet that burden.

THE COURT: What would be, I'm sorry. Go ahead. These are old. What would be the response to the argument that that's a whole lot of work to make them do now that this is the first time we've brought up this objection?

MR. SCAROLA: I'm sorry?

MR. IANNO: Maybe I can help, Judge, because I realized that overnight and I had my office deliver the original interrogatory answer at 10:30, which was filed in October of 2003, which is identical to sub, this really isn't a supplemental answer. It's on page 14.

THE COURT: Right. I mean sort of, I would think one of their responses, you know, this is, we're talking about interrogatories from back in mid 2003. We're now on the eve of trial. This would be an extraordinary amount of work to have to get together. And if you were really intent on getting this, wouldn't it have made sense to pull it up earlier?

MR. SCAROLA: Your Honor, I certainly agree that it would have been better to have brought it up earlier. I don't believe that that relieves Morgan Stanley of the burden and of justifying an unduly burdensome response. We don't have any of the details that would be necessary in order to make the determination as to whether this is in fact an undue burden under the presently existing

circumstances.

THE COURT: Okay. What do you want to respond?

MR. IANNO: Judge, I think that because this is a verified interrogatory response I just handed the Court, we at least put a prima facie case on that we produced 35 boxes of documents totaling 81,900 pages in connection with Sunbeam related engagements.

That satisfies our burden of showing what the work is that's involved in this. They have the documents. They can see every communication. We've justified our undue burden.

You can't wait 15 months and we're

three weeks before trial and say okay, now you have to answer this interrogatory. They should have brought this to court. We've been here for a hundred hours of hearings at least on this case? To bring it up now is just unreasonable.

THE COURT: What's the response?

MR. SCAROLA: If in fact what Morgan Stanley is saying is that every

communication that is responsive to this interrogatory is disclosed within those documents, then I think that Mr. Ianno's position may have some merit at this point in time.

However, there is no such affirmative representation. They aren't telling us that all of those communications are disclosed within the documents and because those documents are in our possession, the burden is equal on us to go through this information the same as it would be on them to go through the information.

I think we need at least from them either the affirmative assertion that it's

all there and we have nothing else or such supplement as they may have to the information contained within the documents.

THE COURT: Do you know if everything that's been produced is everything that's requested in this interrogatory?

MR. IANNO: Well, obviously it wouldn't include telephone calls. Those would have been asked in questions during depositions.

Can I say it's everything, Judge? In 2003 we thought it was everything. Whether or not it's been that since then, I can't represent. I will represent to the Court I bet the vast majority of what is responsive to that has been produced to the Plaintiffs in this case.

THE COURT: Okay, let me take it under advisement. Is that the end of that motion then?

MR. SCAROLA: It is, Your Honor.

THE COURT: Okay, and then the other one we have is?

MR. IANNO: Our motion to compel a second better answer to interrogatory Number

5, Your Honor.

THE COURT: Number 2?

MR. IANNO: Interrogatory Number 2 of the Fifth set, that's correct.

THE COURT: Right. Okay, good. What did you want to say to the Court on that?

MR. IANNO: If I may approach, Judge, I want to hand the Court correspondence between counsel to address the first point that's raised in Coleman's response that we

did make a good faith effort to respond to work this out.

The exact same points made in our motion are made in the December 23rd correspondence bullet point by bullet point asking them to provide better answers on these points.

When we didn't get a response to the letter of December 23rd we then filed our motion. So we have made a good faith effort because that's the way the parties have worked out their discovery disputes, send a letter then contact the other side and go through it.

Now, getting to the exact points of the response, as the Court may recall back in December we had a hearing and you ordered them to not use words like "and slash or" to identify this.

THE COURT: Right.

MR. IANNO: They served their amended response and it still fails to denominate a single communication that includes the names of the participants, exactly who said what, when it happened, the date on which the

communication occurred, and the substance of the communication.

In their response they start for the first time to identify the deposition testimony to which they're referring. As the Court can they used terms like, "in deposition testimony the people testified to this and without any reference to that." At least when we did our responses we identified where that was. So the response under oath should include that at a minimum.

There's a gentleman referred to on page 2 of the amended response, Mr. Gordon Rich who has now passed away, and they say

CPH has not been able to ascertain whether Mr. Rich had any discussions with Morgan Stanley.

Well, contrary to how we did it, Judge, they have no information that Mr. Rich contacted us; and to say he did, to be able to go in front of a jury or make an argument that we can't rebut I think is improper. And that's the reason we say that Mr. Rich should be excused from this.

Do they have any information that

Mr. Rich actually talked to Morgan Stanley, even if it's hearsay in an interrogatory, they should put it in, and not just say Mr. Rich may have talked to them, and we have absolutely no way to rebut that.

Again with Mr. Nesbitt (phonetic), Your Honor, they talked -- Mr. Nesbitt had and others examine analyst's reaction.

Our interrogatory requested the dates. This is a fraud case. I think we're right back to square one where we were on this interrogatory: Tell us who, what, when, where and what was said.

And, Your Honor, I know last time we had this hearing you asked us to, if we had included identified, how we defined identified.

THE COURT: Right.

MR. IANNO: Attached is Exhibit A to our motion are the instructions. And it is in there in the instructions, identify all participants, this is in paragraph 8 on page 3, the date on which the event occurred, the location if applicable, and description of the substance of the fact, telephone

conference, et cetera.

So that is the instruction that was given when you're identifying a communication.

We think they ought to be able to tell us now after 15 months of discovery who said what to whom, when, and what was said.

THE COURT: Okay, what do you want to respond?

MR. SCAROLA: Your Honor, I certainly must acknowledge in looking at the December 23, 2004 letter that's been provided by Mr. Ianno that that letter had been

overlooked when this response was prepared indicating that the request had not been made for page and line designations, but obviously that defect has been cured.

If what Mr. Ianno is asking is that the defect be cured by incorporating what is included in the written response into the interrogatory answer, I am prepared to do that on the record today.

And if that is unsatisfactory to Mr. Ianno, to provide a supplemental response expressly incorporating those page

and line designations from particular depositions into the answer that has been provided.

With regard to the reference to Mr. Rich, I quite frankly really don't understand the concern that Mr. Ianno has here. We are obliged to provide the best information we have in response to this interrogatory. We believe that Gordon Rich may have been an individual who participated in the communications that are referenced in the interrogatories.

THE COURT: Well, why wouldn't it be sort of the flip side of what we spoke about on the other motion and if you don't know, you say unknown, rather than trying to sort of raise the scepter that maybe there was this communication that was beneficial to your client?

MR. SCAROLA: Well, indeed what we have done in response to this interrogatory is really the same thing that Mr. Ianno said that they did in response to our interrogatories, to identify those individuals who they know to have

participated and separately identify those individuals who they say may have participated.

And when Mr. Ianno --

THE COURT: Would you have any information that Rich may have participated in one?

MR. SCAROLA: Yes, Your Honor.

THE COURT: And what's that based on?

MR. SCAROLA: Well, it's based upon the position that he held, the nature of the responsibilities that he held, and the

communications that he had with others within the organization.

There is reason to believe that Gordon Rich may in fact have had such communications.

Now, saying that in an interrogatory in the discovery phase of this proceeding doesn't mean that we're going to be able at the time of trial to introduce evidence that Gordon Rich had such a communication.

I will tell Your Honor that our investigation has not disclosed evidence that Gordon Rich had such a communication.

But I don't know why we are precluded from saying in response to a discovery request that he may have if it is our belief that he may have. And that's all we've done.

We have responded to a discovery request in effect saying you've asked us to tell you everything we know about who had these communications, this is who we know who did, and Gordon Rich may have but he's dead now so we don't know.

THE COURT: Okay. What's the

response?

MR. IANNO: Well, Judge, at least when we did it we had people testifying that they may have had communications. Mr. Rich has just come out of the blue. No one has talked about it. It's speculation and it's improper in an answer to interrogatory.

The rest of it, Judge, I think it's absolutely clear in the second full paragraph on page 2 that they just haven't answered this -- or the first full paragraph, excuse me, it begins with "addition," they have not adequately responded to the interrogatory.

THE COURT: Okay, let me take it under advisement.

MR. SCAROLA: Thank you very much, Your Honor.

THE COURT: Thank you very much.

MR. IANNO: Judge, I understand from your judicial assistant that you have more envelopes on this case than you need but if you want --

THE COURT: I do. We have collections. Oh, we'll take another set.

That would be so nice. We're glad to have them.

MR. SCAROLA: Would you like two more sets?

THE COURT: No. I think she'll get upset.

MR. SCAROLA: Do you want a blank order you can delineate on?

THE COURT: No. I will do my own order.

MR. SCAROLA: Okay, Your Honor.

THE COURT: Thank you very much. Bye bye.

(At 11:33 a.m. the hearing was concluded).

C E R T I F I C A T E

THE STATE OF FLORIDA)

COUNTY OF PALM BEACH)

I, Patty McCoy, Shorthand Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true record.

Dated this 14th day of January, 2004.

_____

Patty McCoy, Shorthand Reporter

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

CIVIL DIVISION

Case No. 03 CA 005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

HEARING BEFORE THE
HONORABLE ELIZABETH T. MAASS

Thursday, January 13, 2005
Palm Beach County Courthouse
Courtroom 11-A
205 N. Dixie Highway
West Palm Beach, Florida 33401
11:07 a.m. - 11:33 a.m.

APPEARANCES:

SEARCY, DENNEY, SCAROLA,
BARNHART & SHIPLEY
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Attorneys for the Defendant
BY: JOSEPH IANNO, JR., ESQUIRE

The Hearing before the HON. ELIZABETH T. MAASS was taken before me, PATTY McCOY, Shorthand Reporter, Notary Public, State of Florida at Large, at the Palm Beach County Courthouse, 205 North Dixie Highway, Courtroom 11-A, West Palm Beach, Florida, on Thursday, January 13, 2005 pursuant to the Notice filed herein, in the above-entitled cause pending before the above-named Court.

P R O C E E D I N G S

THE COURT: Okay, we are back on Coleman and Morgan Stanley, which motion do we want to start with?

MR. SCAROLA: I guess we had actually begun with Coleman's motion to compel, Your Honor. Might as well start there.

THE COURT: Okay.

MR. SCAROLA: I assume that Your Honor has had an opportunity now to have reviewed these documents and there are a few things that I want to focus in on that are of particular concern to me, and let's begin with interrogatory number 1 which asks that

Morgan Stanley identify each individual who conducted due diligence, et cetera.

And if Your Honor takes a look at the response, repeatedly Morgan Stanley responds by giving us the identity of personnel which include but are not limited to. And our concern is that at this stage in the discovery we are entitled to know whether the persons that can be identified by Morgan Stanley are indeed limited to those that they have identified and that language ought to be eliminated.

They ought to tell us who they have identified and we ought not to have the indefiniteness of that phrase repeated throughout their responses.

THE COURT: What would be the response to an argument that we don't know everybody, we have a good faith belief there were other people but we've been unable to identify them?

MR. SCAROLA: Well, by saying including but not limited to, what they are telling us is that indeed there are other

people there without any basis for that
statement. If in fact they know that there
are additional people there, I think they

ought to say that clearly and unequivocally
and tell us that we know there were
additional people present but we have been
unable to identify them, their identities
are unknown. This answer doesn't say that.
THE COURT: Okay, what's the response?
MR. IANNO: Judge, I'm looking at
their attachment to the motion,
interrogatory number one on page 3, and it
doesn't use the words "including but not
limited to." It says, The following
individuals are known to have conducted due
diligence of Sunbeam. It goes on to list
from page 25 separate individuals.
Then on page 7, after we say the
individuals we know conducted due diligence
of Sunbeam, we say subject to, without
limiting the foregoing, the following people
may have also conducted due diligence. And
the reason for that is due diligence is not
a defined term. We said at the beginning of
this interrogatory due diligence means

different things to different people.

So the next people, on pages 7, 8, 9 and ending on page 10, are people that may

have conducted due diligence depending on what you consider due diligence to be but we have responded to the interrogatory in the first few pages where we list 25 separate people that we know conducted due diligence.

THE COURT: What's the response?

MR. SCAROLA: I accept that response, Your Honor. I think that if that's in fact what is meant by that phrase, then I think that that is a reasonable manner in which to reply. And now that that has been a matter of record, I don't find that response to be vague.

THE COURT: Let's go on to Number 2.

MR. SCAROLA: Actually I think, Your Honor, that the concerns that I have about Number 2 are subsumed within Number 3 and so with the Court's permission we will focus on Number 3, and that interrogatory requests the identification of each discussion, telephone conference, meeting, et cetera

concerning Sunbeam's first quarter 1998 sales or profits, the identity of the individuals participating in the communication, and the substance of each

communication.

The response repeatedly refers to Sunbeam officials without identifying who those individuals are.

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Repeatedly throughout the interrogatory response there's a failure to identify the participants in the communications, multiple communications are lumped together, and no effort is made to meet that portion of the interrogatory which asks that the substance of the communication be identified.

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identified to the best of our ability who participated, and it is noted in our response to the motion when the terms are used, quote, Sunbeam management and Sunbeam officials. That's because those were the terms that were used by the deponents themselves who testified about the telephone calls.

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Morgan Stanley must either tell us what it knows about the content of the communication or affirmatively state: This communication took place; all we know about

it is that Sunbeam officials participated, we cannot identify them, and we don't know what the content of the communication is.

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THE COURT: What's the response?

MR. SCAROLA: If in fact what Morgan Stanley is saying is that every

communication that is responsive to this interrogatory is disclosed within those documents, then I think that Mr. Ianno's position may have some merit at this point in time.

However, there is no such affirmative representation. They aren't telling us that all of those communications are disclosed within the documents and because those documents are in our possession, the burden is equal on us to go through this information the same as it would be on them to go through the information.

I think we need at least from them either the affirmative assertion that it's

all there and we have nothing else or such supplement as they may have to the information contained within the documents.

THE COURT: Do you know if everything that's been produced is everything that's requested in this interrogatory?

MR. IANNO: Well, obviously it wouldn't include telephone calls. Those would have been asked in questions during depositions.

Can I say it's everything, Judge? In 2003 we thought it was everything. Whether or not it's been that since then, I can't represent. I will represent to the Court I bet the vast majority of what is responsive to that has been produced to the Plaintiffs in this case.

THE COURT: Okay, let me take it under advisement. Is that the end of that motion then?

MR. SCAROLA: It is, Your Honor.

THE COURT: Okay, and then the other one we have is?

MR. IANNO: Our motion to compel a second better answer to interrogatory Number

5, Your Honor.

THE COURT: Number 2?

MR. IANNO: Interrogatory Number 2 of the Fifth set, that's correct.

THE COURT: Right. Okay, good. What did you want to say to the Court on that?

MR. IANNO: If I may approach, Judge, I want to hand the Court correspondence between counsel to address the first point that's raised in Coleman's response that we

did make a good faith effort to respond to work this out.

The exact same points made in our motion are made in the December 23rd correspondence bullet point by bullet point asking them to provide better answers on these points.

When we didn't get a response to the letter of December 23rd we then filed our motion. So we have made a good faith effort because that's the way the parties have worked out their discovery disputes, send a letter then contact the other side and go through it.

Now, getting to the exact points of the response, as the Court may recall back in December we had a hearing and you ordered them to not use words like "and slash or" to identify this.

THE COURT: Right.

MR. IANNO: They served their amended response and it still fails to denominate a single communication that includes the names of the participants, exactly who said what, when it happened, the date on which the

communication occurred, and the substance of the communication.

In their response they start for the first time to identify the deposition testimony to which they're referring. As the Court can they used terms like, "in deposition testimony the people testified to this and without any reference to that." At least when we did our responses we identified where that was. So the response under oath should include that at a minimum.

There's a gentleman referred to on page 2 of the amended response, Mr. Gordon Rich who has now passed away, and they say

CPH has not been able to ascertain whether Mr. Rich had any discussions with Morgan Stanley.

Well, contrary to how we did it, Judge, they have no information that Mr. Rich contacted us; and to say he did, to be able to go in front of a jury or make an argument that we can't rebut I think is improper. And that's the reason we say that Mr. Rich should be excused from this.

Do they have any information that

Mr. Rich actually talked to Morgan Stanley, even if it's hearsay in an interrogatory, they should put it in, and not just say Mr. Rich may have talked to them, and we have absolutely no way to rebut that.

Again with Mr. Nesbitt (phonetic), Your Honor, they talked -- Mr. Nesbitt had and others examine analyst's reaction.

Our interrogatory requested the dates. This is a fraud case. I think we're right back to square one where we were on this interrogatory: Tell us who, what, when, where and what was said.

And, Your Honor, I know last time we had this hearing you asked us to, if we had included identified, how we defined identified.

THE COURT: Right.

MR. IANNO: Attached is Exhibit A to our motion are the instructions. And it is in there in the instructions, identify all participants, this is in paragraph 8 on page 3, the date on which the event occurred, the location if applicable, and description of the substance of the fact, telephone

conference, et cetera.

So that is the instruction that was given when you're identifying a communication.

We think they ought to be able to tell us now after 15 months of discovery who said what to whom, when, and what was said.

THE COURT: Okay, what do you want to respond?

MR. SCAROLA: Your Honor, I certainly must acknowledge in looking at the December 23, 2004 letter that's been provided by Mr. Ianno that that letter had been

overlooked when this response was prepared indicating that the request had not been made for page and line designations, but obviously that defect has been cured.

If what Mr. Ianno is asking is that the defect be cured by incorporating what is included in the written response into the interrogatory answer, I am prepared to do that on the record today.

And if that is unsatisfactory to Mr. Ianno, to provide a supplemental response expressly incorporating those page

and line designations from particular depositions into the answer that has been provided.

With regard to the reference to Mr. Rich, I quite frankly really don't understand the concern that Mr. Ianno has here. We are obliged to provide the best information we have in response to this interrogatory. We believe that Gordon Rich may have been an individual who participated in the communications that are referenced in the interrogatories.

THE COURT: Well, why wouldn't it be sort of the flip side of what we spoke about on the other motion and if you don't know, you say unknown, rather than trying to sort of raise the scepter that maybe there was this communication that was beneficial to your client?

MR. SCAROLA: Well, indeed what we have done in response to this interrogatory is really the same thing that Mr. Ianno said that they did in response to our interrogatories, to identify those individuals who they know to have

participated and separately identify those individuals who they say may have participated.

And when Mr. Ianno --

THE COURT: Would you have any information that Rich may have participated in one?

MR. SCAROLA: Yes, Your Honor.

THE COURT: And what's that based on?

MR. SCAROLA: Well, it's based upon the position that he held, the nature of the responsibilities that he held, and the

communications that he had with others within the organization.

There is reason to believe that Gordon Rich may in fact have had such communications.

Now, saying that in an interrogatory in the discovery phase of this proceeding doesn't mean that we're going to be able at the time of trial to introduce evidence that Gordon Rich had such a communication.

I will tell Your Honor that our investigation has not disclosed evidence that Gordon Rich had such a communication.

But I don't know why we are precluded from saying in response to a discovery request that he may have if it is our belief that he may have. And that's all we've done.

We have responded to a discovery request in effect saying you've asked us to tell you everything we know about who had these communications, this is who we know who did, and Gordon Rich may have but he's dead now so we don't know.

THE COURT: Okay. What's the

response?

MR. IANNO: Well, Judge, at least when we did it we had people testifying that they may have had communications. Mr. Rich has just come out of the blue. No one has talked about it. It's speculation and it's improper in an answer to interrogatory.

The rest of it, Judge, I think it's absolutely clear in the second full paragraph on page 2 that they just haven't answered this -- or the first full paragraph, excuse me, it begins with "addition," they have not adequately responded to the interrogatory.

THE COURT: Okay, let me take it under advisement.

MR. SCAROLA: Thank you very much, Your Honor.

THE COURT: Thank you very much.

MR. IANNO: Judge, I understand from your judicial assistant that you have more envelopes on this case than you need but if you want --

THE COURT: I do. We have collections. Oh, we'll take another set.

That would be so nice. We're glad to have them.

MR. SCAROLA: Would you like two more sets?

THE COURT: No. I think she'll get upset.

MR. SCAROLA: Do you want a blank order you can delineate on?

THE COURT: No. I will do my own order.

MR. SCAROLA: Okay, Your Honor.

THE COURT: Thank you very much. Bye bye.

(At 11:33 a.m. the hearing was concluded).

C E R T I F I C A T E

THE STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, Patty McCoy, Shorthand Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true record.

Dated this 14th day of January, 2004.

_____

Patty McCoy, Shorthand Reporter

CARLTON FIELDS, P.A.

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Message:

To follow please find a copy of Morgan Stanley's Notice of Filing Deposition Transcripts of Joshua A. Webber, John D'A. Tyree, Ruth Porat, William Kourakos, Robert Kitts, Lily Rafii, Andrew Savarie, Ishaan Seth, James Stynes, Shani Boone, Tyrone Chang, Andrew Conway, Karen Haycox-Eltrich, Blaine V. Fogg, Michael Hat, W. Brooks Harris, and Johannes Groeller. Also please find a copy of Morgan Stanley's Notice of Filing Under Seal for the depositions of Porat, Kourakos, Seth, Stynes, Chang, Conway, Fogg, Hart, and Harris.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF TYRONE CHANG

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of Tyrone Chang taken January 8, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed a copy of the January 8, 2004 deposition transcript of Tyrone Chang under seal.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF ANDREW CONWAY

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of Andrew Conway taken June 4, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed a copy of the June 4, 2004 deposition transcript of Andrew Conway under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

NOTICE OF FILING DEPOSITION TRANSCRIPTS OF BLAINE V. FOGG

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcripts of Blaine v. Fogg taken December 16 and 17, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed the original December 16, 2004 and December 17, 2004 deposition transcripts of Blaine V. Fogg under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF W. JOHANNES GROELLER

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of Johannes Groeller taken November 17, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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IN THE CIRCUIT COURT OF THE
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COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF MICHAEL HART

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of Michael Hart taken May 19, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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IN THE CIRCUIT COURT OF THE
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IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed a copy of the May 19, 2004 deposition transcript of Michael Hart under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF W. BROOKS HARRIS

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of W. Brooks Harris taken October 26, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed a copy of the October 26, 2004 deposition transcript of W. Brooks Harris under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF KAREN HAYCOX-ELTRICH

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of Karen Haycox-Eltrich taken October 15, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF ROBERT KITTS

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of Robert Kitts taken February 12, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF WILLIAM KOURAKOS

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of William Kourakos taken October 29, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed a copy of the October 29, 2004 deposition transcript of William Kourakos under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

NOTICE OF FILING DEPOSITION TRANSCRIPT OF RUTH PORAT

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of Ruth Porat taken December 10, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed a copy of the December 10, 2004 deposition transcript of Ruth Porat under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 18th day of January, 2005.

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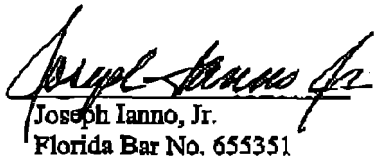
BY: 
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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF LILY RAFII

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of Lily Rafii taken April 2, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF ANDREW SAVARIE

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of Andrew Savarie taken January 22, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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IN THE CIRCUIT COURT OF THE
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COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF ISHAAN SETH

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of Ishaan Seth taken July 30, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed a copy of the July 30, 2004 deposition transcript of Ishaan Seth under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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IN THE CIRCUIT COURT OF THE
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COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF JAMES STYNES

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of James Stynes taken July 13, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed a copy of the July 13, 2004 deposition transcript of James Stynes under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF JOHN D'A. TYREE

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of John D'A. Tyree taken November 14, 2003 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF JOSHUA A. WEBBER

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of Joshua A. Webber taken May 18, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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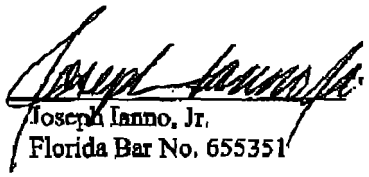
BY: 
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Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 53

Message:

To follow please find a copy of Morgan Stanley's Notice of Filing Deposition Transcripts of Joshua A. Webber, John D'A. Tyree, Ruth Porat, William Kourakos, Robert Kitts, Lily Rafii, Andrew Savarie, Ishaan Seth, James Stynes, Shani Boone, Tyrone Chang, Andrew Conway, Karen Haycox-Eltrich, Blaine V. Fogg, Michael Hat, W. Brooks Harris, and Johannes Groeller. Also please find a copy of Morgan Stanley's Notice of Filing Under Seal for the depositions of Porat, Kourakos, Seth, Stynes, Chang, Conway, Fogg, Hart, and Harris.

☐ *Original to follow Via Regular Mail* ☐ *Original will Not be Sent* ☐ *Original will follow via Overnight Courier*

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF TYRONE CHANG

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of Tyrone Chang taken January 8, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed a copy of the January 8, 2004 deposition transcript of Tyrone Chang under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF ANDREW CONWAY

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of Andrew Conway taken June 4, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed a copy of the June 4, 2004 deposition transcript of Andrew Conway under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

NOTICE OF FILING DEPOSITION TRANSCRIPTS OF BLAINE V. FOGG

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcripts of Blaine v. Fogg taken December 16 and 17, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed the original December 16, 2004 and December 17, 2004 deposition transcripts of Blaine V. Fogg under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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IN THE CIRCUIT COURT OF THE
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COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF W. JOHANNES GROELLER

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of Johannes Groeller taken November 17, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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IN THE CIRCUIT COURT OF THE
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COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF MICHAEL HART

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of Michael Hart taken May 19, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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IN THE CIRCUIT COURT OF THE
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IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed a copy of the May 19, 2004 deposition transcript of Michael Hart under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF W. BROOKS HARRIS

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of W. Brooks Harris taken October 26, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed a copy of the October 26, 2004 deposition transcript of W. Brooks Harris under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF KAREN HAYCOX-ELTRICH

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of Karen Haycox-Eltrich taken October 15, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF ROBERT KITTS

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of Robert Kitts taken February 12, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF WILLIAM KOURAKOS

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of William Kourakos taken October 29, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed a copy of the October 29, 2004 deposition transcript of William Kourakos under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

NOTICE OF FILING DEPOSITION TRANSCRIPT OF RUTH PORAT

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of Ruth Porat taken December 10, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed a copy of the December 10, 2004 deposition transcript of Ruth Porat under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 18th day of January, 2005.

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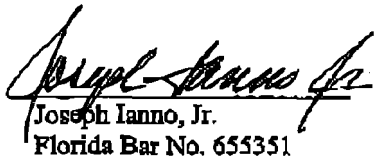
BY: 
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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF LILY RAFII

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of Lily Rafii taken April 2, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF ANDREW SAVARIE

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of Andrew Savarie taken January 22, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
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COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF ISHAAN SETH

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of Ishaan Seth taken July 30, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed a copy of the July 30, 2004 deposition transcript of Ishaan Seth under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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IN THE CIRCUIT COURT OF THE
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COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF JAMES STYNES

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of James Stynes taken July 13, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed a copy of the July 13, 2004 deposition transcript of James Stynes under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF JOHN D'A. TYREE

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of John D'A. Tyree taken November 14, 2003 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

/

NOTICE OF FILING DEPOSITION TRANSCRIPT OF JOSHUA A. WEBBER

Defendant, MORGAN STANLEY & CO. INCORPORATED, by and through their undersigned counsel, hereby gives notice that it has filed a copy of the deposition transcript of Joshua A. Webber taken May 18, 2004 for use in the proceedings and trial in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 14th day of January, 2005.

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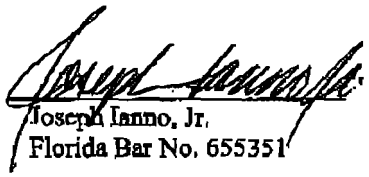
BY: 
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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL ADEQUATE ANSWERS TO MORGAN STANLEY'S SUPPLEMENTAL RESPONSES TO CPH'S FIRST SET OF INTERROGATORIES

THIS CAUSE came before the Court January 13, 2005 on Coleman (Parent) Holdings, Inc.'s Motion to Compel Adequate Answers to Morgan Stanley's Supplemental Responses to CPH's First Set of Interrogatories, with both parties well represented by counsel. The numbered paragraphs below correspond in number to the Interrogatories of CPH's First Set of Interrogatories.

1. denied;
2. ruling deferred pending further hearing, if needed;
3. granted, in part. Defendant Morgan Stanley shall have 7 days to serve an amended answer which shall attempt to specifically identify each communication, and the parties to it, and the substance of the communication. If any of the specific information sought is unknown to Morgan Stanley, it shall specifically so state;
4. granted, in part. Morgan Stanley shall serve its amended answer the interrogatory, identifying each employee or representative who received the Press Release, or a draft thereof, within 7 days; further, Morgan Stanley shall serve its restated answer, stating specifically whether any information sought is unknown to Morgan Stanley, within 7 days;
5. granted, in part. Morgan Stanley shall serve its answer to the interrogatory,

identifying each employee or representative who received the Press Release, or a draft thereof, within 7 days; further, Morgan Stanley shall serve its restated answer to state specifically whether any information sought is unknown to Morgan Stanley, within 7 days; and

10. objection sustained.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 14 day of January, 2005.

ELIZABETH T. MAASS
Circuit Court Judge

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO DEEM CERTAIN DOCUMENTS ADMISSIBLE AND FOR SANCTIONS DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, respectfully requests that this Court enforce a prior discovery Order that this Court entered on December 3, 2004 and enter sanctions for Morgan Stanley's violation of that Order. In support of this motion, CPH states as follows:

1. This motion arises as a result of Morgan Stanley's disregard of this Court's December 3, 2004 Order, which granted CPH's motion directed at Morgan Stanley's disregard of yet another Court Order. *See* Ex. A. In the December 3, 2004 Order, this Court required that Morgan Stanley produce a witness, pursuant to CPH's October 22, 2004 notice of Rule 1.310 deposition, to testify as to the authenticity, business record, and authorship information concerning various documents. In direct disregard of this Court's Order, Morgan Stanley failed to produce a witness competent to testify as to those topics.

2. The lengths to which Morgan Stanley has gone to avoid complying with this routine discovery is illustrated by the number of motions that have been filed and Orders that have been entered. To recap, on October 22, 2004, CPH served its Sixth Set of Requests for Admission – requests that sought admissions on authenticity, business record, and authorship issues relating to documents that CPH might use at trial (Ex. B), as well as a Rule 1.310 notice

of deposition to enable CPH to further explore any of Morgan Stanley's denials to the requests for admission (Ex. C). Rather than responding to the requests for admission or the deposition notice, Morgan Stanley filed a motion for protective order, asking this Court to excuse it from responding to the requests for admission and complying with the notice of deposition. *See* Ex. D. This Court denied that motion on November 17, 2004. *See* Ex. E. Thereafter, on November 22, 2004, Morgan Stanley served patently inadequate responses to the requests for admission, in which it denied or objected to every prong of the business records exception for every document that CPH identified (with the exception of the personnel evaluations, as to which this Court already had entered an Order). *See* Ex. F.

3. The following day, November 23, CPH filed its motion for a finding of contempt and for other relief due to Morgan Stanley's disregard of the Court's November 17, 2004 Order. *See* Ex. G. This Court granted CPH's motion in part on December 3, overruling Morgan Stanley's objections to the requests for admission and requiring that Morgan Stanley produce a witness pursuant to CPH's notice of Rule 1.310 deposition to testify as to the authenticity, source, creation, use, maintenance and business purpose the documents for which Morgan Stanley denied authenticity, authorship, or both. *See* Ex. A.

4. Thereafter, Morgan Stanley designated James Doyle, Executive Director in Morgan Stanley's law division, as the Rule 1.310 corporate representative, and the deposition proceeded in New York on January 12, 2005. However, Mr. Doyle was not prepared to testify as a Morgan Stanley corporate representative as to the authenticity, source, creation, use, maintenance and business purpose of the documents — as required by this Court's December 3, 2004 Order. Rather, Mr. Doyle repeatedly stated that he "would refer to the deposition testimony" of other Morgan Stanley witnesses who may have testified as to those documents "if any," and, with very few exceptions, could not identify any of the witnesses to which he was

referring. The transcript of the deposition is attached as Ex. H. Mr. Doyle also testified that if there was no deposition testimony on the documents, then he was "without knowledge" and could not state whether the documents were authored, created, drafted, written, or even typed by Morgan Stanley. Mr. Doyle also:

- could not state whether the word-processing stamp on the lower left-hand side of many of the documents is a Morgan Stanley word-processing stamp — even though other documents, which Morgan Stanley admitted it authored, include word processing stamps in the same format and location on the documents;
- could not identify the source of the information in the documents; and
- could not state whether the documents were made in the ordinary course of business, at or near the time of the events recorded, by a person with knowledge.

5. Beyond that, when asked what he did to determine if an employee of Morgan Stanley drafted various documents, Mr. Doyle either (1) refused to answer on the basis that his in-house counsel position at Morgan Stanley rendered the information privileged, or (2) stated that he did nothing in preparation for this deposition, other than talk to Kirkland & Ellis attorneys, to determine whether a Morgan Stanley current or former employee drafted the documents, but he believed that "inquiry was made." *See, e.g.*, Ex. H, at 144-47.[1]

6. Under Fla. R. Civ. P. 1.380(b)(1), Mr. Doyle's failure to provide adequate answers to questions regarding the documents about which he was called to testify in his representative capacity constitutes a contempt of court. *See* Fla. R. Civ. P. 1.380(b)(1) ("If a deponent fails . . . to answer a question after being directed to do so by the court, the failure

[1] In addition, as further proof of Morgan Stanley's attempt to obstruct CPH's ability to obtain basic information on documents, Morgan Stanley's counsel instructed Mr. Doyle not to answer questions about any documents for which Morgan Stanley admitted authenticity and authorship in its responses to CPH's requests for admission, but denied one or more prongs of the Florida business records exception to hearsay, under Fla. Stat. § 90.803(6). *See* Ex. H at 157-58.

may be considered a contempt of the court."). Moreover, because Mr. Doyle, who was designated as a corporate representative under Rule 1.310(b)(6), failed to obey this Court's December 3, 2004 Order, the Court can and should deem the documents about which he was asked to be admissions of Morgan Stanley fully admissible at trial. *See* Fla. R. Civ. P. 1.380(b)(2) ("If a party . . . or a person designated under rule 1.310(b)(6) . . . to testify on behalf of a party fails to obey an order to provide or permit discovery, . . . the court in which the action is pending may make . . . (A) an order that the matters regarding which the questions were asked or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.").

7. CPH has been attempting in vain to obtain this routine discovery for almost three months. That effort has resulted in two prior motions before this Court – and two prior Orders issued by the Court requiring Morgan Stanley to comply. Indeed, even after this Court ordered Morgan Stanley to produce a Rule 1.310 witness knowledgeable about these documents, Morgan Stanley failed to produce such a witness. Given Morgan Stanley's consistent and systematic obstruction of CPH's attempts to obtain basic discovery on these documents, and given that trial is less than six weeks away, allowing further discovery on these documents would be an inadequate remedy. Rather, the documents at issue should be deemed to be admissions by Morgan Stanley fully admissible at trial, and Morgan Stanley should be required to pay CPH's costs and attorneys' fees associated with Mr. Doyle's deposition and the filing of this motion.

8. For the foregoing reasons, CPH respectfully requests that this Court enter an Order: (1) deeming the following documents to be admissions by Morgan Stanley fully admissible at trial (subject only to challenges under Fla. Stat. § 90.401 and § 90.403): CPH 9,

CPH 75[2], CPH 122 (handwritten marginalia only), CPH 130, CPH 155[3], CPH 170, CPH 182, CPH 209, CPH 217, CPH 264, CPH 265, CPH 278, MS 40; and (2) awarding CPH the costs of taking Mr. Doyle's deposition, including travel costs, and the costs of bringing this Motion.

Dated: January 18, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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#1200624

[2] Page SB 0018202 of CPH 75 is out of out of order in the exhibit. CPH will move SB 0018202 to its proper location before introducing CPH 75 at trial.

[3] CPH 155 includes six pages of a different document that appear between CPH 1346199 and CPH 1346200. Those pages are bates stamped CPH 0485943-CPH 0485949. CPH will remove those pages before introducing CPH 155 at trial.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 18th day of JAN; 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

MORGAN STANLEY'S RESPONSE TO CPH'S MOTION IN LIMINE NO. 16 TO BAR EVIDENCE AND ARGUMENT CONCERNING CONDUCT OR COMMUNICATIONS NOT ADEQUATELY DISCLOSED IN MORGAN STANLEY'S DECEMBER 2004 SUPPLEMENTAL RESPONSES TO INTERROGATORY NOS. 1, 2, 3, 4, 5, AND 10 OF CPH'S FIRST SET OF INTERROGATORIES

This motion is wholly duplicative of CPH's January 5, 2005 Motion to Compel Adequate Answers to Morgan Stanley's Supplemental Responses to CPH's First Set of Interrogatories, which has already been decided by this Court. The Court's ruling on CPH's motion to compel is dispositive of this motion, and this motion should therefore be denied as moot.

1. CPH's motion to compel asked the Court to require Morgan Stanley to supplement the six interrogatories at issue in this motion. Contrary to CPH's characterization in this motion and its motion to compel, this is ***not*** a situation where Morgan Stanley failed to disclose information that CPH is in danger of being surprised with at trial. Quite the contrary, Morgan Stanley has provided fulsome written responses to each of the interrogatories in addition to over 350 responses to requests for admission and hundreds of hours of testimony from its witnesses discussing the matters addressed by the interrogatories. CPH's motion to compel and this motion improperly ask the Court to shift the burden from CPH to Morgan Stanley to ***summarize*** all of the information from all of the depositions for CPH.

2. For example, Interrogatory No. 1 asks for the identity of each individual who conducted due diligence or is knowledgeable due diligence of Sunbeam. Morgan Stanley responded to Interrogatory No. 1 by naming twenty-five specific individuals who participated in the due diligence of Sunbeam. Although Morgan Stanley believes that it has already fully responded to the interrogatory, Morgan Stanley ought not be required to scour each of the eighty-five depositions that have been taken in the case to determine whether any other witness might potentially be knowledgeable about Sunbeam due diligence.

3. CPH has the same access to the deposition transcripts that Morgan Stanley does, and it is unduly burdensome for CPH to demand on the eve of trial that Morgan Stanley review tens of thousands of pages of deposition testimony to encapsulate information for CPH that CPH already has in its possession. CPH's claim that it will be prejudiced if Morgan Stanley is allowed to introduce evidence not included in prior interrogatory responses holds no water.

4. The fundamental purpose of the discovery process is to preclude the element of surprise at trial. *See, e.g., National Healthcorp Ltd. P'ship v. Close*, 787 So. 2d 22, 25 (Fla 2d DCA 2001). There is no authority Morgan Stanley could find that permits interrogatories to be used to summarize all the evidence in depositions and documents produced in years of litigation.

5. Because CPH has in its possession the information it seeks from Morgan Stanley, CPH cannot claim that it will "surprised" or "prejudiced" at trial by evidence concerning a matter that was addressed in a deposition. CPH's motion to preclude any evidence in response to these interrogatories that Morgan Stanley did not cull from depositions is unreasonable and unwarranted. Indeed, the motion is a patent attempt to force Morgan Stanley to prepare CPH for trial or risk exclusion of evidence.

6. In any event, ruled on CPH's motion to compel addressing the sufficiency of Morgan Stanley's interrogatory responses on January 14, 2005. Morgan Stanley will comply with this Court's order regarding the supplementation of its discovery responses, and the Court should therefore deny this motion as duplicative of CPH's prior motion and moot.

WHEREFORE, Morgan Stanley requests that CPH's Motion in Limine No. 16 be denied as duplicative and moot. This Court's ruing on CPH's motion to compel further responses to the six interrogatories moots this motion in its entirety. Morgan Stanley will comply with this Court's order regarding the supplementation of its discovery responses, and therefore this motion should be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 18th day of January, 2005.

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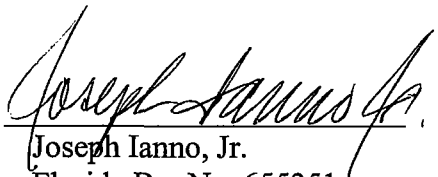
BY: 
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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiffs,

vs.

MORGAN STANLEY & CO., INC.

Defendant.

CASE NO: 2003 CA 005045 AI

COLEMAN (PARENT) HOLDINGS INC.'S NOTICE OF INTENT TO RELY ON ADDITIONAL AUTHORITY IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Plaintiff hereby gives notice of its intent to rely on an additional authority not previously cited by the parties in prior submissions concerning Defendant's Motion for Summary Judgment. Plaintiff will rely on Dean v. Gold Coast Theaters, Inc., 156 So.2d 546 (2 DCA 1963) for the proposition that a Defendant's disclaimer of knowledge of circumstances forming the basis for Plaintiff's claim of fraud through the affidavit of Defendant's corporate president are not sufficient to establish the absence of an issue with regard to the Defendant's knowledge of the falsity of its statements.

Similarly, "self-serving statements in [Defendant's] answers to interrogatories...were not sufficient to establish the absence of a genuine issue of material fact and the entry of summary judgment in his favor." Schurer v. Koch, 741 So.2d 618, 619 (2 DCA 1999).

Coleman Holdings, Inc. vs Morgan Stanley & Company
Coleman (Parent) Holdings Inc.'s Notice Of Intent To Rely On Additional Authority In Opposition To Defendant's Motion For Summary Judgment
Case No.: 2003 CA 005045 AI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 18th day of JAN., 2005.

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Coleman Holdings, Inc. vs Morgan Stanley & Company
Coleman (Parent) Holdings Inc.'s Notice Of Intent To Rely On Additional Authority In Opposition To Defendant's Motion For Summary Judgment
Case No.: 2003 CA 005045 AI

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156 So.2d 546
156 So.2d 546
(Cite as: 156 So.2d 546)

C
District Court of Appeal of Florida, Second District.

Justina DEAN a/k/a Justine Knowles, and Reginald Dean, a/k/a Ben Dean, her husband, Appellants,
v.
GOLD COAST THEATRES, INC., Appellee.

No. 3476.

Oct. 2, 1963.

Suit for rescission of transfer of land against various defendants. The Circuit Court for Broward County, George W. Tedder, Jr., J., entered a summary final decree on motion of corporate defendant, and the plaintiffs appealed. The District Court of Appeal, Barns, Paul D., Associate Judge, held that affidavit of president of corporate defendant was insufficient to show that there was no genuine issue of material fact as to fraud by corporate defendant, and required denial of summary judgment.

Reversed.

West Headnotes

[1] **Judgment** 185.3(18)
228k185.3(18) Most Cited Cases
Affidavit of president of corporate defendant, sued with other codefendants for rescission of transfer of land presently held by corporate defendant, was insufficient to affirmatively and clearly show that there was no genuine issue of material fact as to fraudulent representations, and required denial of summary judgment.

[2] **Judgment** 185.1(4)
228k185.1(4) Most Cited Cases
Statements of ultimate facts are of no weight in affidavit in support of motion for summary judgment. 30 F.S.A. Rules of Civil Procedure, rule 1.36(e).

[3] **Judgment** 185.1(4)
228k185.1(4) Most Cited Cases
Allegations of ultimate facts usually suffice for pleading but more is required of affidavit to support motion for summary decree, as litigant has right to trial where there is slightest doubt as to facts. 30 F.S.A. Rules of Civil Procedure, rule 1.36(e).

*547 William J. George, Pompano Beach, for appellants.

Sullivan, Musselman & Cochran, Pompano Beach, for appellee.

BARNS, PAUL D., Associate Judge.

This is an appeal from a summary final decree granted on motion of the defendant Gold Coast Theatres, Inc. We find error and reverse.

This suit for rescission of a transfer of land was brought by Justina Dean and her husband against Alfonso A. and Angelina DiMartino, his wife, E. E. Jordan, Joel Miller, North Broward Realty, Inc., and Gold Coast Theatres, Inc.; in sustaining defendants' motions to dismiss, the action was dismissed as to Jordan, Miller and North Broward Realty, Inc.; the motion to dismiss of Alfonso A. and Angelina DiMartino was denied and they have answered denying the allegations of the complaint.

The complaint among other things alleges:

'17. That to induce the Plaintiffs to execute said Contract of Sale (Exhibit A) and to execute and deliver said Warranty Deed (Exhibit B), the Defendants, Alfonso A. DiMartino, E. E. Jordan and Joel Miller conspired together and falsely and fraudulently represented to the Plaintiffs

'(a) between December 2, 1955 and December 13, 1955, that the offer made by said Charles E. Myers, presented by said P. H. Biscoe to purchase the said five (5) acres of land for $7,500.00 had been withdrawn by the said Charles E. Myers;

'(b) between December 2, 1955 and December 13, 1955, that the said Charles E. Myers' offer was no longer open and was no longer in existence;

'(c) between December 2, 1955 and December 13, 1955, that the said property had a market value of not more than Six Hundred and no/100 Dollars ($600.00) per acre.

* * *

'21. That when the said representations were made by the Defendants, Joel Miller, E. E. Jordan and Alfonso A. DiMartino at the time of the execution of the said contract (Exhibit A), and at the time of the execution and delivery of said Warranty Deed (Exhibit B) and prior thereto, the Defendants, Joel

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Miller, E. E. Jordan and Alfonso A. DiMartino well knew said representations were false, inasmuch as

'(a) the offer made by said Charles E. Myers to purchase said five (5) acres of land for $7,500.00 had not been withdrawn; and

'(b) the said offer was still open and was still in existence and was intentionally and fraudulently concealed from the Plaintiffs by the Defendants, Joel Miller, E. E. Jordan and Alfonso A. DiMartino.

'(c) the said property had a market value of approximately Three Thousand and no/100 Dollars ($3,000.00) per acre, inasmuch as the Defendants, Joel Miller, E. E. Jordan and Alfonso A. DiMartino had knowledge of the willingness of said Charles E. Myers to pay Fifteen Thousand and no/100 Dollars ($15,000.00) for the said property.

* * *

'25. That the said Defendant, Gold Coast Theatres, Inc., and the said Charles E. Myers, in his capacity as president of said Gold Coast Theatres, Inc., purchased the said five (5) acres of land, as mentioned in Paragraph 23 above with notice of the fraudulent circumstances hereinbefore described.'

After filing a motion to dismiss and not having answered, the defendant Gold Coast Theatres, Inc., made a motion for summary judgment supported by an affidavit of Charles E. Myers stating that his offer of December 2, 1955 of $7500 for the 5 acres was not accepted; that he 'had no knowledge, either directly or constructively, as to any of the facts concerning dealings' between the plaintiffs and the other defendants; that on or about February 8, 1956 ***548** he learned the property had been sold to DiMartino but had no knowledge of the circumstances of the sale or the price paid; that he made DiMartino an offer of $15,000 for the property which was accepted on or about April 30, 1956 and the transaction was closed by a conveyance to the Gold Coast Theatres, Inc.; 'that at no time did he have any knowledge of any of the purported fraudulent circumstances alleged in the plaintiff's complaint until he was served with a copy of it on May 25, 1961'; that he acted in good faith with those parties who on the public records held title.

In opposition to the motion for summary judgment plaintiffs filed an affidavit of P. H. Biscoe which affidavit together with the complaint show the matter hereinafter stated.

Justina Dean was the owner of 5 acres. Joel Miller and E. E. Jordan doing business as Miller and Jordan were attorneys and represented Justina in some litigation. Miller and Jordan dissolved on or about Frbruary 1, 1956. Alfonso A. DiMartino was engaged in the real estate business in the name of North Broward Realty, Inc., and DiMartino was its preseident: Joel Miller and DiMartino were associated together in the operation of the aforesaid 'North Broward' by virtue of a real estate brokerage license held by Miller. Charles E. Myers was president of Gold Coast Theatres, Inc., which now holds title to the 5 acres.

Myers offered Justina $7500 for her 5 acres which was not accepted; Justina then shortly thereafter sold her 5 acres for $3000 to DiMartino who then sold it to Myers for $15,000. Justina brings suit for rescission based on fraud.

On December 2, 1955 P. H. Biscoe, a real estate broker consulted Justina Dean and presented to her an offer of Charles E. Myers of $7500 for her 5 acres; she considered the offer favorably but referred Biscoe to her attorneys, Miller and Jordan, and advised him that she would be guided by their advice: Biscoe in company with Myers on the same day delivered the proposed contract and check to the attorneys pursuant to her instructions; Mr. Jordan received the contract and commented that it was a good deal; that he would have it signed and that it could be picked up on the next day. Biscoe called at the attorneys' offices on December 3rd, 5th, 7th and the 12th without being able to see the attorneys, however, the secretary on December 12, 1955 advised him that the owners had decided not to sell and returned the proposed contract and check to him which he in turn returned to Myers; Biscoe kept Myers informed of each call and the result. When Biscoe returned the proposed contract and check to Myers he expressed himself as being suspicious of the whole transaction and they both agreed that there was something strange about it.

On December 14, 1955 Biscoe called on Myers at his home and in discussing the matter Mr. Myers stated 'They have got me over a barrel. What can I do?', at which time a salesman from the office of DiMartino appeared with a contract for Myers to sign for the purchase of the 5 acres from DiMartino as seller. Mr. Myers knew that Joel Miller was a registered broker in DiMartino's office.

DiMartino's contract for the purchase of the 5 acres was a binder receipt of Ten ($10.00) Dollars with E. E. Jordan signing as a subscribing witness which receipt called for a purchase price at $3000.00 with

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Alfonso DiMartino agreeing to pay an additional amount not exceeding $300 toward the payment of cost involved in and about pending litigation concerning the 5 acres. This binder receipt was dated July 1, 1955 but the complaint alleges that it was actually signed between December 2, 1955 and December 13, 1955.

On February 9, 1956 Justina Dean and her husband executed a warranty deed conveying the 5 acres to Angelina DiMartino (a married woman) which deed was signed by E. E. Jordan as a subscribing witness and notarized by him. On or about February 8, 1956 DiMartino and his wife *549 entered into a contract with Myers for the sale and purchase of the 5 acres at a price of $15,000, which sale was concluded on April 30, 1956, by a conveyance to Gold Coast Theatres, Inc., of which Myers was its president.

Conclusion

The defendant-appellee has not answered, hence there are no paper issues of fact. From the complaint and affidavit submitted in opposition to the defendant's motion for a summary judgment, it appears that appellants' access to proof of the complaint is extremely limited while the defendants' access to proof of the absence of fraud and want of imputed knowledge of any fraud is far more unrestricted since the co-defendants have a common interest and collectively know the real facts.

[1][2] The Motion for summary decree was supported solely by the affidavit of Myers which states that 'at no time did he have any knowledge of the purported fraudulent circumstances alleged in plaintiff's complaint', which is not an evidentiary fact but an ultimate fact to be proved or disproved by evidentiary facts. Statements of ultimate facts in an affidavit in support of a motion for summary decree are of no weight. 6 Moore's Federal Practice, 2nd Ed., § 56.22, p. 2328, note 24. Myers has not been subjected to the fact revealing process of cross-examination.

[3] Rule 1.36(e), Rules of Civil Procedure, 30 F.S.A., requires that such affidavits shall 'set forth such facts as would be admissible in evidence'. Allegation of the ultimate facts usually suffice for pleading purposes but more is required of an affidavit to support a motion for a summary decree. A defendant is not allowed to push a plaintiff out of court of such means. As stated in Peckham v. Ronrico Corp., 1 Cir., 171 F.2d 653, 657: 'A litigant has a right to a trial where there is the slightest doubt as to the facts', which case involved fraud.

In reviewing the entry of a summary decree, Alepco Corporation v. Pozin, Fla.App., 114 So.2d 645, held:

> 'Summary judgment is not a substitute for a trial; and fraud is a subtle thing requiring full explanation of the facts and circumstances of the alleged wrong to determine if they collectively constitute fraud. Since the whole context is necessary for the determination, it is seldom that one can determine the presencke or absence of fraud without trial.'

It is our conclusion that the defendant failed to affirmatively and clearly show in support of its motion that there was no genuine issue of a material fact and that a trial would be useless. In coming to this conclusion we have been guided by the following principles stated in 6 Moore's Federal Practice, 2nd Ed., § 56.23, p. 2341:

> 'In examining the moving papers, and the opposing papers, if any, the trial court should give due weight to a number of factors: to the need for crossexamination by the opposing party in relation to any evidentiary materials, such as supporting affidavits, where the opposing party has had no opportunity to cross-examine; to the general desirability of demeanor testimony; to the factor of access to proof by the opposing party; and, in a proper situation, to the desirability that the case receive the full exploration of a trial.
>
> 'At the risk of wearisome repetition, we reiterate:
>
> 'All reasonable doubts touching the existence of a genuine issue as to a material fact must be resolved against the party moving for summary judgment.
>
> 'It is not the function of the trial court at the summary judgment hearing to resolve any genuine factual issue, including credibility; and for purposes of ruling on the motion all factual inferences are to be taken against the moving party and in favor of the opposing *550 party, and the appellate court will do likewise in reviewing the trial court's grant of summary judgment. Discretion plays no real role in the grant of summary judgment: the grant of summary judgment must be proper under the above principles or the grant is subject to a reversal. The trial court may, however, exercise a sound discretion in denying summary judgment, appropriate to the case at hand, although the movant may have technically shouldered his burden.

Reversed.

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SHANNON, Acting C. J., and WHITE, J., concur.

156 So.2d 546

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Westlaw.

C

District Court of Appeal of Florida,
Second District.

Ann J. SCHURER, Appellant,
v.
Kenneth Allen KOCH, Appellee.

No. 98-04378.

Sept. 22, 1999.

Rear-ended driver sued following driver. The Circuit Court, Pinellas County, James R. Case, J., granted summary judgment to following driver. Rear-ended driver appealed. The District Court of Appeal, Whatley, J., held that self-serving statements of following driver were not sufficient to establish that he had defense of sudden and unforeseeable loss of consciousness.

Reversed and remanded.

West Headnotes

Judgment 185.3(21)
228k185.3(21) Most Cited Cases
Self-serving statements of driver who rear-ended lead car were not sufficient to establish as a matter of law, on motion for summary judgment, that he had defense of sudden and unforeseeable loss of consciousness; although driver stated in his answers to interrogatories that "I was unconscious before impact; I had passed out because of low blood sugar. It is the first time it has ever happened," driver presented no affidavits or depositions from members of the medical community and driver revealed in his deposition that he had a long history of migraine and retinal problems.

***618** Michael L. Kinney, Tampa, for Appellant.

Charles W. Hall and Tracy Raffles Gunn of Fowler, White, Gillen, Boggs, Villareal and Banker, P.A. Tampa, for Appellee.

***619** WHATLEY, Judge.

Ann J. Schurer appeals the final summary judgment entered in favor of Kenneth Allen Koch in her negligence action against him for damages caused by his rear-ending her automobile while she was stopped at a red light. We reverse.

In his motion for summary judgment, Koch alleged as a complete defense that he had experienced a sudden and unforeseeable loss of consciousness prior to the collision. *See Tropical Exterminators, Inc. v. Murray*, 171 So.2d 432, 433 (Fla. 2d DCA 1965) ("It is well settled that negligence is not chargeable against the operator of a motor vehicle who, while driving, suffers a sudden loss of consciousness from an unforeseen cause."). Under the facts of this case, the viability of this defense was a question for the trier of fact to resolve.

In support of his motion for summary judgment, Koch filed his and Schurer's depositions, as well as their answers to interrogatories. He presented the trial court with no affidavits or depositions from members of the medical community. Further, in his deposition, Koch revealed that he had a long history of migraine and retinal problems. Koch's self-serving statements in his answers to interrogatories that "I was unconscious before impact; I had passed out because of low blood sugar. It is the first time it has ever happened," were not sufficient to establish the absence of a genuine issue of material fact and the entry of summary judgment in his favor. Compare *Wingate v. United Services Auto. Ass'n*, 480 So.2d 665 (Fla. 5th DCA 1985), in which the motion for summary judgment asserting that the driver lost control of the vehicle when he suffered an unexpected heart attack was supported by affidavits from physicians which confirmed that the driver died of a heart attack which he had no reason to expect.

Accordingly, this matter is reversed and remanded to the trial court for proceedings consistent with this opinion.

Reversed and remanded.

FULMER, A.C.J., and SCHEB, JOHN M., (Senior) Judge, Concur.

741 So.2d 618, 24 Fla. L. Weekly D2235

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

**COLEMAN (PARENT) HOLDINGS INC.'S
RESPONSE IN OPPOSITION TO MORGAN STANLEY'S
MOTION FOR PROTECTIVE ORDER**

More than a month after an almost identical motion for protective order was denied by this Court, Morgan Stanley once again has moved for a protective order, seeking to avoid a corporate representative deposition on the issue of punitive damages. Specifically, in its motion, Morgan Stanley seeks a protective order to preclude a deposition on the following topics relevant to CPH's claim for punitive damages: (a) "Morgan Stanley & Co.'s net worth, income, revenue, profits, losses, cash flow, and global holdings for each fiscal year beginning and including 2003-2004" (Topic 2); and (b) "Morgan Stanley & Co.'s ability to satisfy a punitive damages judgment" (Topic 3). Morgan Stanley's motion should be denied.

First, with respect to Topic 2, this Court denied Morgan Stanley's motion for protective order seeking only to postpone the deposition on that very same topic. *See* Ex. A (Morgan Stanley's motion); Ex. B (12/3/04 Order). A fortiori, Morgan Stanley's present motion to bar the deposition is baseless.

Morgan Stanley nonetheless argues that it should be relieved of presenting a corporate representative to testify on Topic 2, on the ground that it has produced documents providing financial information. In fact, the documents themselves are inadequate and of questionable accuracy, and they certainly are no substitute for a deposition of a corporate representative.

Morgan Stanley could prepare and present a witness on Topic 2 in a fraction of the time that Morgan Stanley will have devoted to filing a motion and opposing the deposition before this Court.

Second, with respect to Topic 3, Morgan Stanley likewise should be required to produce a corporate representative for a deposition. Morgan Stanley's excuse for failing to do so (at 2) is that "[a] deponent cannot testify as to Morgan Stanley's ability to satisfy a potential judgment without an indication of, *inter alia*, the amount of the judgment, the date of the judgment, the terms of the judgment, and the scope of the judgment." This argument not only is baseless, it is directly inconsistent with the position taken by Morgan Stanley in a motion that it filed just two days before the instant motion was filed. Specifically, in its Motion in Limine No. 5 filed on January 10, Morgan Stanley takes the position (at 8) that "there is no dispute about Morgan Stanley's ability to pay a judgment up to the constitutional maximum." Thus, contrary to the position taken by Morgan Stanley in the present motion, Morgan Stanley can indeed provide a witness to testify "as to Morgan Stanley's ability to satisfy a potential judgment."

For the foregoing reasons, it is clear that Morgan Stanley's objections to Topic Nos. 2 and 3 concerning punitive damages are without merit, and are interposed solely for purposes of delay. This Court therefore should deny Morgan Stanley's motion for protective order and direct Morgan Stanley to produce a corporate representative to testify about Topics 2 and 3 in the CPH deposition notice attached to Morgan Stanley's motion without further delay.

Dated: January 18, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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Ronald L. Marmer
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#1200270

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 18th day of _____, 2005.

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

MOTION FOR PROTECTIVE ORDER

Defendant Morgan Stanley & Co. Inc. ("Morgan Stanley") requests that this Court enter a Protective Order pursuant to Fla. R. Civ. P. 1.280(c) concerning several Notices of Taking Videotaped Depositions served by Plaintiff as set forth below. In support of this Motion, Morgan Stanley states as follows:

I. Plaintiff's deposition notice for a corporate representative concerning debentures

1. On November 17, 2004, this Court entered an Order overruling Morgan Stanley's Motion for a Protective Order to produce documents and to produce a corporate representative to testify concerning trading activity by Morgan Stanley related to Sunbeam debentures.

2. On November 19, 2004 at 6:17 p.m., Morgan Stanley received a Notice of Taking Deposition purporting to schedule a deposition for November 24, 2004 at 9:30 in New York City. A copy of the deposition notice is attached hereto as Exhibit "A." Morgan Stanley objected to the deposition because insufficient notice was given. A copy of this correspondence is attached hereto as Exhibit "B."

3. However, based upon Plaintiff's argument to this Court and reasons for this discovery, Morgan Stanley suggested that a written response could be provided to Plaintiff that

EXHIBIT
A

would provide all of the necessary information requested by Plaintiff. Such an offer was clearly reasonable since Plaintiff's counsel unilaterally took the same action with respect to a corporate representative deposition of Plaintiff. See correspondence attached hereto as Exhibit "C."

WHEREFORE, Morgan Stanley respectfully requests that this Court enter an Order requiring Plaintiff to accept a written response in lieu of a deposition or in the alternative, requiring the deposition to be rescheduled to a date and time mutually convenient for counsel and the witness and award such other and further relief as is just and proper.

II. Plaintiff's deposition notice for a corporate representative concerning Coleman Escrow Notes

4. On November 17, 2004, this Court entered an Order overruling Morgan Stanley's Motion for a Protective Order and required Morgan Stanley to produce documents and respond to interrogatories concerning trading activity by Morgan Stanley related to Coleman Escrow Notes and related documents. The Court required Morgan Stanley to produce documents and respond to the interrogatories on or before November 23, 2004. The Court did not address the Motion for Protective Order concerning the Rule 1.310(b)(6) deposition on this topic.

5. On November 19, 2004 at 6:17 p.m., Morgan Stanley received a Notice of Taking Deposition purporting to schedule a deposition for November 24, 2004 at 9:30 in New York City on this topic. A copy of the deposition notice is attached hereto as Exhibit "D." Morgan Stanley objected to the deposition because insufficient notice was given.

6. Because Morgan Stanley has not responded to the discovery, counsel submits that a deposition is premature at this time. Morgan Stanley will timely comply with the Court's Order. After CPH receives the written discovery, a deposition may be unnecessary.

WHEREFORE, Morgan Stanley respectfully requests that this Court enter an Order requiring the deposition to be rescheduled to a date and time mutually convenient for counsel and the witness and award such other and further relief as is just and proper.

III. Plaintiff's deposition notice for a corporate representative concerning authenticity of hundreds of deposition exhibits

7. On November 19, 2004, counsel received this Court's order overruling Morgan Stanley's motion for protective order concerning CPH's Sixth Request for Admissions.

8. On November 22, 2004, Morgan Stanley timely served its Responses to CPH's Sixth Request for Admissions pursuant to the Court's Order.

9. However, on November 22, 2004 at 1:04 p.m., prior to receiving Morgan Stanley's Response to the Sixth Request for Admissions, CPH served a deposition notice for a corporate representative to testify as to the authenticity of these documents. A copy of the deposition notice is attached hereto as Exhibit "E."

10. Serving the deposition notice prior to receiving the discovery responses clearly demonstrates the harassing nature of this request. Had CPH waited to receive the discovery responses, CPH would have learned that Morgan Stanley did not object to authenticity of a number of documents, thus, the deposition notice could have been narrowly tailored.

11. Moreover, CPH has provided insufficient notice for this deposition.

WHEREFORE, Morgan Stanley respectfully requests that this Court enter an Order requiring the deposition to be rescheduled to a date and time mutually convenient for counsel and the witness and award such other and further relief as is just and proper.

IV. Plaintiff's deposition notice for a corporate representative concerning punitive damages

12. On November 22, 2004, counsel received this Court's order permitting CPH to assert claims for punitive damages.

13. Immediately after receiving the Court's Order, at 2:12 p.m. that same day, CPH demanded that Morgan Stanley produce documents pursuant to the Seventh Request for Production. In addition, CPH demanded that Morgan Stanley produce a corporate representative to testify concerning financial information allegedly relevant to punitive damages. CPH unilaterally scheduled the deposition for November 24, 2004 at 9:30 a.m. A copy of the deposition notice is attached hereto as Exhibit "F."

14. With regard to the Seventh Request for Production, CPH is not entitled to any documents as Morgan Stanley's substantive objections to the Request have not been resolved either through agreement of the parties or by this Court.

15. With regard to the deposition, the scope of the requested areas of inquiry is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Further, the scope of the areas of inquiry exceeds the permissible scope of financial discovery even with the claims for punitive damages. Finally, CPH has provided insufficient notice for this deposition.

WHEREFORE, Morgan Stanley respectfully requests that this Court enter an Order requiring the deposition to be rescheduled to a date and time mutually convenient for counsel and the witness and award such other and further relief as is just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 23rd day of November, 2004.

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON DEFENDANT MORGAN STANLEY & CO., INC.'S MOTION FOR PROTECTIVE ORDER

THIS CAUSE came before the Court December 3, 2004 on Defendant Morgan Stanley & Co., Inc.'s Motion for Protective Order, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that paragraphs I and II of Defendant Morgan Stanley & Co., Inc.'s Motion for Protective Order are Denied, as moot. It is further

ORDERED AND ADJUDGED that paragraph III of Defendant Morgan Stanley & Co., Inc.'s Motion for Protective Order is Denied, except as modified by the Court's December 3, 2004 Order on Coleman (Parent) Holdings, Inc.'s Motion for a Finding of Contempt and for Other Relief due to Morgan Stanley's Disregard of Court Order. It is further

ORDERED AND ADJUDGED that paragraph IV of Defendant Morgan Stanley & Co., Inc.'s Motion for Protective Order is Denied.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 3 day of December, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

EXHIBIT
B

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January 17, 2005

BY FACSIMILE

Michael Brody, Esq.
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Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*

Dear Mike:

I write in response to your January 14 letter.

CPH's Witness List: We are not persuaded by the reasons offered in your letter for CPH's failure to comply with the Court's Order regarding the provision of address information for CPH's trial witnesses. While your untimely provision of this information moots the specific relief requested in Morgan Stanley's Motion to Compel, we reserve the right to seek appropriate relief from the Court arising from the CPH's witness list.

CPH's Trial Exhibits – Your arguments and efforts to link this issue to Morgan Stanley's summary judgment exhibits are unavailing. (See Morgan Stanley Motion To Compel CPH's Trial Exhibits ¶ 4.) In response to your question, Morgan Stanley did file with the Court deposition errata sheets and exhibits marked at each deposition. We accept your proposal to receive copies of CPH's trial exhibits on January 19, but will not withdraw our motion to compel. Instead, we agree to remove the motion from the Court's calendar for January 19 and reserve the right to re-notice the motion and seek appropriate relief after we have had an opportunity to review CPH's trial exhibits. We also reserve the right to add additional trial exhibits after we receive the actual exhibits you intend to offer.

Morgan Stanley's Motion To Strike – We intend to proceed with the motion to strike. CPH's insistence on this highly compressed pretrial schedule, coupled with CPH's failure respond to Morgan Stanley's Proposed Findings of Fact And Conclusions of Law on the date it was originally due, has upended the normal summary judgment briefing process and resulted in Morgan Stanley having less than a week to reply to your 230-page response. Your dilatory service of the opposition further shortened our time to response. We intend to present our motion to the Court as scheduled.

KIRKLAND & ELLIS LLP

service of the opposition further shortened our time to response. We intend to present our motion to the Court as scheduled.

Sincerely,

Thomas A. Clare

Thomas A. Clare

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark C. Hansen, Esq. (by facsimile)

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,
Defendant.

MORGAN STANLEY'S RESPONSE TO CPH MOTION IN LIMINE NO. 18 TO BAR EVIDENCE AND ARGUMENT CONCERNING PLAINTIFF'S COUNSEL'S RETENTION OF PROFESSOR MARK GRINBLATT AS AN EXPERT IN PRIOR UNRELATED CASES

CPH erroneously argues that Morgan Stanley intends to introduce evidence that one of Morgan Stanley's experts, Professor Mark Grinblatt, was retained by counsel for CPH in another case. Morgan Stanley does not intend to do so. Morgan Stanley does not dispute that to date, Professor Grinblatt's prior retention by CPH counsel has not been put at issue in this case. Morgan Stanley agrees not to introduce the fact of prior retention to the jury unless and until CPH opens the door to such testimony.

If, for example, CPH chooses to cross-examine Professor Grinblatt on the reasonableness of his fees, Morgan Stanley would be entitled to elicit the fact that counsel for CPH has paid the very same fees for Professor Grinblatt's services. Similarly, if CPH were to attack Professor Grinblatt's credibility and experience, he would likewise be entitled to point out that he has worked on cases with plaintiff's counsel in the past. *See Flores v. Miami-Dade County*, 787 So. 2d 955, 958 -959 (Fla. App. 3 Dist. 2001) ("[T]here must be reasonable latitude for inquiry about the extent of a trial expert's alignment with one side, or another, of litigation practice .... To that end, *Elkins* and the rule allow some discovery regarding work that the trial expert has done in

other cases .... The inquiry extends not just to the compensation arrangements for the current case, but also allows inquiry into the expert's work in other cases. ") (internal citations omitted); *see also, Springer v. West*, 769 So. 2d 1068, 1069 (Fla. App. 5 Dist. 2000) (inquiry regarding relationship between expert and attorney permissible).

WHEREFORE, Morgan Stanley agrees to CPH's Motion In Limine No. 18, to the extent the motion requests that Morgan Stanley be barred from eliciting on direct examination evidence regarding Professor Grinblatt's prior retention by CPH counsel. Morgan Stanley reserves its right to introduce such evidence, if and only if, CPH opens the door to such testimony.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 18th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiffs,

CASE NO: 2003 CA 005045 AI

vs.

MORGAN STANLEY & CO., INC.
Defendant.
_____/

NOTICE OF FILING PLEADING UNDER SEAL

COLEMAN (PARENT) HOLDINGS INC. hereby gives notice of the filing of COLEMAN (PARENT) HOLDINGS INC.'S Response to Morgan Stanley's Motion in Limine No. 1 to Exclude Performance Evaluations or Other Propensity Evidence, Filed under Seal on this date.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 18th day of Jan, 2005.

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Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Notice Of Filing Pleading Under Seal
Case No.: 2003 CA 005045 AI

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16div-009995

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

PLAINTIFF'S RESPONSE TO MORGAN STANLEY'S MOTION IN LIMINE NO. 2 TO EXCLUDE SECURITIES AND EXCHANGE COMMISSION PROCEEDINGS

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") respectfully submits this response to Morgan Stanley's Motion in Limine No. 2 to Exclude Securities and Exchange Commission Proceedings. Morgan Stanley's motion seeks to bar "testimony and records reflecting allegations and determinations made by the Securities and Exchange Commission ('SEC') as part of its investigation of and litigation concerning Sunbeam Corporation ('Sunbeam')." Mot. at 1. CPH understands Morgan Stanley's motion to seek an Order barring the introduction of any evidence or argument at trial concerning (i) the absence of an SEC enforcement action against Morgan Stanley or (ii) the presence of SEC enforcement actions against Sunbeam Corporation, its officers, and its accountants. To the extent that this understanding is correct, CPH agrees with the relief that Morgan Stanley requests. Indeed, CPH requested this same relief in its Motion in Limine (No. 9) to Bar Evidence and Argument Concerning the Absence of an Enforcement Action Against Defendant by the Securities and Exchange Commission.[1]

[1] Except where expressly noted, CPH does not concur with the recitations of purported facts in Morgan Stanley's motions in limine.

Although CPH disagrees with certain of the factual recitations, and much of the legal argument, in Morgan Stanley's motion, the Court need not delve into the points of disagreement so long as the parties and the Court agree on the proper relief.

Dated: January 18, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiffs,

CASE NO: 2003 CA 005045 AI

vs.

MORGAN STANLEY & CO., INC.
Defendant.
_____/

NOTICE OF FILING PLEADING UNDER SEAL

COLEMAN (PARENT) HOLDINGS INC. hereby gives notice of the filing of COLEMAN (PARENT) HOLDINGS INC.'S Response to Morgan Stanley's Motion in Limine No. 3 to Exclude Irrelevant and Prejudicial References to Corporate Corruption and Accounting Scandals, Filed under Seal on this date.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 18th day of Jan., 2005.

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Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Notice Of Filing Pleading Under Seal
Case No.: 2003 CA 005045 AI

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiffs,

CASE NO: 2003 CA 005045 AI

vs.

MORGAN STANLEY & CO., INC.
Defendant.
_____/

NOTICE OF FILING PLEADING UNDER SEAL

COLEMAN (PARENT) HOLDINGS INC. hereby gives notice of the filing of COLEMAN (PARENT) HOLDINGS INC.'S Response to Morgan Stanley's Motion in Limine No. 4 to Exclude Evidence and Testimony Regarding Extra-Contractual Representations, Filed under Seal on this date.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 18th day of Jan, 2005.

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Case No.: 2003 CA 005045 AI

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

PLAINTIFF'S RESPONSE TO MORGAN STANLEY'S MOTION IN LIMINE NO. 5 TO EXCLUDE IRRELEVANT AND PREJUDICIAL REFERENCES TO MORGAN STANLEY'S NET WORTH

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") respectfully submits this response opposing Morgan Stanley's Motion in Limine No. 5 to Exclude Irrelevant and Prejudicial References to Morgan Stanley's Net Worth. Morgan Stanley seeks an Order "excluding from trial all reference to Morgan Stanley's financial condition, corporate wealth, [revenues, profits, cash on hand, assets,] or net worth" (collectively "financial condition") and "strictly limiting" any reference to Morgan Stanley's finances "to the gains or losses Morgan Stanley realized in connection with the specific transaction at issue in this case." Mot. at 1, 3, 6, 10.[1]

This motion should be denied because Morgan Stanley's financial condition is relevant to the size of the punitive damages award. As Morgan Stanley concedes, under Florida law, evidence of a defendant's financial condition customarily has played a central role "in determining the amount of punitive damages." Mot. at 2 (citing Florida authority). But contrary to Morgan Stanley's contentions (Mot. at 1-10), nothing in the particular circumstances of this case or in the U.S. Supreme Court's 2003 decision in *State Farm Mutual Automobile Insurance*

[1] Except where expressly noted, CPH does not concur with the recitations of purported facts in Morgan Stanley's motions in limine.

Co. v. Campbell, 538 U.S. 408 (2003), requires this Court to deviate from that norm. On the issue of defendants' financial condition, *State Farm* broke no new ground, as it merely reaffirmed the Court's 1996 decision in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996). Indeed, this Court has already acknowledged the continuing relevance of financial-condition evidence in this case, at the December 3, 2004 hearing: "THE COURT: 'You're not suggesting that the net worth is not relevant because you guys are going to admit that you can answer to three times compensatory damages. We still agree the net worth, if the jury ever got to punitive damages, it would be relevant.' MR. IANNO [counsel for Morgan Stanley]: 'I think under your Court's order, I don't think there is a way around that . . . .'" Ex. A, 12/3/04 Hr'g Tr. at 75.

ARGUMENT

First, the consistent practice in Florida — both before and after the Supreme Court decided *State Farm* (and, for that matter, both before and after it handed down the *Gore* decision on which the *State Farm* Court relied) — has been to admit financial-condition evidence because it is highly relevant to setting the appropriate level of punitive damages and its probative value outweighs any danger of unfair prejudice. *See, e.g., Liggett Group Inc. v. Engle*, 853 So. 2d 434, 457 n.28 (Fla. 3d DCA 2003) ("Florida courts routinely use net worth to determine whether a punitive award is bankrupting or excessive.") (citing cases dating from 1961 to 2002), *rev. granted*, 873 So. 2d 1222 (Fla. 2004). As the Third District recently explained: "A defendant's financial capacity is a crucial factor in determining the appropriateness of a punitive damages award. The amount awarded should be large enough to provide retribution and deterrence, but cannot be so great as to result in bankruptcy." *Id.* at 458. Indeed, Morgan Stanley concedes this point: "Morgan Stanley acknowledges that there is law in Florida and elsewhere suggesting that

the wealth of a defendant is relevant in determining the amount of punitive damages. *See, e.g.*, *Rinaldi v. Aaron*, 314 So. 2d 762 (Fla. 1975); Fla. Std. Jury Instr. P.D. 1." Mot. at 2.

Second, given that concession, Morgan Stanley then goes on to argue that *State Farm* was a watershed case, and that the Due Process Clause, as re-interpreted in *State Farm*, trumps Florida's long-standing practice of admitting financial-condition evidence. Mot. at 1-5. But *State Farm* in no way bars evidence of a defendant's financial condition. As a general matter, *State Farm* broke little new ground, as the "case [was] neither close nor difficult" under "the principles outlined in *BMW of North America, Inc. v. Gore.*" *State Farm*, 538 U.S. at 418. Moreover, to the extent that *State Farm* discussed evidence of defendants' wealth, it never stated, or even suggested, that such evidence should be barred. *See, e.g., id.* at 417, 421-23, 426-27. Rather, *State Farm* elaborated *Gore*'s three "guideposts" that appellate courts must consider when reviewing punitive damages awards: (1) the degree of reprehensibility of defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. *Id.* at 418.

Far from excluding all evidence of defendants' financial condition, *State Farm* instructed courts to weigh financial condition worth alongside other evidence relevant to these three guideposts, keeping all factors in reasonable balance. That message, however, gets thoroughly distorted by Morgan Stanley's selective quoting from the Justices' opinions. Morgan Stanley's motion twice quotes part of a passage from Justice Breyer's concurrence in *Gore*: "[Wealth] provides an open-ended basis for inflating awards when the defendant is wealthy." *Gore*, 517 U.S. at 591 (Breyer, J., concurring), *quoted in* Mot. at 1, 8-9. But in a sentence that Morgan Stanley conveniently omits, Justice Breyer continued: "That does not make its use unlawful or

inappropriate; it simply means that this factor cannot make up for the failure of other factors, such as 'reprehensibility,' to constrain significantly an award that purports to punish a defendant's conduct." *Id.* (emphasis added). Although Morgan Stanley omitted that key sentence, the *State Farm* Court quoted it with approval. *See State Farm*, 538 U.S. at 427-28 (quoting the entire passage from Justice Breyer's *Gore* concurrence, and concluding that these principles "must be implemented with care").

Courts in Florida and elsewhere have consistently reached the same conclusion in the wake of *State Farm.* Here in Florida, the Third District explained that *State Farm* stands for the proposition that a punitive damages award "must be reasonable and proportionate to the harm suffered and cannot be justified solely upon the wealth of the defendant." *Liggett Group Inc. v. Engle*, 853 So. 2d at 458 n.30 (emphasis added) (citing *State Farm*, 538 U.S. at 427). Likewise, in *White v. Ford Motor Co.*, No. CV-N-95-0279-DWH, 2003 WL 23353600, at *3-*8 (D. Nev. Dec. 30, 2003), Ford filed motions in limine to exclude all evidence and argument relating to the company's financial condition, on the grounds that *State Farm* had made "evidence of corporate financial status not only irrelevant and unduly prejudicial, but also unconstitutional." *Id.* at *4. The court denied Ford's motions, holding that, "far from being irrelevant and solely inflammatory, as Ford contends," evidence of a corporate defendant's financial condition remains "crucial to the jury's exercise of its responsibility." *Id.* at *7 (citing *State Farm*, 538 U.S. at 427-28); *see also Dewick v. Maytag Corp.*, 324 F. Supp. 2d 889, 892-93 (N.D. Ill. 2004) (denying defendant's motion in limine because "evidence as to a defendant's net worth, and arguments based on that evidence, are appropriate to place before a jury that is asked to award punitive damages") (citing *State Farm*, 538 U.S. at 427); *Williams v. Philip Morris Inc.*, 92 P.3d 126, 145 (Or. App. 2004) (affirming the jury's award of punitive damages, which was based in

part on evidence that defendant had a net worth of more than $17 billion and annual profits of $1.6 billion) (citing *State Farm*, 538 U.S. at 427-28).

Third, Morgan Stanley contends, incorrectly, that a defendants' financial condition is irrelevant to whether a punitive damages award serves its prime functions of punishment and deterrence whenever the defendant is "a large corporate entity." Mot. at 6. In making that argument, Morgan Stanley relies solely on a passage from *Zazu Designs v. L'Oreal, S.A.*, 979 F.2d 499 (7th Cir. 1992), a pre-*State Farm*, pre-*Gore* opinion from a divided panel of the Seventh Circuit. Mot. at 6-7 (quoting *Zazu Designs*, 979 F.2d at 508). But the passage from *Zazu Designs* was just "unsubstantiated economic theory propounded in dicta." *White v. Ford Motor Co.*, 2003 WL 23353600, at *5 n.4 (citing *Zazu Designs*, 979 F.2d at 508). And the Seventh Circuit itself has repudiated this economic theory. *See Lampley v. Onyx Acceptance Corp.*, 340 F.3d 478, 485 (7th Cir. 2003) ("'We think it reasonable to suppose that a sizeable award is both suitable and necessary to punish and deter a corporation of this size.'") (citation omitted), *cert. denied*, 540 U.S. 1182 (2004); *see also Matthias v. Accor Economy Lodging, Inc.*, 347 F.3d 672, 677 (7th Cir. 2003) (Posner, J.) (affirming a punitive damages award that was 37 times the size of the jury's compensatory damages award because it was needed for deterrence, given the defendant's $1.6 billion net worth).

Moreover, common sense tells us that a $5 million award of punitive damages directed against a $100 million company does not inflict as much punishment as an identical $5 million award against a $10 million company would inflict. A jury can reasonably find "that a large award [is] necessary in order to punish defendant adequately because it would treat a small award as no more than an insignificant nuisance and part of the cost of doing business." *Williams v. Philip Morris*, 92 P.3d at 145; *see also Lowry's Reports, Inc. v. Legg Mason, Inc.*,

302 F. Supp. 2d 455, 461 (D. Md. 2004) ("the jury's consideration of Legg Mason's wealth was a correct application of the deterrent role of [punitive] damages"); *Eden Elec., Ltd. v. Amana Co.*, 258 F. Supp. 2d 958, 972 (N.D. Iowa 2003) ("[I]f punitive damages are to continue to serve the broader functions of deterrence and retribution, . . . the defendant's wealth must be a consideration in calculating any award.") (citing *State Farm*, 538 U.S. at 416-17). *See generally* 1 LINDA L. SCHLUETER & KENNETH R. REDDEN, PUNITIVE DAMAGES § 5.3(F)(2), at 283-84 (4th ed. 2000) ("The goal of punitive damages to deter and punish the defendant cannot be achieved unless the size of the award is based on the defendant's financial worth. Therefore, the defendant's net worth is a material issue, and the plaintiff is entitled to use discovery procedures to obtain the evidence and present it at trial.") (footnotes omitted).

Fourth, although Morgan Stanley has already conceded to the Court that it has the ability to pay a judgment of at least $2.72 billion, the jury will not know that fact and will be hamstrung in assessing a proper punitive damages award unless it is allowed to hear evidence and argument concerning Morgan Stanley's financial condition. CPH seeks approximately $680 million in compensatory damages (without pre- or post-judgment interest). Morgan Stanley has conceded that punitive damages "'can be awarded in this case of three times compensatory [damages].'" Ex. A, 12/3/04 Hr'g Tr. at 74 (quoting Mr. Ianno); *see also id.* at 75 ("THE COURT: 'You're not suggesting that the net worth is not relevant because you guys are going to admit that you can answer to three times compensatory damages. We still agree the net worth, if the jury ever got to punitive damages, it would be relevant.' MR. IANNO: 'I think under your Court's order, I don't think there is a way around that . . . .'").

A compensatory damages award of $680 million plus a punitive damages award three times that size would result in a $2.72 billion judgment. In its motion in limine, Morgan Stanley

further conceded that "there is no dispute about Morgan Stanley's ability to pay a judgment up to the constitutional maximum." Mot. at 8; *see also State Farm*, 538 U.S. at 425 (suggesting that, the "constitutional maximum" generally cannot exceed "a single-digit ratio [*i.e.*, nine-to-one] between punitive and compensatory damages"); *Campbell v. State Farm Mut. Auto. Ins. Co.*, 98 P.3d 409, 417-18 (Utah) (on remand from the Supreme Court, unanimously entering a punitive damages award with a nine-to-one ratio), *cert. denied*, 125 S. Ct. 114 (2004).

From all this, the Court can readily conclude that Morgan Stanley has the ability to pay a judgment of at least $2.72 billion. But under Morgan Stanley's proposed approach, the jury would never know that. Indeed, the jury would be deprived of the information needed to calibrate its punitive damages award to achieve the basic goals of punishment and deterrence. Therefore, the Court should deny Morgan Stanley's motion and allow evidence of Morgan Stanley's financial condition to come before the jury.

CONCLUSION

For the foregoing reasons, this Court should deny Morgan Stanley's Motion in Limine No. 5.

Dated: January 18, 2005

Respectfully submitted,

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IN THE FIFTEENTH JUDICIAL CIRCUIT COURT IN AND
FOR PALM BEACH COUNTY, FLORIDA
CASE NO.: 2003 CA 005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

* * *

TRANSCRIPT OF THE PROCEEDINGS BEFORE
THE HONORABLE ELIZABETH J. MAASS

* * *

West Palm Beach, Florida
December 3rd, 2004
8:00 a.m. - 9:39 a.m.

proposition. There are cases and experience everyone has had, I mean, if you think about it, a really rich person can't go into a state where they don't have much assets, commit some horrible tort, and then on the punitive damages say, you know, I've only got a Volkswagon from 1953 sitting here, you can't tag me. It's so preposterous, it almost defeats itself. That's really the gist of the two substantive arguments.

They had a thing about attorney/client privilege. I don't know what they're talking about there. The answer is, put it on a privilege log. If there is a document that's privileged, put it on a privilege log. I think that's the gist of the arguments.

THE COURT: What's the response?

MR. IANNO: In addition, Judge, right now, I don't know if The Court has had a chance to see the letter, we've asked The Court to rehear --

THE COURT: I did, and I denied it. You'll get a copy of the order.

MR. IANNO: So that takes care of my prematurity argument.

THE COURT: Yes, it does.

MR. IANNO: Then we get to the scope

argument. We believe that the scope is overbroad when they get into global holdings. Even if Mr. Marmer is correct, what Morgan Stanley's net worth is in Asia or Europe --

THE COURT: Why would that not be relevant?

MR. IANNO: Well, Your Honor, their net worth is their net worth. What their global holdings are, whether or not they have plants or interests in other countries, we think they could have limited it as to what is Morgan Stanley's net worth, period, not what are your global holdings, what are all your financial things. There's a limit on the punitive damages that can be awarded in this case of three times compensatory. We all know that, and they recognize that. Whether or not Morgan Stanley has any assets or holdings in any countries all over the world doesn't really affect that. The bottom line is the net worth, and we think that their scope is overbroad.

THE COURT: How would they challenge your statements of net worth then without information on the holdings?

MR. IANNO: That assumes that they want to. They may not challenge it, Judge. If there is follow up, they say we don't believe this, then

perhaps, but, you know --

THE COURT: Again, isn't that sort of, once again, trying to control the discovery?

MR. IANNO: Well, in this situation, the legislature is controlling the discovery to a great extent.

THE COURT: You're not suggesting that the net worth is not relevant because you guys are going to admit that you can answer to three times compensatory damages. We still agree the net worth, if the jury ever got to punitive damages, it would be relevant.

MR. IANNO: I think under your Court's order, I don't think there is a way around that, especially denying the rehearing motion, but because financial discovery is so sensitive, the legislature and the courts are really loathe to grant it to go into a fishing expedition on everything that a company, whether it's Morgan Stanley or any other company that comes before The Court that has a punitive damages claim against it, we need to start out small and then go big.

THE COURT: I understand. It still seems to me it's the same argument I seem to be hearing. It's, look, Judge, we think if we answered just

this part of what they've asked, the other stuff is not going to be relevant, so we want to do this piecemeal, even though, clearly, this is all discoverable. Again, it's sort of you're trying to usurp the function of The Court.

MR. IANNO: Or protect the client.

THE COURT: Sure. And I understand that.

MR. IANNO: That's really where we're coming from here, Judge. I hope The Court understands that we're not here trying to limit the discovery that is relevant to this case other than to protect the client from unreasonable intrusion into this financial discovery. If what they're trying to get really is really the net worth, then ask for the net worth, but don't go into every holding that Morgan Stanley has.

THE COURT: I assume this information is readily available?

MR. IANNO: I believe so. I mean, it's -- this is not -- punitive damages, well, obviously, we still haven't received The Court's order denying the motion for rehearing, so this is the first time The Court has heard this on this discovery.

THE COURT: I understand that. Just to back

#230580/mep

IN THE CIRCUIT COURT OF THE FIFTEENTH UDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiffs,

CASE NO: 2003 CA 005045 AI

vs.

MORGAN STANLEY & CO., INC.
Defendant.
_____/

NOTICE OF FILING PLEADING UNDER SEAL

COLEMAN (PARENT) HOLDINGS INC. hereby gives notice of the filing of COLEMAN (PARENT) HOLDINGS INC.'S Response to Morgan Stanley's Motion in Limine No. 6 to Exclude Irrelevant and Prejudicial References to Morgan Stanley Employees Discarding Engagement Materials in the Normal Course of Business Before this Action was Filed, Filed under Seal on this date.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 18th day of Jan, 2005.

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Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Notice Of Filing Pleading Under Seal
Case No.: 2003 CA 005045 AI

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

PLAINTIFF'S RESPONSE TO MORGAN STANLEY'S MOTION IN LIMINE NO. 7 TO EXCLUDE EVIDENCE AND TESTIMONY "CONFLATING" SUNBEAM AND MORGAN STANLEY

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") respectfully submits this response opposing Morgan Stanley's Motion in Limine No. 7 to Exclude Evidence and Testimony "Conflating" Sunbeam and Morgan Stanley. Morgan Stanley seeks an Order "prohibiting CPH from attributing to Morgan Stanley the documents, activities, representations, omissions, or statements of Sunbeam Corporation or its [other] representatives for the purpose of proving Morgan Stanley's alleged culpability." Mot. at 6. Morgan Stanley further requests an Order requiring CPH "to distinguish between Morgan Stanley and Sunbeam in its exhibits, questions, and testimony." *Id.* Morgan Stanley's motion should be denied, for two reasons.[1]

First, a motion in limine is not the proper device to address this issue. If CPH asks a question at trial that Morgan Stanley considers confusing or misleading, Morgan Stanley may object to the form of the question at that time.

Second, because this case involves aiding-and-abetting and conspiracy claims, there is nothing improper or unusual about CPH asking a witness whether Sunbeam or Morgan Stanley

[1] Except where expressly noted, CPH does not concur with the recitations of purported facts in Morgan Stanley's motions in limine.

engaged in a particular activity. Indeed, such questions may well be essential, given the nature of CPH's claims against Morgan Stanley. *See Tresvant v. State*, 396 So. 2d 733, 737 n.5 (Fla. 3d DCA 1981) (holding that a statement by a coconspirator made during and in furtherance of the conspiracy can be admitted against another coconspirator); FLA. STAT. ANN. § 90.803(18)(e) (West 2004) (making admissible "[a] statement that is offered against a party and is . . . [a] statement by a person who was a coconspirator of the party during the course, and in furtherance, of the conspiracy.").

For the foregoing reasons, this Court should deny Morgan Stanley's Motion in Limine No. 7.

Dated: January 18, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

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One of Its Attorneys

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

PLAINTIFF'S RESPONSE TO MORGAN STANLEY'S MOTION IN LIMINE NO. 8 TO ESTABLISH PROCEDURE FOR USE OF DEPOSITIONS AT TRIAL

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") respectfully submits this response opposing Defendant Morgan Stanley's Motion in Limine No. 8 to Establish Procedure for Use of Depositions at Trial. Morgan Stanley asks the Court to "order that all designated [and counter-designated] portions of each deposition be 'read' at one time," unless the opponent of the deposition designation prefers to rebut the designated portions by calling the witness live during its case-in-chief. Mot. at 5 (emphasis and internal quotation marks added).[1]

Morgan Stanley's motion should be denied because it is contrary to Rule 1.330(a)(4) of the Florida Rules of Civil Procedure and because Morgan Stanley's proposal is a transparent effort to scramble the ordinary order of proofs and frustrate CPH's presentation of its case-in-chief.

First, Rule 1.330(a)(4) of the Florida Rules of Civil Procedure establishes the standard for using parts of depositions at trial. Rule 1.330(a)(4) imposes a "fairness" test — that is, the party who has offered an excerpt from a deposition can be ordered to read only such other portions from the deposition "that in fairness ought to be considered with the part introduced." Fla. R.

[1] Except where expressly noted, CPH does not concur with the recitations of purported facts in Morgan Stanley's motions in limine.

Civ. P. 1.330(a)(4) ("If only part of a deposition is offered in evidence by a party, an adverse party may require the party to introduce any other part that in fairness ought to be considered with the part introduced, and any party may introduce any other parts."). Similarly, Florida evidence law provides that when a party introduces part of a writing or recorded statement, "an adverse party may require him or her at that time to introduce any other part . . . that in fairness ought to be considered contemporaneously." FLA. STAT. ANN. § 90.108(1) (West 2004) (emphasis added).

Morgan Stanley's motion seeks to abandon the "fairness" test set forth in Rule 1.330(a)(4) and require that all deposition designations be read at the same time. That approach finds no basis in the rules. Instead, Morgan Stanley cites two cases to support its proposal, both of which are inapposite. In *Kaminsky v. Travelers Indemnity Co.*, 474 So. 2d 287 (Fla. 3rd DCA 1985), on cross-examination of the plaintiff, defense counsel read portions of the plaintiff's deposition to impeach her. *Id.* at 288. Plaintiff's counsel requested that additional portions of the deposition be read to the jury, and the trial court assured counsel that he would be given that opportunity later, during redirect. *Id.* But on redirect, the trial judge reversed course and barred plaintiff's counsel from using the deposition to rehabilitate his client. *Id.* The jury rendered a verdict for the defendants. *Id.* Not surprisingly, the appellate court reversed. *Id.* The only other case that Morgan Stanley cites — *Eberhardt v. State*, 550 So. 2d 102, 105 (Fla. 1st DCA 1989), *rev. denied*, 560 So. 2d 234 (Fla. 1990) — did not even involve the use of a deposition at trial, much less a blanket motion in limine to admit all designated and counter-designated deposition excerpts.

The proper procedure is set forth in Rule 1.330(a)(4). Under that rule, when a portion of a deposition is read, the opposing party can ask the court to require such other portions to be read

at the same time as are required on grounds of fairness. The issue presented in such circumstances is whether, "in the interest of fairness, the jury should hear the remaining portions at the same time so as to avoid the potential for creating misleading impressions by taking statements out of context." *Mason v. State*, 719 So. 2d 304, 305 (Fla. 4th DCA 1998) (citing *Larzelere v. State*, 676 So. 2d 394, 401 (Fla.), *cert. denied*, 519 U.S. 1043 (1996)) (emphasis added).

Second, Morgan Stanley's proposal is just an attempt to scramble the ordinary order of proofs, disrupt CPH's case-in-chief, and inject Morgan Stanley's proposed proofs into the plaintiff's case. That should not be allowed to occur. As the late Professor Charles Alan Wright put it: "The trial of a case . . . is much like a baseball game, where each side takes a turn at bat while the other team is on the field defensively. Just as the home team is not supposed to send up a hitter in the top of the ninth, so the defendant is not supposed to prove his case while the plaintiff is putting on evidence." 21 CHARLES ALAN WRIGHT & KENNETH W. GRAHAM, FEDERAL PRACTICE AND PROCEDURE: EVIDENCE § 5072, at 342 (1977).

CONCLUSION

For the foregoing reasons, this Court should deny Morgan Stanley's Motion in Limine No. 8 to Establish Procedure for Use of Depositions at Trial.

Dated: January 18, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
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Fla.R.Civ.P. Rule 1.330
C

West's Florida Statutes Annotated Currentness
Florida Rules of Civil Procedure (Refs & Annos)

> > Rule **1.330**. Use of Depositions in Court Proceedings

(a) Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice of it so far as admissible under the rules of evidence applied as though the witness were then present and testifying in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness or for any purpose permitted by the Florida Evidence Code.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent or a person designated under rule 1.310(b)(6) or 1.320(a) to testify on behalf of a public or private corporation, a partnership or association, or a governmental agency that is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (A) that the witness is dead; (B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition; (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used; or (F) the witness is an expert or skilled witness.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the party to introduce any other part that in fairness ought to be considered with the part introduced, and any party may introduce any other parts.

(5) Substitution of parties pursuant to rule 1.260 does not affect the right to use depositions previously taken and, when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken for it.

(6) If a civil action is afterward brought, all depositions lawfully taken in a medical liability mediation proceeding may be used in the civil action as if originally taken for it.

(b) Objections to Admissibility. Subject to the provisions of rule 1.300(b) and subdivision (d)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part of it for any reason that would require the exclusion of the evidence if the witness were then present and testifying.

(c) Effect of Taking or Using Depositions. A party does not make a person the party's own witness for any purpose by taking the person's deposition. The introduction in evidence of the deposition or any part of it for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition under subdivision (a)(2) of this rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by that party or by any other party.

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(d) Effect of Errors and Irregularities.

(1) *As to Notice.* All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) *As to Disqualification of Officer.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) *As to Taking of Deposition.*

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition unless the ground of the objection is one that might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind that might be obviated, removed, or cured if promptly presented are waived unless timely objection to them is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under rule 1.320 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 10 days after service of the last questions authorized.

(4) *As to Completion and Return.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, or otherwise dealt with by the officer under rules 1.310 and 1.320 are waived unless a motion to suppress the deposition or some part of it is made with reasonable promptness after the defect is, or with due diligence might have been, discovered.

CREDIT(S)

Amended July 26, 1972, effective Jan. 1, 1973 (265 So.2d 21); July 14, 1977, effective Sept. 1, 1977 (348 So.2d 325); Sept. 10, 1981, effective Jan. 1, 1982 (403 So.2d 926); July 16, 1992, effective Jan. 1, 1993 (604 So.2d 1110); Oct. 1, 1998 (718 So.2d 795).

COMMITTEE NOTES

2004 Main Volume

1972 Amendment. Derived from Federal Rule of Civil Procedure 32 as amended in 1970. Subdivisions (a), (b), and (c) are former rules 1.280(d), (f), and (g) respectively. Subdivision (d) is derived from the entire former rule **1.330.**

1998 Amendment. Subdivision (a)(1) was amended to clarify that, in addition to the uses of depositions prescribed by these rules, depositions may be used for any purpose permitted by the Florida Evidence Code (chapter 90, Fla. Stat.). This amendment is consistent with the 1980 amendment to Rule 32 of the Federal Rules of Civil Procedure .

AUTHORS' COMMENT--1967

2004 Main Volume

* * * *

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Objections to the notice of taking a deposition are waived unless written objection is promptly served upon the party giving the notice. There is no justification for allowing a party served with a notice to permit the deposition to be taken and then move to suppress the deposition because of errors and irregularities in the notice. Objection should be made in time for correction.

In terms of timely objections to testimony at the time of the taking of the deposition, Evans v. Perry, 161 So.2d 27 (D.C.A.2d 1964) specifically held that a party must object at the deposition, and it was too late to interpose objections at trial, since the ground of objection could have been obviated if made at the time of the deposition. Failure to object constituted a waiver.

Rule 1.300(d) specifies grounds which disqualify an officer or a stenographer.

Paragraph (d) deals only with matters after the testimony has been taken stenographically; it has no application to any of the matters covered by (a), (b) and (c) inclusive.

HISTORICAL NOTES

Source:

1954 RCP 1.26.

Prior Provisions:

Law. 1950 Common Law Rule 25. Derived from Federal Rule 32.

Equity. 1950 Equity Rule 53. Identical with 1950 Common Law Rule 25, q. v., except for omission of subd. (c)(3) of 1950 Common Law Rule 25.

Law and equity. F.S.A. §§ 91.01 to 91.30 (Depositions). Repealed, Laws 1955, c. 29737, § 1, eff. May 1, 1955.

1954 RCP 1.26. Identical with 1950 Common Law Rule 25.

1966 amendment. Substituted, in subd. (c)(3), "Rule 1.25" for "Rule 1.27." Under the 1967 revision, the reference was changed to "Rule 1.320" which corresponded with 1954 RCP 1.25.

The Florida Supreme Court in the per curiam opinion of July 14, 1977, adopting rule **1.330**(a) (6) and rule 1.340(f) provided: "The foregoing amendments shall govern all proceedings within their scope after 12:01 a.m., September 1, 1977. From and after their effective date, all rules and statutes in conflict with such amendments are hereby superseded, and any statute not superseded shall remain in effect as a rule promulgated by the Supreme Court."

West's F.S.A. RCP Rule **1.330**, FL ST RCP Rule **1.330**

Current with Amendments received through 12/02/04

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West's F.S.A. § 90.108
C

West's Florida Statutes Annotated Currentness
Title VII. Evidence (Chapters 90-92)
+ Chapter 90. Evidence Code (Refs & Annos)

> > **90.108.** Introduction of related writings or recorded statements

(1) When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him or her at that time to introduce any other part or any other writing or recorded statement that in fairness ought to be considered contemporaneously. An adverse party is not bound by evidence introduced under this section.

(2) The report of a court reporter, when certified to by the court reporter as being a correct transcript of the testimony and proceedings in the case, is prima facie a correct statement of such testimony and proceedings.

CREDIT(S) Amended by Laws 1995, c. 95-147, § 472, eff. July 10, 1995; Laws 1995, c. 95-286, § 5, eff. July 1, 1995.

HISTORICAL AND STATUTORY NOTES

Derivation:
Laws 1978, c. 78-361, § 2.
Laws 1976, c. 76-237, § 1.

Amendment Notes:

Laws 1978, c. 78-361, added the second sentence.

Laws 1995, c. 95-147, a reviser's bill, eliminated gender-specific references without making substantive changes in legal effect.

Laws 1995, c. 95-286, § 5, eff. July 1, 1995, designated the former section as subsec. (1); and added subsec. (2), relating to reports of court reporters.

Prior Laws
Fla.St.1993, § 29.06.
Comp.Gen.Laws 1927, § 4877.
Rev.Gen.St.1920, § 3093.
Gen.St.1906, § 1848.
Laws 1903, c. 5122, § 5.

Federal Evidence Rules:

For rule relating to remainder of or related writings or recorded statements, see Rule 106, Fed.Rules Evid., 28 U.S.C.A.

Uniform Rules of Evidence:

For rule relating to remainder of related writings, see Rule 106, Uniform Laws Annotated, Master Edition, vol. 13.

West's F. S. A. § **90.108**, FL ST § **90.108**

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Current through Chapter 484 and H.J.R. No. 1 and S.J.R. No. 2394 (End) of 2004 Special 'A' Session of the Nineteenth Legislature

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District Court of Appeal of Florida,
Third District.

Sandra KAMINSKY, Appellant,
v.
TRAVELERS INDEMNITY COMPANY, J. Byrons Enterprises, Inc. and Steven Chait, Appellees.

No. 84-1003.

July 9, 1985.
Rehearing Denied Sept. 10, 1985.

After remand, 443 So.2d 206, plaintiff appealed from a judgment of the Circuit Court, Dade County, Frederick Barad, J., in favor of defendants. The District Court of Appeal, Nesbitt, J., held that where defense counsel had used portions of plaintiff's deposition to impeach plaintiff, it was error to deny plaintiff's attorney the opportunity on redirect examination to use other relevant portions of deposition to rehabilitate plaintiff.

Reversed and remanded.

West Headnotes
Witnesses ⇐ 396(2)
410k396(2) Most Cited Cases
Where defense counsel had used portions of plaintiff's deposition to impeach plaintiff, it was error, under Florida Civil Rule 1.330(a)(4), to deny plaintiff's attorney the opportunity on redirect examination to use other relevant portions of the deposition to rehabilitate plaintiff. West's F.S.A. RCP Rule 1.330(a)(4).

***287** Hershoff & Levy and Jay Levy; George M. Nachwalter, Miami, for appellant.

***288** Nelson & Schwait and Lorraine S. Cohen, Miami, for appellees.

Before HENDRY, NESBITT and BASKIN, JJ.

NESBITT, Judge.

The plaintiff appeals a judgment rendered on a jury verdict for the defendants. We reverse.

The only point with merit raised by the plaintiff concerns the use of her deposition at trial. On cross-examination of the plaintiff, defense counsel read portions of the plaintiff's deposition to impeach the plaintiff. The plaintiff's attorney requested that defense counsel read additional portions of the deposition. The trial court informed the plaintiff's attorney he would be given the opportunity to read those portions. On redirect, the plaintiff's attorney attempted to read those other portions of the deposition. The defense counsel, however, objected, arguing that when a deposition is used solely to impeach, other portions of the deposition may not be read to rehabilitate the witness. The trial court agreed and sustained the objection which required the plaintiff's attorney to proffer the explanatory portions of the deposition outside the hearing of the jury.

Florida Rule of Civil Procedure 1.330(a)(4) provides:

> If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part that in fairness ought to be considered with the part introduced, and any party may introduce any other parts.

This rule was interpreted in *King v. Califano,* 183 So.2d 719 (Fla. 1st DCA 1966), where the court was presented with precisely the same issue as presented here. The court held:

> To attain ... a just determination and to ascertain the truth in controversies is the ultimate and noble objective of our court system. Our procedural rules are designed as a vehicle to aid the court, the jurors, and the litigants to reach that objective as nearly as humanly possible. It is thus contrary to the intent and spirit of those rules to allow one party to use them to take an unfair advantage of the other party, such as in presenting a half-truth and then objecting to the other party's effort to present the whole truth from the same evidentiary source. This latter description, we think, fits the situation in the case at bar, wherein the trial court permitted the plaintiff's attorney to read certain selected and prejudicial portions of the defendant's deposition in order to discredit her trial testimony but prohibited the defense counsel from reading other portions of the same deposition transcript which explained and classified her answers read by the plaintiff's attorney and which other portions presumably

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demonstrated that the defendant's trial testimony should not be discredited.

183 So.2d at 723-24. The court then held that the trial court had erred in prohibiting the attorney from using the other relevant portions of the deposition in an effort to demonstrate to the jury that the "whole truth" was that the witness' trial testimony should not be discredited on account of her deposition testimony. 183 So.2d at 724.

Thus, where one party reads selected and prejudicial portions of the other party's deposition for impeachment, it is error to prohibit opposing counsel from reading other portions of that same deposition in an effort to demonstrate the "whole truth." *American Motors Corp. v. Ellis,* 403 So.2d 459, 463 (Fla. 5th DCA 1981), *review denied,* 415 So.2d 1359 (Fla.1982); *King*. *See also Highlands Insurance Co. v. Lucci,* 423 So.2d 947 (Fla. 3d DCA 1982). In the present case, the plaintiff's attorney was precluded from using relevant portions of the plaintiff's deposition in an effort to demonstrate that the plaintiff's trial testimony should not be discredited. Since defense counsel had used portions of the deposition to impeach the plaintiff, it was error to deny the plaintiff's attorney the opportunity on redirect examination to use other relevant portions of the deposition to rehabilitate the plaintiff. *See* Fla.R.Civ.P. 1.330(a)(4); *Ellis; King*. This error was ***289** prejudicial since the plaintiff's credibility was crucial in the case.

Accordingly, the judgment under review is reversed and the cause remanded for further proceedings.

474 So.2d 287, 10 Fla. L. Weekly 1675

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Westlaw
16djv-010037

District Court of Appeal of Florida,
First District.

Kennedy EBERHARDT, Appellant,
v.
STATE of Florida, Appellee.

No. 88-891.

Sept. 26, 1989.

Defendant was convicted in the Circuit Court, Leon County, William L. Gary, J., of burglary of a structure. Defendant appealed. The District Court of Appeal, Zehmer, J., held that: (1) defendant's counsel should have been allowed to ask whether defendant appeared to be under influence of drugs or alcohol when discovered; (2) defense counsel should have been allowed to cross-examine officer regarding all statements defendant made to officer after arrest; (3) instruction on intoxication defense was warranted by evidence; and (4) prosecution's reference in closing to defendant's claim of intoxication "through counsel" constituted improper comment on defendant's failure to take stand.

Reversed and remanded for new trial.

West Headnotes

[1] Criminal Law ⇐ 633(1)
110k633(1) Most Cited Cases
Fact that defendant had asked his family to bring nonprison clothes did not necessarily relieve State of its obligation to comply with defendant's request to appear in court in other than prison clothes when clothing did not arrive on time.

[2] Criminal Law ⇐ 633(1)
110k633(1) Most Cited Cases
[2] Criminal Law ⇐ 660
110k660 Most Cited Cases
Defendant desiring to establish that he was prejudiced because forced to stand trial in prison clothing must make timely objection and establish on record that he was identified by juror as being prisoner by reason of his wearing prison uniform.

[3] Criminal Law ⇐ 1043(1)
110k1043(1) Most Cited Cases
While trial court should not have permitted venire to see defendant in courtroom in prison clothes, defense counsel did not properly preserve objection as basis for reversal; although counsel made timely objection, counsel did not thereafter question jury to establish that at least one member saw defendant's attire and recognized his status as prisoner, nor did counsel undertake to challenge any of jurors for cause on that ground.

[4] Witnesses ⇐ 268(12)
410k268(12) Most Cited Cases
Once State asked about burglary defendant's condition and appearance when found in building, defense had right to question and explore by cross examination all facts relevant to defendant's state or condition, including intoxication, when discovered there.

[5] Criminal Law ⇐ 396(2)
110k396(2) Most Cited Cases
Instrument
Once direct testimony of conversation between police officer and defendant had been admitted, defense became entitled to cross-examine officer concerning whole of conversation and, accordingly, trial court should not have sustained state's hearsay objection on ground that defendant's statements that he was "high" or intoxicated were self-serving.

[6] Criminal Law ⇐ 55
110k55 Most Cited Cases
Voluntary intoxication is recognized as valid defense to specific intent crimes.

[7] Criminal Law ⇐ 774
110k774 Most Cited Cases
Defendant is entitled to instruction on defense of voluntary intoxication where any evidence presented at trial supports his theory of defense, even where such evidence is brought out on cross-examination, though evidence showing use of intoxicants does not require that instruction be given if evidence fails to show intoxication.

[8] Criminal Law ⇐ 774
110k774 Most Cited Cases
Instruction on intoxication was warranted by evidence in prosecution for burglary; owner of burgled building testified that it was his impression upon seeing defendant that defendant was passed out, and police officer testified that, upon being awakened, defendant appeared "spaced out.".

[9] Burglary ⇐ 31
67k31 Most Cited Cases
[9] Criminal Law ⇐ 338(7)
110k338(7) Most Cited Cases
In prosecution for burglary, testimony by owner of

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burgled premises, offered as explanation for why owner was at premises, which described another burglary of premises on night before defendant entered premises, should not have been admitted; reason why owner went to his place of business was not relevant to State's case and testimony was highly prejudicial.

[10] Criminal Law ⇐ 717

110k717 Most Cited Cases

Prosecutor's closing argument misstated law of defense of intoxication and intentionally misled jury by imploring them to believe "that our founding fathers never intended that to be the law in this country * * *.".

[11] Criminal Law ⇐ 721(3)

110k721(3) Most Cited Cases

Prosecution's reference in closing argument to defendant's claim of intoxication "through counsel" amounted to improper comment on defendant's failure to take stand and testify to facts himself, in derogation of defendant's right to remain silent. U.S.C.A. Const.Amend. 5.

***103** Michael E. Allen, Public Defender, and Phil Patterson, Asst. Public Defender, Tallahassee, for appellant.

Robert A. Butterworth, Atty. Gen., and Edward C. Hill, Jr., Asst. Atty. Gen., Tallahassee, for appellee.

ZEHMER, Judge.

Appellant, Kennedy Eberhardt, was charged with unlawfully entering a structure located in Tallahassee on the night of September 20, 1987, with the intent to commit an offense therein, contrary to section 810.02, Florida Statutes. Eberhardt pleaded not guilty, was tried, and was adjudicated guilty of burglary of a structure as charged pursuant to the jury verdict. He appeals the judgment on numerous grounds. Because several errors deprived him of a fair trial, we reverse and remand for a new trial.

Briefly stating the context of the case, Douglas Cooksey, the owner of the subject premises, found Eberhardt asleep or passed out in an office chair at a desk on a Sunday morning. Eberhardt's shirt had been taken off and was found in another office. A key to the office, a pocket knife, and a monogrammed money clip bearing Cooksey's name, all normally kept in his desk drawer, were found in Eberhardt's pockets. Whether Eberhardt was merely asleep or passed out due to overindulgence of alcohol or drugs and unable to form the requisite intent to commit an offense upon entering the building was critical to the defense at trial.

I.

We first address the defendant's argument that the trial court erred in denying his motion for a new trial because he was brought in prison clothing before the venire. It appears that prior to jury selection and while clad in readily recognizable jail clothes, Eberhardt was brought into the courtroom and apparently observed by the venire. At that point defense counsel moved without success for a continuance so that a jury could be chosen from a venire that had not observed appellant so dressed. Before sentencing, counsel moved unsuccessfully for a new trial on the same ground.

***104** Eberhardt had requested that the state allow him to dress for trial in normal clothing. His family were supposed to bring clothes to the jail before the trial, but they did not arrive in time, and he was moved to the courtroom in jail clothes. Shortly thereafter Eberhardt's family arrived with his clothes and he changed clothes prior to the jury panel's being seated in the jury box and examined on voir dire. Citing *Estelle v. Williams*, 425 U.S. 501, 96 S.Ct. 1691, 48 L.Ed.2d 126, *reh'g denied* 426 U.S. 954, 96 S.Ct. 3182, 49 L.Ed.2d 1194 (1976), Eberhardt argues that it was reversible error for the state and the court to compel him to appear before the venire in jail clothes rather than to provide him with appropriate clothing, even though his family failed to timely arrive, and that the court proceedings should have been delayed temporarily to provide him with appropriate clothing.

The state argues that no violation of *Estelle* occurred because the failure of Eberhardt's family to bring his clothes in a timely manner was not the fault of the state; and furthermore, when the voir dire of the jury took place, defendant was dressed in the clothes they had brought. Therefore, the state argues, any problem with Eberhardt's dress in the courtroom was his own fault and is a matter concerning which he should not be heard to complain. The state further contends that Eberhardt has failed to demonstrate prejudice and preserve this issue for appellate review because he is required by

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law to show affirmatively on the record that the venire actually saw the prison clothes and that the viewing was more than incidental and resulted in prejudicial identification. The state cites, in support of this contention, *Maxwell v. Wainwright,* 490 So.2d 927 (Fla.), *cert. denied* 479 U.S. 972, 107 S.Ct. 474, 93 L.Ed.2d 418 (1986); *Elledge v. State,* 408 So.2d 1021 (Fla.1981), *cert. denied* 459 U.S. 981, 103 S.Ct. 316, 74 L.Ed.2d 293 (1982), *reh'g denied* 459 U.S. 1137, 103 S.Ct. 771, 74 L.Ed.2d 984 (1983); and *Gates v. Zant,* 863 F.2d 1492 (11th Cir.), *reh'g denied* 880 F.2d 293 (1989). Pointing out that Eberhardt's counsel did not ask any potential juror whether he or she saw the defendant in prison clothes and failed to establish the requisite prejudice, the state argues it would be pure speculation to conclude that the defendant was prejudiced within the meaning of *Estelle.*

[1][2][3] The law now recognizes that once the defendant has requested to appear in court in other than prison clothes, the state must make appropriate provisions to this end. We conclude that even though Eberhardt had asked his family to bring the necessary clothing, the state was not necessarily relieved of its obligation by the family's undertaking should the clothing not arrive on a timely basis. However, a defendant desiring to establish that he was prejudiced because forced to stand trial in prison clothing must make a timely objection and establish on the record that he was identified by a juror as being a prisoner by reason of his wearing the prison uniform. *Torres-Arboledo v. State,* 524 So.2d 403 (Fla.), *cert. denied* 488 U.S. 901, 109 S.Ct. 250, 102 L.Ed.2d 239 (1988). Although Eberhardt's counsel made a timely objection, counsel did not thereafter question the jury to establish on the record that at least one member saw him so attired and recognized his status as a prisoner. Nor did she undertake to challenge any of the jurors for cause on this ground. Where a defendant has so established his objection, prejudice is shown and the defendant is held to be denied a fair trial. Although we conclude that it was error for the court to permit the venire to see Eberhardt in the courtroom in prison clothes, defense counsel did not properly preserve this objection as a basis for reversal. See *Torres-Arboledo v. State, supra; Hildwin v. State,* 531 So.2d 124 (Fla.1988), *aff'd* 490 U.S. 638, 109 S.Ct. 2055, 104 L.Ed.2d 728, *reh'g denied* 492 U.S. 927, 109 S.Ct. 3268, 106 L.Ed.2d 612 (1989).

II.

Eberhardt next contends that he was erroneously prevented from adducing evidence establishing that he was too intoxicated and "high" on drugs to form the requisite criminal intent to commit an offense upon entering the building. He argues ***105** that he was denied due process of law and the assistance of counsel because counsel was prohibited from eliciting testimony from witnesses that Eberhardt appeared to them to be passed out; that is, in a state or condition of severe intoxication.

[4] On direct examination by the prosecutor, two witnesses testified that the defendant was found asleep in a desk chair. On cross-examination, counsel for defendant was prohibited from asking whether the defendant appeared to be under the influence of drugs or alcohol. A lay witness may testify to physical appearance or observable intoxication. Ehrhardt, *Florida Evidence* § 701.1, n. 18 (2d ed. 1984). The questions on cross-examination did not go beyond the scope of the questions asked on direct examination. Once the state asked about the defendant's condition and appearance when found in the building, the defense had a right to question and explore all the facts relevant to defendant's state or condition, including intoxication, when discovered there. *Steinhorst v. State,* 412 So.2d 332, 337 (Fla.1982). One of the fundamental purposes of cross-examination is to test, weaken, or demonstrate the impossibility of the testimony on direct examination, and the scope of cross-examination cannot be unduly limited so as to prevent counsel from carrying out this purpose.

[5] Moreover, Eberhardt contends that the trial court reversibly erred in not allowing his counsel to cross-examine Officer Glisson regarding all the statements Eberhardt made to him after arrest. The following question was asked on cross-examination by the defense counsel:

Q. Mr. Poitinger asked you what the Defendant said about the shirt. What else did Mr. Eberhardt tell you?

MR. POITINGER: Your Honor, I'm going to object. Can we approach the bench?

(R. 164). The state's objection was sustained. Despite the state's argument that the officer was being asked to recite conversations other than the one he mentioned on direct examination that involved exculpatory statements, that is not manifest

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from this question and no proffer of the answer from the witness was made. Once direct testimony of a conversation between Glisson and defendant had been admitted, the defense became entitled to cross-examine the witness concerning the whole of the conversation. *Guerrerro v. State,* 532 So.2d 75, 77 (Fla. 3d DCA 1988). Because portions of the defendant's conversation with the officer were admitted on direct examination, the rule of completeness generally allows admission of the balance of the conversation as well as other related conversations that in fairness are necessary for the jury to accurately perceive the whole context of what has transpired between the two. Ehrhardt, *Florida Evidence,* § 108.1 (2d Ed.1984). Once the officer testified in the state's case-in-chief about one portion of Eberhardt's statements to him, the court erred in sustaining the state's hearsay objection for the reason that his statements he was "high" or intoxicated were self serving. *Heathcoat v. State,* 430 So.2d 945 (Fla. 2d DCA), *aff'd,* 442 So.2d 955 (Fla.1983).

III.

[6][7] Defendant next contends that the trial court erred in failing to instruct the jury on his defense of voluntary intoxication as requested. Voluntary intoxication is recognized as a valid defense in Florida to specific intent crimes. *Linehan v. State,* 476 So.2d 1262, 1264 (Fla.1985). A defendant is entitled to a jury instruction where *any* evidence presented at trial supports his theory of defense, even where such evidence is brought out on cross-examination. *Gardner v. State,* 480 So.2d 91, 92-3 (Fla.1985). The instruction need not be given even though the evidence shows the use of intoxicants if the evidence fails to show intoxication. *Lambrix v. State,* 534 So.2d 1151 (Fla.1988).

[8] Although the evidence of intoxication in this case was marginal, we conclude that it was sufficient to warrant such an instruction. The building owner, Cooksey, testified on cross-examination that it was his impression upon seeing defendant that he was passed out. Officer Whaley testified on direct examination that, upon ***106** being awakened in the office, defendant appeared spaced out. His proffered, but excluded, testimony was that defendant had told him he "was high and needed a place to crash." Although it is not error to refuse to give the instruction on intoxication where there is no evidence as to the amount of intoxicants consumed prior to the commission of a crime *and* no evidence of intoxication, *Gardner v. State,* 480 So.2d 91 (Fla.1985); *Jacobs v. State,* 396 So.2d 1113 (Fla.), *cert. denied,* 454 U.S. 933, 102 S.Ct. 430, 70 L.Ed.2d 239 (1981), these two requirements are alternative in nature and not necessarily conjunctive. Evidence of one's condition of intoxication may suffice even though there is no direct evidence of the amount of intoxicants consumed. We conclude that the evidence of defendant's intoxication, including that which should have been admitted had the testimony on cross-examination been allowed, was sufficient to warrant instructing the jury on this defense. *See Heathcoat,* 430 So.2d 945; *Mellins v. State,* 395 So.2d 1207 (Fla. 4th DCA), *rev. denied,* 402 So.2d 613 (Fla.1981).

IV.

[9] Eberhardt next objects to the testimony admitted at trial proving a burglary of the same premises on September 19, 1987, the night before the crime charged against him, contending that this evidence improperly linked him to that earlier, uncharged crime. On direct examination, the owner of the business was questioned by the prosecutor as follows:

Q. All right, sir. Now I'm going to call your attention to the date on or about the 20th of September, 1987. Did you have an occasion to go to your place of business and find anything unusual?
A. Yes, sir.
Q. Okay. If you will, what did you find when you went--first of all, why did you go there?
A. I had been notified the day before--
MS. WILLIAMS: Your Honor, I object....

The objection was overruled, and in response to the prosecutor's questions, Mr. Cooksey described the burglary of the premises the night before defendant entered it. But the reason *why* Mr. Cooksey happened to go to his own place of business on a Sunday morning was simply not a material fact in issue. The testimony was, therefore, not relevant to the state's case, and the court erred in overruling the objection. The admission of evidence of a burglary that occurred the night before Eberhardt was involved and for which he was not charged was highly prejudicial, and such prejudice manifestly outweighed any

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probative value of this irrelevant evidence.

V.

Finally, Eberhardt complains that deliberate prosecutorial overreaching during final argument was fundamental error and denied him a fair trial. The argument complained of is as follows:

> PROSECUTOR: If you believe that somehow we are to excuse and justify this defendant because allegedly he was loaded, what does that do to our property rights? Does that mean that my house, her home, his place of business can be violated by anybody as long as they are drunk or under the influence of drugs? Welcome, drunks, come into my house? Wrong. I don't think that our founding fathers ever intended that to be the law in this country and I anticipate that your verdict is going to confirm what I think, and that we are not going to allow this defendant, just because he claims through counsel that he was so loaded he didn't know what he was doing, that we are going to excuse that somehow.
>
> Now, how many times have we heard the old adage, "The devil made me do it" or "Wine made me do it".... The problem with that is right here between our ears. It's called a brain. Because of this brain, I'm able to determine for myself whether I should do something and the consequences of doing it. And I submit to you that it's time for this jury with its verdict to deliver a message to Mr. Eberhardt, use your head, don't commit any more crimes, because, as I asked you initially, this case is deserving of a verdict that ***107** speaks the truth. And that verdict is guilty of burglary of a structure as charged.
>
> (R. 200-201).

[10][11] This argument was highly improper in at least two respects. The argument misstated the law of the defense of intoxication and intentionally misled the jury by imploring them to believe "that our founding fathers never intended that to be the law in this country...." This amounts to an overt appeal to the jury's sympathy and borders on a "golden rule" argument. The reference to Eberhardt's claim of intoxication "through counsel" amounts to a comment on his failure to take the stand and testify to the facts himself, in derogation of the defendant's right to remain silent. Such argument is erroneous and may be grounds in itself for a new trial. *See, e.g., Redish v. State,* 525 So.2d 928 (Fla. 1st DCA 1988); *Rosso v. State,* 505 So.2d 611 (Fla. 3d DCA 1987).

The state argues that no objection was made and no curative instruction or motion for mistrial was made by defense counsel, and therefore the error has not been properly preserved for appellate review and a ground for reversal. Eberhardt argues that the argument was so overreaching that it amounted to fundamental error. We need not reach that question, however, because reversal for a new trial is required on other grounds. We are confident that upon retrial the argument of counsel for the state will comport with the requirements of the law and professional standards.

REVERSED AND REMANDED FOR NEW TRIAL.

ERVIN, J., concurs.

WENTWORTH, J., concurs in conclusion.

550 So.2d 102, 14 Fla. L. Weekly 2272

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(The decision of the Supreme Court of Florida is referenced in the Southern Reporter in a table captioned 'Florida Decisions Without Published Opinions.')

Supreme Court of Florida.

State
v.
Eberhardt (Kennedy)

NO. 74,929

FEB 28, 1990

Appeal From: 1st DCA 550 So.2d 102

Rev. den.

560 So.2d 234 (Table)

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District Court of Appeal of Florida,
Fourth District.

Douglas MASON, Appellant,
v.
STATE of Florida, Appellee.

No. 971820.

June 24, 1998.

Defendant was convicted of attempted burglary by the Seventeenth Judicial Circuit Court, Broward County, M. Daniel Futch, J., and he appealed. The District Court of Appeal, Klein, J., held that exclusion of portion of defendant's statement to police needed to explain a portion introduced by state, regarding defendant's desire to flee, was reversible error.

Reversed and remanded.

West Headnotes

[1] Criminal Law ⇦ 412(1)
110k412(1) Most Cited Cases
Having allowed state to introduce a portion of burglary defendant's statement to police, in which defendant talked about his desire to leave after his companion had kicked in victim's door and burglar alarm had sounded, trial court should have allowed defendant to introduce remaining portion, in which he explained that the reason he wanted to leave was because he "didn't wanna be caught up in that shit 'cause it was wrong," in order to shed light on the portion already admitted. West's F.S.A. § 90.108(1).

[2] Criminal Law ⇦ 1163(1)
110k1163(1) Most Cited Cases
Where error is not constitutional, burden is on appellant to show prejudice.

[3] Criminal Law ⇦ 1165(1)
110k1165(1) Most Cited Cases
It is important, in determining effect of error on fact finder, to keep in mind that the Due Process Clause protects accused against conviction except upon proof beyond reasonable doubt of every fact necessary to constitute crime with which he is charged. U.S.C.A. Const.Amend. 14.

[4] Criminal Law ⇦ 1163(1)
110k1163(1) Most Cited Cases
Even where defendant in criminal case has burden of demonstrating prejudicial effect of error, that burden will be easier to carry than the burden on appellant in civil case.

[5] Criminal Law ⇦ 1169.12
110k1169.12 Most Cited Cases
Trial court's error, after having allowed state to introduce a portion of burglary defendant's statement to police in which defendant talked about his desire to leave after his companion had kicked in victim's door and burglar alarm had sounded, in not allowing defendant to introduce remaining portion of statement, in which he explained that the reason he wanted to leave was because he "didn't wanna be caught up in that shit 'cause it was wrong," warranted reversal of defendant's conviction, where statement admitted was significant portion of state's case, and where omitted statement tended to support defendant's testimony that he had not known his companion would kick in door.

***304** Richard L. Jorandby, Public Defender, and Marcy K. Allen, Assistant Public Defender, West Palm Beach, for appellant.

Robert A. Butterworth, Attorney General, Tallahassee, and Jeanine M. Germanowicz, Assistant Attorney General, West Palm Beach, for appellee.

KLEIN, Judge.

Appellant was convicted of attempted burglary and appeals, arguing that the trial court erred in not requiring the state to read one sentence in appellant's statement to the police when the state put other portions of appellant's statement in evidence. We reverse.

At 7:00 a.m. a witness heard two thumps, and then a burglar alarm, at the house next door. He looked out and saw two men walking across the lawn engaged in conversation and photographed them. The police responded to the alarm and found that the bottom part of the wooden front door to the house had been kicked in, but that the door was still locked. The officer found appellant and his companion in the neighborhood, and ***305** they were identified by the witness as being the people the witness had seen after he heard the noise next door.

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Appellant, after being given his Miranda warnings, gave a taped statement to the police, stating that his companion had told him that yard work was available to be done at the home next to the witness. When they arrived, the companion told appellant to knock on the door to see if anyone was home. Appellant knocked, but no one answered.

The companion then kicked in the door and the alarm went off. Appellant walked away, and as the companion was running to catch up with appellant, appellant saw the neighbor who identified them. Appellant then stated: "I told him I wanna leave, get outta the neigh--I wanna leave. I didn't wanna be caught up in that shit 'cause it was wrong. I don't wanna go back to prison."

Both men were charged with burglary of a dwelling. Appellant moved to exclude from evidence at trial the last sentence quoted above referring to prison, and the state agreed. When the redacted statement was admitted at trial, however, the second sentence had also been removed. Appellant objected to the deletion of that sentence, but the court overruled the objection.

Appellant relies on § 90.108(1), Florida Statutes (1997) which provides in part:

> When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him or her at that time to introduce any other part of any other writing or recorded statement that in fairness ought to be considered contemporaneously.

In *Larzelere v. State,* 676 So.2d 394 (Fla.), *cert. denied,* 519 U.S. 1043, 117 S.Ct. 615, 136 L.Ed.2d 539 (1996), the Florida Supreme Court held, under similar facts, that the standard for determining whether the additional portions of the statement should have been admitted is whether, in the interest of fairness, the jury should hear the remaining portions at the same time so as to avoid the potential for creating misleading impressions by taking statements out of context.

[1] We conclude that the court erred in refusing to admit that portion of the statement at the time that the state put in the remaining portions, because it would have "shed light upon the part already admitted." Ehrhardt, *Florida Evidence* § 108.1 (1995 Ed.).

We now address whether the error is prejudicial. We begin with § 924.051(7), Florida Statutes (1997) which provides:

> In a direct appeal or a collateral proceeding, the party challenging the judgment or order of the trial court has the burden of demonstrating that a prejudicial error occurred in the trial court. A conviction or sentence may not be reversed absent an express finding that a prejudicial error occurred in the trial court.

Prejudicial error is defined in § 924.051(1)(a) as "an error in the trial court that harmfully affected the judgment or sentence."

When the above provisions became effective in 1996, we already had, and still have § 924.33, which provides:

> No judgment shall be reversed unless the appellate court is of the opinion, after an examination of all the appeal papers, that error was committed that injuriously affected the substantial rights of the appellant. It shall not be presumed that error injuriously affected the substantial rights of the appellant.

[2] In *Goodwin v. State,* 23 Fla. L. Weekly D1538, 721 So.2d 728, 1998 WL 158875 (Fla. 4th DCA Apr. 8, 1998), we concluded that, notwithstanding § 924.051(7), the burden of demonstrating that an error is prejudicial cannot constitutionally be placed on the defendant in a criminal case, if the error is of a constitutional nature. That was the holding of *Chapman v. California,* 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967), which was recognized by the Florida Supreme Court in its seminal decision on harmless error, *State v. DiGuilio,* 491 So.2d 1129 (Fla.1986). Both *Chapman* and *DiGuilio* involved the prosecutor commenting on the defendant's silence. Where the error is not constitutional, as in *Goodwin* and the present case, however, § 924.051(7), which puts the burden on the appellant to show prejudice, ***306** governs. *Goodwin,* 23 Fla. L. Weekly at D1539, 721 So.2d at ---- (Klein, J., concurring).

In *DiGuilio,* our supreme court relied heavily on Roger J. Traynor, *The Riddle of Harmless Error* (1970). At the end of *DiGuilio,* after the court concluded that the burden was on the state to show harmlessness beyond a reasonable doubt where the error was constitutional, the court expressed the

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following thoughts on harmless error:

> In his perceptive essay, The Riddle of Harmless Error, former Chief Justice [of the California Supreme Court] Traynor addressed various common errors which, historically, appellate courts fall into when applying harmless error analysis. The worst is to abdicate judicial responsibility by falling into one of the extremes of all too easy affirmance or all too easy reversal. Neither course is acceptable. The test must be conscientiously applied and the reasoning of the court set forth for the guidance of all concerned and for the benefit of further appellate review. The test is not a sufficiency-of-the-evidence, a correct result, a not clearly wrong, a substantial evidence, a more probable than not, a clear and convincing, or even an overwhelming evidence test. Harmless error is not a device for the appellate court to substitute itself for the trier-of-fact by simply weighing the evidence. The focus is on the effect of the error on the trier-of-fact. The question is whether there is a reasonable possibility that the error affected the verdict. The burden to show the error was harmless must remain on the state. If the appellate court cannot say beyond a reasonable doubt that the error did not affect the verdict, then the error is by definition harmful. This rather truncated summary is not comprehensive but it does serve to warn of the more common errors which must be avoided. [emphasis added].

Traynor addressed both constitutional error and nonconstitutional error, and it was his opinion that non-constitutional error is harmless when it is "highly probable that the error did not affect the judgment." Traynor, *supra* at 34, 35.

Although we concluded in *Goodwin* that our supreme court in *DiGuilio* was only deciding when constitutional error can be harmless, we believe that the general thoughts expressed by the court are still significant in helping us to determine whether nonconstitutional error is harmful under § 924.051(7), which took effect in 1996. In that regard, one sentence in the above quote bears repeating:

> The focus is on the effect of the error on the trier-of-fact.
> 491 So.2d at 1139.

[3][4] It is important, when determining the effect of an error on the fact finder, to keep in mind that "the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship,* 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). Accordingly, even where the defendant in a criminal case has the burden of demonstrating the prejudicial effect of the error, that burden will be easier to carry than the burden on an appellant in a civil case in which the burden of proof in the trial court is lighter, i.e., preponderance of the evidence or clear and convincing evidence.

[5] In the present case the jury could have found from the evidence that the appellant had only gone with his companion in order to do yard work and did not know that his companion was going to attempt to break in. His statement was a significant part of the state's proof, and the omitted sentence would have supported appellant's defense. Appellant has carried the burden of demonstrating that a prejudicial error occurred. We therefore reverse and remand for a new trial.

WARNER and TAYLOR, JJ., concur.

719 So.2d 304, 23 Fla. L. Weekly D1540

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Briefs and Other Related Documents

Supreme Court of Florida.

Virginia Gail LARZELERE, Appellant,
v.
STATE of Florida, Appellee.

No. 81793.

March 28, 1996.
As Revised July 11, 1996.
Rehearing Denied July 11, 1996.

Defendant was convicted in the Circuit Court, Volusia County, John W. Watson, III, J., of first-degree murder, and was sentenced to death. Defendant appealed. The Supreme Court held that: (1) trial court did not abuse its discretion when it limited defendant's impeachment of prosecution witness; (2) instruction on circumstantial evidence was not required; (3) rule of completeness did not require defendant to show how she was prejudiced by state's introduction of partial portions of taped statements before state could be required to play statements in their entirety; (4) defendant who agreed to dual representation by attorneys who also represented her son was not entitled to discharge counsel after jury recommended death; (5) jury was not tainted when person who was unconnected to case approached three jurors in courthouse parking lot and threatened to blow up a juror's car; (6) even if state acted improperly in intercepting conversation defendant had with her son in holding cell while they were both incarcerated, proper remedy would have been for trial judge to suppress evidence obtained as result of misconduct, rather than to dismiss indictment; (7) findings that murder was cold, calculated and premeditated and committed for financial gain, as aggravating circumstances, were not duplicative; and (8) death penalty was not disproportionate.

Affirmed.

West Headnotes

[1] Witnesses ⇐ 355
410k355 Most Cited Cases
Trial court did not abuse its discretion in capital murder prosecution when it limited defendant's impeachment of prosecution witness by excluding testimony of reputation witnesses on ground that their knowledge of prosecution witness was too limited and that community from which their knowledge arose was too small to establish reliability; witnesses knew prosecution witness through a small number of individuals from his association in gay bars and had known prosecution witness for less than four months before murder occurred. West's F.S.A. § 90.609.

[2] Witnesses ⇐ 37(4)
410k37(4) Most Cited Cases
As predicate to introduction of reputation evidence, foundation must be laid to prove that witness testifying as to reputation is aware of person's general reputation for truthfulness in the community. West's F.S.A. § 90.609.

[3] Witnesses ⇐ 37(4)
410k37(4) Most Cited Cases
For reputation evidence to be admissible it must be established that community from which reputation testimony is drawn is sufficiently broad to provide witness with adequate knowledge to give reliable assessment; this assessment must be based on more than mere personal opinion, fleeting encounters, or rumors. West's F.S.A. § 90.609.

[4] Witnesses ⇐ 37(4)
410k37(4) Most Cited Cases
Reputation evidence must be based on discussions of broad group of people so that it accurately reflects person's character, rather than biased opinions or comments of narrow segment of community. West's F.S.A. § 90.609.

[5] Criminal Law ⇐ 1170.5(1)
110k1170.5(1) Most Cited Cases
Even if trial court abused its discretion in excluding reputation testimony to impeach testimony of key prosecution witness, such error was harmless in capital murder prosecution; defense counsel conducted extensive cross-examination of witness and impeached him with evidence that he had illegal identification card, had pending driving under the influence (DUI) charge, had committed perjury, and had lied to police, and state even conceded to jury that witness probably had not testified truthfully as to full extent of his involvement in charged crime. West's F.S.A. § 90.609.

[6] Criminal Law ⇐ 867
110k867 Most Cited Cases
Testimony that defendant's son had used cocaine in

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witness' presence prior to victim's funeral did not require mistrial of murder prosecution, although defendant and her son had allegedly conspired to kill victim and state had stipulated that evidence regarding son's purported drug use was inadmissible; statement was apparently inadvertent on part of witness, was in no way suggestive of defendant's guilt, and jury was instructed to disregard it.

[7] Criminal Law ⇐ 784(1)
110k784(1) Most Cited Cases

Instruction on circumstantial evidence was not required in murder prosecution.

[8] Criminal Law ⇐ 396(2)
110k396(2) Most Cited Cases

Rule of completeness did not require defendant to show how she was prejudiced by state's introduction of partial portions of taped statements before state could be required to play statements in their entirety in murder prosecution; correct standard was whether, in interest of fairness, remaining portions of statement should have been contemporaneously provided to jury. West's F.S.A. § 90.108.

[9] Criminal Law ⇐ 396(2)
110k396(2) Most Cited Cases

Purpose of rule of completeness is to avoid potential for creating misleading impressions by taking statements out of context; under this provision, once party opens the door by introducing part of statement, opposing party is entitled to contemporaneously bring out remainder of statement in interest of fairness. West's F.S.A. § 90.108.

[10] Criminal Law ⇐ 396(2)
110k396(2) Most Cited Cases

Under statute setting forth rule of completeness, parties may seek introduction of other statements when those statements in fairness ought to be considered contemporaneously with introduction of partial statements; such fairness determination falls within discretion of trial judge. West's F.S.A. § 90.108.

[11] Criminal Law ⇐ 1169.1(7)
110k1169.1(7) Most Cited Cases

Erroneously allowing selected portions of taped statements to be played to jury over defense counsel's objection because defense counsel was unable to establish how defendant would be prejudiced by introduction of partial statements was harmless in murder prosecution, where statements introduced by state were only finite portion of extensive record, and defendant did not seek to introduce redacted portions in her case-in-chief, even though trial judge specifically stated that she could do so. West's F.S.A. § 90.108.

[12] Criminal Law ⇐ 641.5(3)
110k641.5(3) Most Cited Cases
[12] Criminal Law ⇐ 641.5(4)
110k641.5(4) Most Cited Cases

Defendant who agreed to dual representation by attorneys who also represented her son was not entitled to discharge counsel after jury recommended death in capital murder case, where defendant failed to show how she had been prejudiced by continuing representation by same counsel, and trial judge found there was no existing conflict of interest and that defendant's claims of ineffective assistance of counsel were meritless. U.S.C.A. Const.Amend. 6.

[13] Criminal Law ⇐ 641.5(.5)
110k641.5(.5) Most Cited Cases

Actual conflict of interest that adversely affects counsel's performance violates Sixth Amendment. U.S.C.A. Const.Amend. 6.

[14] Criminal Law ⇐ 641.5(7)
110k641.5(7) Most Cited Cases

Defendant's fundamental right to conflict-free counsel could be waived. U.S.C.A. Const.Amend. 6.

[15] Criminal Law ⇐ 641.5(7)
110k641.5(7) Most Cited Cases

For waiver of conflict-free counsel to be valid, record must show that defendant was aware of conflict of interest, that defendant realized conflict could affect defense, and that defendant knew of right to obtain other counsel. U.S.C.A. Const.Amend. 6.

[16] Criminal Law ⇐ 641.5(5)
110k641.5(5) Most Cited Cases
(Formerly 110k641.5(.5))

It is trial court's duty to ensure that defendant fully understands adverse consequences counsel's conflict of interest may impose. U.S.C.A. Const.Amend. 6.

[17] Criminal Law ⇐ 641.5(5)
110k641.5(5) Most Cited Cases

Trial judge met burden of assuring that defendant's waiver of conflict-free counsel was made voluntarily, knowingly and intelligently in capital murder prosecution, where trial judge specifically advised defendant of possible conflict of interest that could arise from counsel's dual representation of both defendant and her son, and then extensively questioned defendant to determine whether she understood potential for conflict and her right to obtain other counsel. U.S.C.A. Const.Amend. 6.

[18] Criminal Law ⇐ 641.10(2)

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110k641.10(2) Most Cited Cases
Defendant had no right to have different counsel appointed in capital murder case after trial judge found no existing conflict of interest. U.S.C.A. Const.Amend. 6.
[19] Criminal Law ⇐ 855(8)
110k855(8) Most Cited Cases
Jury was not tainted in capital murder case after it convicted defendant but before penalty phase proceeding began, when person who was unconnected to case approached three jurors in courthouse parking lot and threatened to blow up a juror's car, even if trial judge improperly inquired as to whether jurors were prejudiced by incident; jurors saw no nexus between defendant and threat, and incident did not expose them to any non-record information that was prejudicial.
[20] Criminal Law ⇐ 868
110k868 Most Cited Cases
Trial court conducted proper inquiry in capital murder case after one of the jurors alleged that numerous improprieties occurred during trial, where judge questioned jurors in objective manner, asking questions only about any overt acts that might have prejudicially affected jurors in reaching their verdict.
[21] Criminal Law ⇐ 404.65
110k404.65 Most Cited Cases
Bullets which defendant allegedly found at a residence and turned over to police were admissible in capital murder prosecution as evidence of desire to evade prosecution, where defendant told police she took bullets out of fence at her home after she reported drive-by shooting, and state introduced bullets and testimony of firearms expert that bullets had never been fired to show that defendant had attempted to misdirect police investigation away from her.
[22] Criminal Law ⇐ 394.3
110k394.3 Most Cited Cases
[22] Criminal Law ⇐ 700(1)
110k700(1) Most Cited Cases
Even if state acted improperly in intercepting conversation defendant had with her son in holding cell while they were both incarcerated, proper remedy would have been for trial judge to suppress evidence obtained as result of misconduct, rather than to dismiss indictment.
[23] Criminal Law ⇐ 700(1)
110k700(1) Most Cited Cases
State did not act improperly when it intercepted and recorded conversation defendant had with her son in a holding cell while they were both incarcerated there, where defendant had not asked to speak to her son privately.
[24] Constitutional Law ⇐ 257.5
92k257.5 Most Cited Cases
[24] Criminal Law ⇐ 700(1)
110k700(1) Most Cited Cases
State's interception of defendant's conversation with her son while they were both incarcerated in holding cell was not so egregious as to warrant dismissal of indictment due to violation of Florida's due process clause. West's F.S.A. Const. Art. 1, § 9.
[25] Criminal Law ⇐ 338(4)
110k338(4) Most Cited Cases
Trial court did not abuse its discretion in capital murder case when it excluded testimony of investigator regarding "bugging" of defendant's cell, offered to show police would go to great lengths to prove defendant's guilt.
[26] Criminal Law ⇐ 126(2)
110k126(2) Most Cited Cases
Pretrial publicity did not require change of venue in capital murder case, where, although many prospective jurors had read or heard media reports about murder, extensive questioning of those jurors by judge and attorneys for both sides reflected that their knowledge of incident was not such that it caused them to form any prejudicial, preconceived opinions about case.
[27] Homicide ⇐ 1139
203k1139 Most Cited Cases
(Formerly 203k253(1))
Evidence that defendant planned and directed murder of her husband, identified her son as the gunman, and directed disposal of murder weapon was sufficient to support capital murder conviction.
[28] Criminal Law ⇐ 427(5)
110k427(5) Most Cited Cases
Evidence that defendant's calculated plan to murder her husband involved conspiratorial association with her son was sufficient to establish existence of conspiracy necessary to make son's hearsay statements admissible in capital murder case under coconspirator hearsay exception. West's F.S.A. § 90.803(18)(e).
[29] Sentencing and Punishment ⇐ 1660
350Hk1660 Most Cited Cases
(Formerly 203k357(10))
Findings that murder was cold, calculated and premeditated and committed for financial gain, as aggravating circumstances in capital murder case,

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were not duplicative, where financial gain aggravating circumstance was based on evidence that defendant killed her husband to collect life insurance, while cold, calculated and premeditated aggravating circumstance was based on evidence that she meticulously staged her husband's murder to look as though it were committed during robbery.

[30] Sentencing and Punishment ⇐ 1655
350Hk1655 Most Cited Cases
(Formerly 203k356)

Death penalty imposed on defendant convicted of first-degree murder for conspiring to kill her husband was not disproportionate sentence, even though two of state's key witnesses were not prosecuted despite their involvement in crime, where defendant was dominating force behind murder and was more culpable than state's witnesses.

[31] Criminal Law ⇐ 1134(2)
110k1134(2) Most Cited Cases
[31] Sentencing and Punishment ⇐ 56
350Hk56 Most Cited Cases
(Formerly 110k983)

When codefendant or coconspirator is equally culpable or more culpable than defendant, disparate treatment of codefendant may render defendant's punishment disproportionate; thus, equally or more culpable defendant's sentence is relevant to proportionality analysis.

[32] Sentencing and Punishment ⇐ 56
350Hk56 Most Cited Cases
(Formerly 110k983)

Disparate treatment of codefendant is justified when defendant is more culpable participant in crime.

[33] Sentencing and Punishment ⇐ 1788(6)
350Hk1788(6) Most Cited Cases
(Formerly 110k1134(2))

Acquittal of defendant's son, who allegedly acted as triggerman in murder of defendant's husband, was irrelevant to determination of whether defendant's death sentence was disproportionate, since he was exonerated of any culpability.

[34] Sentencing and Punishment ⇐ 1789(3)
350Hk1789(3) Most Cited Cases
(Formerly 203k325)

Issue of whether standard jury instruction on cold, calculated, premeditated aggravating circumstance was unconstitutionally vague in capital murder case was not preserved for review, absent specific objection at trial.

[35] Sentencing and Punishment ⇐ 1789(9)
350Hk1789(9) Most Cited Cases
(Formerly 203k340(1))

Giving of unconstitutionally vague cold, calculated and premeditated aggravating circumstance instruction was harmless error in capital murder case, where facts of murder established that murder, involving staged shooting of defendant's husband, was cold, calculated and premeditated under any definition.

***398** James B. Gibson, Public Defender and Christopher S. Quarles, Assistant Public Defender, Daytona Beach, for Appellant.

Robert A. Butterworth, Attorney General and Gypsy Bailey, Assistant Attorney General, Tallahassee, for Appellee.

PER CURIAM.

Virginia Gail Larzelere appeals her conviction of first-degree murder and the trial court's imposition of the death penalty. We have jurisdiction. Art. V, § 3(b)(1), Fla. Const. For the reasons expressed, we affirm the conviction and sentence.

The appellant was married to Norman Larzelere (the victim), a dentist, and she worked as the office manager for his dentistry practice. On March 8, 1991, at approximately one o'clock in the afternoon, a masked gunman came into the victim's dental office, chased the victim, shot him with a shotgun, and fled. The victim died within a short time after being shot. At the time of the shooting, a dental assistant, a patient, and the appellant were in the office.

The appellant and her adult son, Jason Larzelere, [FN1] were charged with the victim's murder. The State's theory was that the appellant and Jason conspired to kill the victim to obtain approximately $2 million in life insurance and $1 million in assets. Jason and the appellant were tried separately. The appellant was tried first.

FN1. Jason Larzelere was adopted by the victim after he and the appellant were married.

The State presented the following evidence at the appellant's trial. Two men testified that they had affairs with the appellant during her marriage to the victim and that the appellant asked them to help her have her husband killed. Two other witnesses, Kristen Palmieri and Steven Heidle, were given

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immunity and testified to a number of incriminating actions and statements made by the appellant and Jason regarding the murder. Specifically, their statements reflected that the night before the murder the appellant sent Jason to a storage unit to pick up documents, which included the victim's will and life insurance policies; that the appellant told Jason after the murder, "Don't worry, you'll get your $200,000 for taking care of business"; that the appellant told both witnesses that Jason was the gunman and that he "screwed up ... he was supposed to be there at 12:30, but he was a half hour late, so [the dental assistant] and a patient were there. That's why I had to fake a robbery."; that the appellant directed the two witnesses to dispose of a shotgun and a .45 handgun by having them encase the guns in concrete and dump them into a creek; and, that, in the days following the murder, Jason and the appellant reenacted the murder, with Jason playing the role of the gunman and the appellant playing the role of the victim. With Heidle's assistance, police recovered the guns from the creek but were unable to conclusively determine whether the shotgun was the murder weapon.

Additional testimony reflected that the appellant gave several conflicting versions of the murder to police, with differing descriptions of the gunman and the vehicle in which he left. The patient who was present at the time of the murder heard the victim call out just after he was shot, "Jason, is that you?"

***399** It was further established that over the six-year period preceding the murder, the appellant obtained seven different life insurance policies on the victim and that within the six months preceding his death, the appellant doubled the total amount payable on his life from over $1 million to over $2 million. Although the victim assisted in obtaining these policies, it was shown that the appellant was the dominant motivator in securing the policies. In addition, evidence was introduced to show that the appellant gave false information and made false statements to obtain the policies (in securing the policies she falsely represented to several insurance agents that pre-existing policies had been cancelled, did not exist, or were being replaced by the new policy). Further, soon after the victim's death, the appellant filed a fraudulent will, which left the victim's entire estate to the appellant. The fraudulent will was prepared on the same date one of the largest insurance policies on the victim's life became effective.

In her defense, the appellant presented evidence in an attempt to show that her inconsistent versions of the murder were due to her state of mind due to the distress of having just lost her husband; that the victim assisted in obtaining all of the insurance policies; that the appellant's lovers did not think she was serious about having her husband killed; that Heidle and Palmieri were not believable and perjured themselves; and that Heidle and Palmieri were unable to obtain incriminating statements from the appellant after they had been requested to do so by police.

The jury found the appellant guilty as charged.

No evidence was presented by either side at the penalty phase proceeding. The jury recommended death by a seven-to-five vote. In his sentencing order, the trial judge found the following two factors in aggravation: cold, calculated, and premeditated and committed for financial gain. He found no statutory mitigating factors, but he did find the following nonstatutory mitigating factors: ability to adjust and conform to imprisonment (marginal weight); and the appellant was not the shooter (insignificant weight due to fact that appellant was the mastermind behind the killing). Finding that the two aggravating factors outweighed the relatively minor mitigating evidence, the trial judge sentenced the appellant to death.

Following the appellant's trial, Jason was tried and acquitted of all charges.

GUILT PHASE

[1] Appellant raises twelve issues regarding her conviction phase proceeding. First, she contends that the trial judge improperly limited her impeachment of Stephen Heidle, one of the State's key witnesses. Appellant attempted to introduce the testimony of two witnesses who would have testified as to Heidle's unsavory reputation for truth and veracity. After hearing the proffered testimony of the witnesses, however, the trial judge excluded this testimony on the grounds that the witnesses' knowledge of Heidle was too limited and that the community from which their knowledge arose was too small to establish sufficient reliability.

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Appellant argues that these were the only witnesses who could testify concerning Heidle's reputation for truthfulness given his limited exposure to others in the months preceding the murder and that the failure to allow this testimony deprived the appellant of a fair trial.

[2][3][4] Under section 90.609, Florida Statutes (1991), a party may attack the credibility of a person by introducing character evidence in the form of reputation provided that the evidence relates only to the person's reputation for truthfulness. Section 90.405 governs the type of evidence that may be used to prove reputation. As a predicate to the introduction of such evidence, a foundation must be laid to prove that the witness testifying as to reputation is aware of the person's general reputation for truthfulness in the community. Charles W. Ehrhardt, *Florida Evidence* § 405.1 (1995 ed). Essentially, it must be established that the community from which the reputation testimony is drawn is sufficiently broad to provide the witness with adequate knowledge to give a reliable assessment. This assessment must be based on more than "mere personal opinion, fleeting encounters, or rumor." *Rogers* ***400** *v. State,* 511 So.2d 526, 530 (Fla.1987), *cert. denied,* 484 U.S. 1020, 108 S.Ct. 733, 98 L.Ed.2d 681 (1988). Further, reputation evidence "must be based on discussions among a broad group of people so that it accurately reflects the person's character, rather than the biased opinions or comments of ... a narrow segment of the community." Ehrhardt, *supra,* § 405.1 at 197 (footnote omitted).

In this case, the proffered testimony of the two proposed witnesses indicated that they both knew Heidle from a very limited community segment and for a very limited period of time. They both knew Heidle through a small number of individuals from his association at gay bars. Moreover, each of the witnesses had known Heidle for less than four months before the murder occurred. After reviewing the proffered testimony, the trial judge declined to admit this reputation evidence based on the limited amount of time the witnesses had known Heidle, the limited number of people from whom this reputation evidence was gathered, the extremely narrow section of the community from which the witnesses knew Heidle, and the fact that the testimony would be based largely on personal opinion and rumor. Under these circumstances, we cannot say that the trial judge abused his discretion in refusing to admit this testimony. *See Heath v. State,* 648 So.2d 660 (Fla.1994) (trial court has wide discretion in ruling on the admissibility of evidence and its rulings will not be disturbed absent an abuse of discretion), *cert. denied,* 515 U.S. 1162, 115 S.Ct. 2618, 132 L.Ed.2d 860 (1995); *Welty v. State,* 402 So.2d 1159 (Fla.1981) (same); *Wisinski v. State,* 508 So.2d 504 (Fla. 4th DCA) (trial court did not abuse its discretion in refusing to admit reputation testimony given the small number of people, the limited cross-section, and the relatively short period of time on which the reputation testimony was based), *review denied,* 518 So.2d 1279 (Fla.1987); *Gamble v. State,* 492 So.2d 1132 (Fla. 5th DCA 1986) (trial judge has wide discretion in admitting or excluding reputation testimony; one learns of another's general reputation in a community over a period of time and through miscellaneous contact with many people).

[5] Even were we to find that the trial judge abused his discretion in excluding this testimony, we would find such error to be harmless. Defense counsel conducted an extensive cross-examination of Heidle and impeached him with evidence that he had an illegal identification card, had a pending DUI charge, had committed perjury, and had lied to police. The State even conceded to the jury that Heidle probably had not testified truthfully as to the full extent of his involvement in this crime. Consequently, we find beyond a reasonable doubt that the exclusion of this evidence did not have an effect on the outcome of the jury's verdict. *State v. DiGuilio,* 491 So.2d 1129 (Fla.1986).

[6] In her next issue, appellant argues that the trial judge erroneously denied her motion for mistrial, which was based on Kristen Palmieri's statement that Jason had used cocaine in her presence. The record reveals that, before Palmieri testified, the State stipulated that evidence regarding Jason's purported drug use was inadmissible. As a result, Palmieri was instructed to avoid mentioning this subject. During her testimony, however, she inadvertently made the following statement in discussing the victim's funeral: "[A]s I was getting dressed downstairs, Jason proceeded to come downstairs and do coke in the tanning room in front of me." Defense counsel immediately moved for a mistrial. The trial judge denied the motion but struck the offensive testimony and instructed the

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jury to disregard it. According to appellant, the motion should have been granted because the introduction of testimony that the appellant's son and co-conspirator was snorting cocaine prior to the victim's funeral could not have been disregarded by the jury and because it implicated the appellant based on "guilt by association." We disagree. This statement was not solicited by the State, was apparently inadvertent on the part of the witness, and was in no way suggestive of the appellant's guilt. Even though the State's theory was that the appellant and Jason committed this crime together, the appellant was portrayed as the orchestrator of the crime and no reference was made to any drug use on her part. We find that this brief reference to Jason's drug use ***401** was insufficient to warrant a mistrial given its limited nature and the trial court's curative instructions. *Cf. Craig v. State,* 510 So.2d 857, 865 (Fla.1987) ("We are not persuaded that any prejudice flowed from the evidence of illegal drug use when there was ample direct evidence of appellant's guilt ... of first-degree murder."), *cert. denied,* 484 U.S. 1020, 108 S.Ct. 732, 98 L.Ed.2d 680 (1988).

[7] Appellant also asserts that the trial judge erred in refusing to specially instruct the jury. The appellant asked the judge to instruct the jury that the jury should consider the witnesses' interest in the outcome of the case; that the fact one party called more witnesses and introduced more evidence should not necessarily result in a verdict for that side; that the testimony of police officers should not be given more or less weight than the testimony of other witnesses; and that accomplice testimony must be scrutinized with great care. The appellant also requested that the jury be given the former standard jury instruction on circumstantial evidence. The trial judge refused to give these instructions. Although the appellant concedes that most of these instructions are covered in the standard jury instructions, she asserts that the requested instructions were warranted because they would have offered a more thorough and accurate explanation of the applicable law. Further, she asserts that the requested instructions on circumstantial evidence and credibility of the police are not covered by the standard instructions and that the failure to give her requested instructions deprived her of due process.

As conceded by the appellant, all but two of the requested instructions are covered by the standard jury instructions. We find that the standard instructions provide adequate guidance in this regard. As to the other two instructions, we note that the appellant withdrew her requested instruction regarding the credibility of police, and we find her requested instruction on circumstantial evidence was properly denied. In 1981, this Court eliminated the circumstantial evidence instruction from the standard instructions. *See In re Use by Trial Courts of Std. Jury Instr. in Crim. Cases,* 431 So.2d 594 (Fla.), *modified,* 431 So.2d 599 (Fla.1981). In eliminating this instruction, we did state that judges could continue to use the instruction if, in their discretion, they felt it was appropriate. Nevertheless, we concluded that "the giving of the ... instructions on reasonable doubt and burden of proof ... renders an instruction on circumstantial evidence unnecessary." *Id.* at 595.

[8] Next, appellant contends that the trial judge erred in admitting selected portions of taped statements and in refusing appellant's request to introduce the complete statements. At trial, the State introduced selected portions of taped statements the appellant and Jason made to police. Defense counsel objected to the introduction of this evidence and requested, under the "doctrine of completeness" and section 90.108, Florida Statutes (1991), that the entire tapes be introduced. The judge refused to allow the statements to be played in their entirety during the State's case-in-chief on the ground that the defense had not established prejudice by the partial introduction of the tapes at that time. The judge stated that the defense could introduce the tapes in their entirety during its case-in-chief. The appellant argues that a showing of prejudice is not required, that section 90.108 allows an adverse party to require the *contemporaneous* introduction of the entire taped statements, and that the failure of the court to allow this testimony deprived appellant of a fair trial.

[9][10] Section 90.108, Florida Statutes (1991), provides in pertinent part:

> When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him at that time to introduce any other part or any other writing or recorded statement that in fairness ought to be considered contemporaneously.

This rule is known as the "rule of completeness,"

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and its purpose is to avoid the potential for creating misleading impressions by taking statements out of context. Ehrhardt, *supra,* § 108.1. Under this provision, once a party "opens the door" by introducing part of a statement, the opposing party is entitled to contemporaneously bring out the remainder ***402** of the statement in the interest of fairness. *Long v. State,* 610 So.2d 1276 (Fla.1992). This right, however, is not absolute. For instance, in *Correll v. State,* 523 So.2d 562, 566 (Fla.), *cert denied,* 488 U.S. 871, 109 S.Ct. 183, 102 L.Ed.2d 152 (1988), we stated:

> Ordinarily, a defendant's statement should be introduced into evidence in its entirety, absent totally extraneous matters. However, the trial court here concluded that the matters contained in the last portion of Correll's statement were irrelevant. We cannot say that the judge abused his discretion in so ruling, particularly since he made it clear that Correll was at liberty to introduce the redacted portion himself. Even Correll must not have believed that the redacted portion was of great significance because he did not seek to introduce it in his case-in-chief, even though he presented several witnesses in his defense.

See also Mulford v. State, 416 So.2d 1199, 1201 (Fla. 4th DCA 1982) (section 90.108 gives parties "only a *qualified* right to seek the admission" of an entire statement) (emphasis added); Ehrhardt, *supra,* § 108.1 at 35 ("Under ... section 90.108, the remainder to the document or writing is not automatically admissible when requested or offered by the adverse party."). Under a plain reading of the statute, parties may seek the introduction of other statements when those statements "in fairness ought to be considered contemporaneously" with the introduction of the partial statement. § 90.108, Fla.Stat. Such a fairness determination falls within the discretion of the trial judge. *Correll* (trial judge did not abuse his discretion in holding matters irrelevant).

[11] In this case, the State asked to introduce only selected portions of the statements made by the appellant and Jason, contending that the remaining portions of the statements were not relevant. The trial judge allowed the selected portions to be played over defense counsel's objection because defense counsel was unable to establish how the appellant would be prejudiced by the introduction of the partial statements. The trial judge ruled, however, that the defense could introduce the remaining portions of the statements during its case-in-chief. We find that the trial judge erred in requiring the defense to show prejudice. As indicated above, the correct standard is whether, in the interest of fairness, the remaining portions of the statements should have been contemporaneously provided to the jury. After a full reading of the record, however, we find this error to be harmless because there is no reasonable probability that exclusion of the redacted statements affected the outcome of the jury's verdict. *State v. DiGuilio,* 491 So.2d 1129 (Fla.1986). The statements introduced by the State constituted only a finite portion of the extensive record in this case. Moreover, as we found in *Correll,* even the appellant must not have believed that the redacted portions of the statements were of great significance because she did not seek to introduce them in her case-in-chief even though the trial judge specifically stated that she could do so and even though she produced a number of witnesses.

[12] In her fifth claim, the appellant maintains that the trial judge improperly denied her motion to discharge counsel and various other motions connected to that request. Appellant was represented by two attorneys, John Wilkins and John Howes. Both of these attorneys also represented Jason. The record reflects that both the trial judge and the State were concerned with the conflict of interest that might occur as a result of this dual representation. As a result, the trial judge extensively advised and questioned appellant about the potential for conflict in this dual representation, after which the trial judge made a specific finding that appellant knowingly and intelligently waived the right to raise any apparent or possible conflicts.

After the jury recommended a sentence of death but before the trial judge imposed sentence, appellant filed a pro se motion for a new trial alleging that the trial judge erred in accepting her waiver of conflict-free counsel. She also raised a number of substantive issues regarding alleged errors at trial and ineffective assistance of counsel. Thereafter, the judge conducted a hearing on the motion in which he questioned both appellant and her counsel. At the hearing, appellant requested a continuance asserting that she ***403** needed to bring in F. Lee Bailey and others to support her motion. The trial judge denied the motion for continuance, ruling that appellant had to state the grounds to support the

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motion at the instant hearing. Appellant stated she would rely on her motion. The judge then denied the motion to discharge, finding there had been no showing of ineffective assistance or conflict that would warrant discharging appellant's counsel. He offered appellant the opportunity to represent herself, which she declined. Thereafter, Wilkins asked to be discharged, which request the trial judge also denied.

[13][14][15][16] An actual conflict of interest that adversely affects counsel's performance violates the Sixth Amendment of the United States Constitution. *Barclay v. Wainwright,* 444 So.2d 956 (Fla.1984). Nevertheless, a defendant's fundamental right to conflict-free counsel can be waived. *United States v. Rodriguez,* 982 F.2d 474 (11th Cir.), *cert. denied,* 510 U.S. 901, 114 S.Ct. 275, 126 L.Ed.2d 226 (1993); *Woseley v. State,* 590 So.2d 979 (Fla. 1st DCA 1991). For a waiver to be valid, the record must show that the defendant was aware of the conflict of interest, that the defendant realized the conflict could affect the defense, and that the defendant knew of the right to obtain other counsel. 982 F.2d 474 at 477. It is the trial court's duty to ensure that a defendant fully understands the adverse consequences a conflict may impose. *Winokur v. State,* 605 So.2d 100 (Fla. 4th DCA 1992), *review denied,* 617 So.2d 322 (Fla.1993).

[17][18] In this case, the trial judge specifically advised appellant of the possible conflict of interest that could arise from the dual representation. He then extensively questioned her to determine whether she understood the potential for conflict and her right to obtain other counsel. Clearly, on this record the trial judge met the burden of assuring that appellant's waiver was made voluntarily, knowingly, and intelligently. Once the jury recommended death, however, appellant chose to revoke this waiver and wanted new counsel. At that point in the proceedings, the trial judge found that no conflict of interest or other basis existed to warrant removal of counsel. Under these circumstances, we find that the trial judge properly denied the motions to discharge counsel. First, appellant has failed to show how she was prejudiced by the continued representation. *See, e.g., Roberts v. State,* 573 So.2d 964 (Fla. 2d DCA 1991) (once defendant voluntarily chooses to proceed with dual representation, defendant must show prejudice in the form of actual conflict to succeed in a subsequent claim for ineffective assistance of counsel); *Morgan v. State,* 550 So.2d 151 (Fla. 3d DCA 1989). Second, appellant had no right to have different counsel appointed after the trial judge found no existing conflict of interest. *Hardwick v. State,* 521 So.2d 1071 (Fla.) (no constitutional right exists to obtain different court appointed counsel), *cert. denied,* 488 U.S. 871, 109 S.Ct. 185, 102 L.Ed.2d 154 (1988). Additionally, the trial judge conducted a proper *Nelson* inquiry in the face of appellant's assertions of ineffective assistance of counsel by allowing appellant to state her reasons for her claims on the record, by questioning counsel regarding those assertions, and by specifically finding that the claims were meritless and that counsel was competent as to those assertions. *Hardwick; Nelson v. State,* 274 So.2d 256 (Fla. 4th DCA 1973). Consequently, we find this claim to be without merit.

[19] Sixth, appellant claims that the trial judge erred in failing to grant her motion for new trial, which was based on allegations that the jury had been contaminated by extrajudicial information. After the jury convicted the appellant (but before the penalty phase proceeding began), a female, who was unconnected to this case, approached three jurors in the courthouse parking lot and threatened to blow up a juror's car. After the incident was reported to the trial judge, he questioned the jurors individually in the presence of counsel for the State and the appellant to determine whether the jurors were prejudiced by the incident. After ascertaining the facts, the trial judge asked the jurors whether they thought that the appellant was in any way responsible for the incident. Each of the jurors responded in the negative. The judge also asked the jurors whether the incident affected their ability to ***404** serve as impartial jurors, to which they also responded in the negative. The appellant moved for a new guilt phase based on contamination of the jury and moved for a mistrial of the penalty phase on the same grounds. The trial judge denied the motions, finding that this incident did not prejudice or taint the jury and that the jurors could remain impartial.

The incident occurred after the completion of the guilt phase. Consequently, it in no way affected the jury's verdict as to appellant's conviction. As to the penalty phase, the judge determined, after inquiry, that the incident did not prejudice the jury in any way and that the jurors could remain

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impartial. Because this incident occurred after the conviction phase but *before* the penalty phase, the test for determining whether a new jury for the penalty phase was warranted is somewhat comparable to those cases involving pretrial publicity wherein a determination must be made as to whether a juror can be fair and impartial despite the pretrial publicity. *Cf. Provenzano v. State,* 497 So.2d 1177 (Fla.1986) (test for determining prejudice from pretrial publicity is whether publicity caused any accompanying prejudice, bias, or *preconceived opinions* about case), *cert. denied,* 481 U.S. 1024, 107 S.Ct. 1912, 95 L.Ed.2d 518 (1987). Nonetheless, because the conviction and penalty phase proceedings of a death penalty case are so intertwined, [FN2] the problem presented is more akin to those cases involving juror contamination or misconduct during the course of the proceedings. While it is appropriate to inquire into the thought processes of a juror in the first instance, it is inappropriate to do so in the latter. *See, e.g., State v. Hamilton,* 574 So.2d 124 (Fla.1991) (inappropriate for judge to inquire into jurors' thought processes as to whether presence of materials in jury room was prejudicial). Under the unique circumstances of this case, however, we find that the trial judge properly determined that the jury had not been tainted by the incident even if the trial judge improperly inquired as to whether the jurors were prejudiced by this incident. The jurors saw no nexus between the defendant and the threat, and the incident did not expose them to any non-record information that was prejudicial. Consequently, we find that no reasonable possibility exists that the incident affected the jury's verdict. *McKinney v. State,* 579 So.2d 80 (Fla.1991) (prejudice exists where there is a reasonable possibility that the contact affected the jury's verdict).

FN2. In this case, for example, neither side presented any evidence in the penalty phase proceeding, relying instead on the evidence presented in the conviction phase proceeding.

[20] In a similar claim, appellant asserts that she is entitled to a new trial based on juror misconduct. After the completion of the penalty phase, one of the jurors (Juror Kelley) participated in an interview with a writer in which she alleged that numerous improprieties occurred during the trial. [FN3] Based on these allegations of juror misconduct, the appellant moved for a new trial. The trial judge then interviewed Juror Kelley, as well as all of the other jurors. After conducting the interviews, the trial judge denied the motion. In an extremely detailed, well-reasoned order, the trial judge found that Juror Kelley's testimony was internally inconsistent, was unreliable, conflicted with the testimony of the other eleven jurors, was based on speculation and confusion, and exhibited bias and partiality. We find that the trial judge properly denied the motion after finding that Juror Kelley's allegations were without merit. [FN4]

FN3. She asserted that jurors discussed evidence before deliberations; that several jurors concluded the appellant was guilty during the first week of the four week trial; that one juror revealed information regarding Jason and a plea bargain; that several jurors perjured themselves about the parking lot incident; that, contrary to court order, several jurors read media accounts of the case; and that she herself was misled and pressured into finding the appellant guilty.

FN4. Appellant also contends that the trial judge erroneously inquired into the thought processes of the jurors in questioning them about Juror Kelley's assertions. The record reflects that the judge properly questioned the jurors in an objective manner, asking questions only about any overt acts that might have prejudicially affected the jurors in reaching their own verdict.

[21] In her next claim, appellant asserts that the trial judge erred in admitting bullets appellant found at her residence and turned ***405** over to police. Appellant contends the bullets were irrelevant and prejudicial. The record shows that appellant told the police she dug the bullets out of a fence at her home after she reported a drive-by shooting at her home. The State introduced the bullets to show that the appellant attempted to misdirect the police investigation away from her. At trial, a firearms expert testified that the bullets had never been fired. We find that the trial judge properly admitted the bullets as "after the fact evidence" of a desire to evade prosecution, which was relevant to the issue of guilt. *Anderson v. State,* 574 So.2d 87 (Fla.) (consciousness of guilt could be inferred from defendant's after-the-fact statements, and, thus, was relevant to the material issue of guilt), *cert. denied,* 502 U.S. 834, 112 S.Ct. 114, 116 L.Ed.2d 83 (1991); *Straight v. State,* 397 So.2d 903 (Fla.)

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(after-the-fact evidence of a desire to evade prosecution is relevant to the consciousness of guilt, which may be inferred from such conduct), *cert. denied,* 454 U.S. 1022, 102 S.Ct. 556, 70 L.Ed.2d 418 (1981).

[22][23][24] Appellant also argues that the trial judge improperly denied her motion to dismiss the indictment, which was based on the claim that the State illegally intercepted a conversation she had with Jason in a holding cell. Because appellant had invoked her constitutional right to silence and was represented by counsel before the recording took place, she contends that the police acted wrongfully in recording the conversation, which, in turn, warrants dismissal of the charges against her. Appellant acknowledges that a person loses much of the right to an expectation of privacy during incarceration. *See, e.g., Hudson v. Palmer,* 468 U.S. 517, 528, 104 S.Ct. 3194, 3201, 82 L.Ed.2d 393 (1984) (Fourth Amendment proscription against unreasonable searches does not apply within the confines of the prison cell); *State v. McAdams,* 559 So.2d 601 (Fla. 5th DCA 1990) (recording of conversation between two defendants in police car after defendants had invoked constitutional rights not illegal). Appellant argues, however, that this case is distinguishable from those cases because here the State fostered the illusion of privacy in placing her and Jason in the cell together. *See State v. Calhoun,* 479 So.2d 241 (Fla. 4th DCA 1985) (fostering illusion of privacy when placing two individuals in holding cell after invocation of constitutional rights warranted suppression of recorded statements). Accordingly, appellant argues that the charges should be dismissed. We do not agree that the State acted wrongfully in recording the conversation between the appellant and Jason. Unlike the situation in *Calhoun,* appellant did not ask to speak to her son privately; they were simply placed in a cell together before a hearing. Further, even were we to find that misconduct occurred, we would still find that the trial judge properly denied the motion. Under the circumstances of this case, the proper remedy for such misconduct would have been for the trial judge to suppress the evidence obtained as a result of the misconduct rather than to dismiss the indictment. [FN5] In this case, both parties acknowledge that the recording of the conversation was worthless. Consequently, there was nothing to suppress.

FN5. Contrary to appellant's assertions, the conduct at issue was not so egregious as to warrant dismissal due to a violation of Florida's due process clause. *Cf. State v. Williams,* 623 So.2d 462 (Fla.1993) (law enforcement personnel's manufacturing of crack cocaine for use in sting operation was so egregious as to warrant dismissal of charges).

[25] In a similar issue, appellant contends that the trial judge erroneously excluded the testimony of an investigator who was involved in the recording of this conversation. Defense counsel attempted to call the investigator to establish that the police would go to great lengths to prove appellant's guilt. The trial judge disallowed the questioning of the investigator regarding the "bugging" of appellant's cell, finding the testimony to be irrelevant and prejudicial. We find that the trial judge did not abuse his discretion in excluding this testimony.

[26] In her tenth claim, appellant alleges that the trial judge erroneously denied her motion for change of venue, which she filed because of prejudicial pretrial publicity. The record indicates that appellant filed a motion for change of venue, that the trial judge took the motion under advisement, and that the ***406** trial judge denied the motion after a jury was selected. After reviewing the record of the voir dire examination, we find that the trial judge properly denied the motion. Although many of the prospective jurors had read or heard media reports about the murder, the extensive questioning of those jurors by the trial judge and by the attorneys for both sides reflects that the jurors' knowledge of the incident was not such that it caused them to form any prejudicial, preconceived opinions about the case. *Pietri v. State,* 644 So.2d 1347 (Fla.1994), *cert. denied,* 515 U.S. 1147, 115 S.Ct. 2588, 132 L.Ed.2d 836 (1995); *Provenzano* (pretrial publicity is expected in certain cases, and, standing alone, does not necessitate a change of venue; the critical factor is the extent of the prejudice or lack of impartiality among potential jurors that may accompany the knowledge of the incident).

[27] In her next claim, appellant argues that the trial judge improperly denied her motion for judgment for acquittal because the evidence is legally insufficient to support the guilty verdict. According to appellant, the evidence is almost entirely circumstantial and failed to preclude the

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reasonable possibility that the appellant was not involved in any way with her husband's murder. We find this claim to be totally without merit. The evidence introduced at trial reflected that the appellant planned and directed the murder, identified Jason as the gunman, and directed the disposal of the murder weapon.

[28] In her final guilt phase claim, appellant argues that the trial judge improperly admitted a number of Jason's hearsay statements. The trial judge admitted the statements under section 90.803(18)(e), the co-conspirator hearsay exception. According to appellant, the trial judge erred in admitting these statements because the State failed to establish, using evidence independent of the hearsay statements, that a conspiracy existed between Jason and the appellant. We find this claim to be without merit. The facts presented at trial established, independent of Jason's statements, that appellant's calculated plan to murder the victim involved the conspiratorial association of Jason.

PENALTY PHASE

[29] We turn now to the issues regarding the penalty phase proceeding. In her first claim, appellant contends that the trial judge erroneously found that the murder was both cold, calculated, and premeditated (CCP) and committed for financial gain. Appellant asserts that these two aggravating circumstances are duplicative because both are based on the fact that the appellant had her husband murdered in furtherance of her plan to receive life insurance proceeds. In making this argument, the appellant concedes that this Court has previously rejected a similar argument in other cases. *See Fotopoulos v. State,* 608 So.2d 784 (Fla.1992), *cert. denied,* 508 U.S. 924, 113 S.Ct. 2377, 124 L.Ed.2d 282 (1993); *Echols v. State,* 484 So.2d 568 (Fla.1985), *cert. denied,* 479 U.S. 871, 107 S.Ct. 241, 93 L.Ed.2d 166 (1986). She argues, however, that those cases were wrongly decided. We disagree. As we stated in those cases, the facts in a given case may support multiple aggravating factors provided the factors are not based on the same essential feature of the crime. In this case, the aggravating circumstance of committed for financial gain was based on the evidence that appellant killed her husband to collect life insurance; the factor of CCP was based on evidence that she meticulously staged her husband's murder to look as though it were committed during a robbery. Under these circumstances, we do not find that the trial judge improperly duplicated these two aggravating factors.

[30][31][32] Nor do we find the death penalty in this case to constitute a disproportionate sentence even though two of the State's key witnesses were apparently not prosecuted despite their involvement in this crime and even though Jason was acquitted. When a codefendant (or coconspirator) is equally as culpable or more culpable than the defendant, disparate treatment of the codefendant may render the defendant's punishment disproportionate. *Downs v. State,* 572 So.2d 895 (Fla.1990), *cert. denied,* 502 U.S. 829, 112 S.Ct. 101, 116 L.Ed.2d 72 (1991); *Slater v. State,* 316 So.2d 539 (Fla.1975). Thus, an equally or more culpable codefendant's sentence is relevant to a proportionality analysis. ***407** *Cardona v. State,* 641 So.2d 361 (Fla.1994), *cert. denied,* 513 U.S. 1160, 115 S.Ct. 1122, 130 L.Ed.2d 1085 (1995). Disparate treatment of a codefendant, however, is justified when the defendant is the more culpable participant in the crime. *Hayes v. State,* 581 So.2d 121 (Fla.), *cert. denied,* 502 U.S. 972, 112 S.Ct. 450, 116 L.Ed.2d 468 (1991).

[33] In this case, the trial judge specifically examined the appellant's culpability, stating:

> The evidence established beyond a reasonable doubt that, although [the appellant] was not the triggerman, she was present for the murder actively participating in carrying out the murder which she planned in a cold and calculated manner. Her participation was not relatively minor. Rather she instigated and was the mastermind of and was the dominant force behind the planning and execution of this murder and behind the involvement and actions of the co-participants before and after the murder. Her primary motive for the murder was financial gain, which motive was in her full control.
>
> ....
>
> ... Under no reasonable view of the evidence can it be said that the degree of culpability of Steven Heidle or Kristen Palmieri was equal to that of [the appellant]. [The appellant] was in charge and they were the subordinates with significantly lesser roles.

As indicated by the trial judge, we find that the evidence establishes beyond question that the

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appellant was the dominating force behind this murder and that she was far more culpable than the State's two key witnesses. Additionally, the evidence supports the judge's conclusion that the aggravating factors outweigh the mitigating factors. Consequently, we find that the appellant's sentence is not disproportionate. *See, e.g., Garcia v. State,* 492 So.2d 360 (Fla.) (prosecutorial discretion in plea bargaining with less culpable accomplices is not impermissible and does not violate the principles of proportionality), *cert. denied,* 479 U.S. 1022, 107 S.Ct. 680, 93 L.Ed.2d 730 (1986). In making this determination, we note that Jason's acquittal is irrelevant to this proportionality review because, as a matter of law, he was exonerated of any culpability. [FN6]

FN6. On this record, we are unable to determine what evidence was presented against Jason in his trial; however, it is obvious that some of the evidence that was admissible against the appellant would have been inadmissible against Jason.

[34][35] In her final claim, the appellant raises a number of issues regarding the constitutionality of Florida's death penalty scheme. [FN7] Most of the arguments raised under this claim have not been preserved for review. Further, almost all of the arguments have been previously rejected. We find that only one of appellant's arguments under this issue merits discussion; that is her claim that the aggravating circumstance of CCP is unconstitutionally vague. In this case, the trial judge provided the jury with the standard jury instruction on CCP. We have since determined that the standard instruction given in this case is, in fact, unconstitutionally vague. *See Jackson v. State,* 648 So.2d 85 (Fla.1994). We also stated in *Jackson,* however, that a claim that the CCP aggravating circumstance is unconstitutionally vague is procedurally barred unless a specific objection is made at trial. A review of the record reflects that defense counsel failed to properly preserve this issue for appeal; consequently, this issue is procedurally barred. Moreover, even were we to find this issue properly preserved, we conclude that ***408** the giving of this instruction was harmless error because the facts of this murder as set forth earlier in this opinion establish that this murder was CCP under any definition. *Foster v. State,* 654 So.2d 112 (Fla.), *cert. denied,* 516 U.S. 920, 116 S.Ct. 314, 133 L.Ed.2d 217 (1995).

FN7. Appellant claims that: the CCP instruction is vague and arbitrarily applied; the death penalty statute is unconstitutional because it authorizes a death recommendation on the basis of a bare majority vote; the lack of a unanimous verdict as to any aggravating circumstance is unconstitutional; the jury is told its role is only advisory; the sentencing judge was selected by a racially discriminatory system; the statute unconstitutionally prevents the evenhanded application for appellate review; a number of the aggravating circumstances are unconstitutional because they do not rationally narrow the class of death-eligible persons; the use of the contemporaneous objection rule prevents the consistent application of the death penalty; special verdict forms should be provided; the criminal rules unconstitutionally forbid the mitigation of a death sentence; the death penalty is presumed where a single aggravating circumstance is found; juries are not allowed to consider sympathy; and electrocution is cruel and unusual punishment.

Accordingly, for the reasons expressed, we affirm Virginia Gail Larzelere's conviction for first-degree murder and sentence of death.

It is so ordered.

GRIMES, C.J., and OVERTON, SHAW, KOGAN, HARDING, WELLS and ANSTEAD, JJ., concur.

676 So.2d 394, 21 Fla. L. Weekly S147, 21 Fla. L. Weekly S311

Briefs and Other Related Documents (Back to top)
. 1995 WL 17016322 (Appellate Brief) Reply Brief of Appellant (Jul. 13, 1995)

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Supreme Court of the United States

Virginia Gale LARZELERE, petitioner,
v.
FLORIDA.

No. 96-6345.

Dec. 16, 1996.

Case below, 676 So.2d 394.

Petition for writ of certiorari to the Supreme Court of Florida denied.

519 U.S. 1043, 117 S.Ct. 615, 136 L.Ed.2d 539, 65 USLW 3432

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Federal Practice & Procedure
Federal Rules Of Evidence
Updated By The 2004 Supplement
Charles Alan Wright FNa , Kenneth W. Graham, Jr. FNb ; Supplement By The Late Charles Alan Wright, Kenneth W. Graham, Jr.

Chapter 2. Administration Of Rules Of Evidence
Rule 106. Remainder Of Or Related Writings Or Recorded Statements

§ 5072. Policy Of Rule 106; The Completeness Doctrine

Link to Pocket Part

The completeness doctrine arises from two important aspects of the adversary system. The first of these is the principle of party presentation of evidence; it is the function of the parties, not the court, to produce evidence. Each side, under the goad of rules governing burden of proof, must produce evidence in support of its factual contentions. The corollary of this principle is that neither side is under any obligation to produce evidence that favors its opponent, though this is subject to a number of qualifications with respect to the prosecution in criminal cases. The second aspect of the adversary system significant in its bearing on the completeness doctrine is the concept of procedural sequence, or "stage preclusion" as it is sometimes called. The trial of a case follows a sequence of proof and counterproof at each stage the proper role of the parties is alternated. It is **much like a baseball game**, where each side takes a turn at bat while the other team is on the field defensively. Just as the home team is not supposed to send up a hitter in the top of the ninth, so the defendant is not supposed to prove his case while the plaintiff is putting on evidence.

The completeness doctrine operates to qualify these two principles in order to prevent their abuse. It soon occurred to devotees of the "win-at-any-cost" theory of litigation that they might gain the winning edge by introducing a statement out of context that would so prejudice the opponent that he could not hope to repair the damage during his presentation of evidence. Better yet, it might be that the evidence needed to put the statement in context was not available to the opponent or was inadmissible in his hands. The completeness doctrine was designed to prevent such abuse by requiring the proponent of the evidence to show enough of the context to avoid mis-interpretations not completely curable by cross-examination. The common law doctrine as codified by Wigmore was as follows:

In evidencing the tenor of an utterance material or relevant, made in words, whether written or oral, in original or in copy, the whole of the utterance on a single topic or transaction must be taken together. FN1

This statement of the rule was followed by eight pages of qualifications and conditions.

Rule 106 does not codify the common law completeness doctrine, nor is it similar to prior codifications of the rule. This can be illustrated by a recent California case. FN2 In an action arising out of an intersection collision, the plaintiff called the investigating police officer to testify concerning statements made by the defendant at the scene of the crash. The direct testimony was carefully tailored so as only to elicit what the defendant said about (a) the condition of the light when he entered the intersection (red) and (b) his speed. The police officer was not asked about the rest of the defendant's statement in which he explained that his brakes unexpectedly failed when he attempted to stop for the light. When the defendant sought to elicit the rest of the conversation on cross-examination, the plaintiff objected that the cross-examination was beyond the scope of direct and that, in any event, the statements of defendant were hearsay and inadmissible when offered by him, though admissible under

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the admissions exception when offered by the plaintiff. Catch 22? Not so, said the trial judge, admitting the evidence. His decision was affirmed on appeal, the court citing the statutory predecessor FN3 of the current California Evidence Code version of the completeness doctrine. FN4

Notice that under the California rule, it makes no difference what form the evidence takes, while Federal Rule 106 applies only if the evidence introduced is a "writing or recorded statement." FN5 On the other hand, the Federal Rule requires that the proponent introduce the part required for completeness as part of his case, while the California rule simply permits the opponent to introduce the rest of the statement on cross-examination. The two rules have different standards for completeness, "fairness" in the Federal Rule, while California only requires that it be "necessary to make it understood." FN6 Both rules make the evidence admissible irrespective of its compliance with the other exclusionary rules. FN7

The Advisory Committee Note explains the policy considerations that led to the formulation of Rule 106. If the party prejudiced by taking evidence out of context is content to do so, he may wait to expose the fraud until he puts on his own case. Sometimes, however, it would be unfair to require this delay. The judge has discretion under Rule 611 to permit the context to be shown on cross-examination, FN8 but sometimes even this will not be soon enough to dispel the prejudice. Thus, when fairness demands it, the judge must require the party who introduced the evidence to also put in the related material which explains it. The Rule applies a more severe test than the California rule because it provides a more drastic remedy. The Rule is limited to writings and recorded statements because it is difficult to determine what constitutes the whole or part of conversation or other item of proof; moreover, often such other items cannot be proved by the witness on the stand.

Rule 106 has two aspects. First, it permits the alteration of the rules with respect to order of proof. Second, it permits the court to disregard the exclusionary rules to the extent that this is necessary to prevent the misleading use of evidence out of context. While the Rule seems clear on this second point, the Advisory Committee Note makes no mention of it. Presumably inadmissible evidence that comes in under Rule 106 can only be used for explanatory purposes and not as substantive evidence. Thus, in this aspect the Rule is a specialized application of the doctrine of multiple admissibility, which is treated in the immediately preceding Rule.

The completeness doctrine as formulated in Rule 106 is related in varying ways to a number of other rules. The first of these is Rule 611, governing cross-examination. Under the Advisory Committee's draft of the Rules as approved by the Supreme Court, a party could, if he chose, postpone showing the context of a statement until cross-examination without worrying about the scope of cross-examination; Rule 611(b) provided for wide-open cross-examination. FN9 However, Congress subsequently amended Rule 611(b) to limit the scope of cross-examination to "the subject matter of the direct examination." FN10 Perhaps most material needed to show the context of a statement would meet that test, but if it does not the party must rely on the discretion of the judge to permit him to go into such material. Therefore, it will often be wise for counsel to invoke Rule 106 rather than wait until cross-examination if he has any doubt about his ability to cover the matter on cross-examination.

Rule 106 is also related to Rule 611(a) on the order of proof. In situations where counsel wishes to show the context of a statement but it is beyond the scope of cross-examination, Rule 611(a) gives the court the power to alter the order of proof and permit the party to "make the witness his own." Indeed, the authority under Rule 611 is sufficient to permit the court to stop presentation of one party's case in order to permit his opponent to introduce other evidence needed to place in context material which is not covered by Rule 106. For example, suppose that a party in a personal injury case were to call a photographer who had taken a series of pictures of the accident, but only introduced the photos that were most favorable to his case. Rule 106 does not apply because the proof is not part of a "writing or recorded statement." But the judge could, under Rule 611(a), alter the order of proof and let the opponent put in the rest of the photographs then, rather than having him wait until cross-examination or later. This authority is, however, discretionary while the right to put in other evidence under Rule 106 is not.

Rule 106 is also a distant cousin of the "best evidence" or "documentary originals rule." While the requirement that a party prove the contents of a writing by producing the original serves other goals as well, it also functions

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to prevent matter from being taken out of context, at least insofar as the context is the same piece of paper. The two doctrines can be combined to prevent some attempts to evade the completeness doctrine. If, for example, a party calls a witness to testify to the contents of a document that is explained by another document, his opponent has no remedy under Rule 106 since he has not introduced a "writing." Thus, the opponent should first invoke Rule 1002 to require the introduction of the document, and then invoke Rule 106 to get in the explanatory writing.

In placing the completeness doctrine in its own historical context, it will be well to keep in mind that it was once related to a number of concepts that are no longer recognized by the Evidence Rules. One of these is the old doctrine of "res gestae," which permitted the use of otherwise inadmissible evidence in order to place an event in its proper context. FN11 Probably much of the development of the completeness doctrine can be traced to the decline of the rule of "res gestae," since in many cases their function would be the same. FN12 The completeness doctrine must also owe some of its development to the complex of rules known collectively as the "proprietorship of witnesses." FN13 It seems likely that one of the motives for attempting to require the opponent to elicit favorable facts from "his witnesses" rather than to wait and call them as part of one's own case was to avoid being stuck with an unfavorable answer that the rules of proprietorship would forbid one to impeach.

The completeness doctrine should not be confused with the now-discredited notion that a party who introduces inadmissible evidence is estopped to object when his opponent counters in kind--the so-called doctrine of "opening the door" or "fighting-fire-with-fire." FN14 While both the completeness doctrine and the pseudo-doctrine would admit inadmissible evidence and both are premised, at least in part, on loose notions of estoppel, they are fundamentally different. The completeness doctrine assumes that the part of the evidence introduced was admissible and permits the inadmissible evidence to come in to prevent the dangers of taking matters out of context. If the part of the evidence originally introduced is inadmissible, the remedy of the opponent is to object and move to strike; he cannot consent to its admission, then seek to explain it with inadmissible evidence.

Research References

Fed. R. Evid. 106

Pocket Part

Rule 106 does not codify the common law completeness doctrine, nor is it similar to prior codifications of the rule. FN1.1

The Advisory Committee Note explains the policy considerations that led to the formulation of Rule 106. FN7.1

The first of these is Rule 611, governing cross-examination. FN8.1

The completeness doctrine is an evidentiary doctrine, not a rule of constitutional law binding on states. FN15

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FN1 Wigmore's statement
Wigmore, Code of Evidence, 3d ed. 1942, p. 371.

Pocket Part FN: FN1 Wigmore's statement
State v. Warren, 1999, 732 A.2d 1017, 1019, 143 N.H. 633 (purpose of rule is to prevent jury from being misled by statements taken out of context).
Nance, Evidential Completeness and The Burden of Proof, 1998, 49 HAST.L.J. 621.

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Pocket Part FN: FN1.1 Does not codify
The view that Rule 106 is only a partial codification of the common law completeness doctrine is embraced by the Supreme Court in Beech Aircraft Corp. v. Rainey, 1988, 109 S.Ct. 439, 451, 488 U.S. 153, 171, 102 L.Ed.2d 445.
The common law rule of completeness is accurately stated by court, which then goes on to say (incorrectly) that it has been codified in Rule 106. U.S. v. Costner, C.A.6th, 1982, 684 F.2d 370, 373.
Evidence Rule 106 codifies the common law rule of completeness. U.S. v. Walker, C.A.7th, 1981, 652 F.2d 708, 710 (relying upon the completely unsupported statement to this effect in Saltzburg & Redden, Federal Rules of Evidence Manual, 2d ed. 1977, p. 55). The error is repeated, in reliance on Walker, in U.S. v. Sweiss, C.A.7th, 1987, 814 F.2d 1208, 1211.
For an opinion that assumes without discussion that the common law rule is still in effect, see U.S. v. Smith, C.A.8th, 1986, 794 F.2d 1333, 1335 (defendant has right to introduce balance of oral statement).
State v. Warren, 1999, 732 A.2d 1017, 1019, 143 N.H. 633 (only partly codifies); State v. Taylor, 1998, 508 S.E.2d 870, 875 n. 5, 333 S.C. 159 (stating prior law in way that shows it is not the same as Rule 106); State v. Leleae, Utah.App.1999, 993 P.2d 232, 242 (only partly codifies doctrine); State v. Briggs, App.1997, 571 N.W.2d 881, 886, 214 Wis.2d 281 (codifies common law; ipse dixit).
State v. Keough, Tenn.2000, 18 S.W.3d 175, 182 (declining to follow pre-Rules cases).
The Alaskan drafters acknowledge the difference between Rule 106 and the common law. Commentary, Alaska R.Ev. 106.
The Commentary to Haw.R.Ev. 106, which is identical with F.R.Ev. 106, says that the rule "incorporates the common law doctrine of completeness", citing McCormick § 56. As explained in the main volume, Rule 106 is significantly different from the common law rule as set forth both by McCormick and Wigmore.
The Mississippi drafters claim Rule 106 is a codification of the common law doctrine, but admit that it is narrower than the Mississippi caselaw. Comment, Miss.R.Ev. 106. It is unclear whether they believe the prior rule has been repealed or not.
The Montana drafters believe that their amended version "is a more accurate statement of the rule of completeness." Commission Comments, Mont.R.Ev. 106.
The Comment to Prop.N.Y.Evid.Code § 106, which has been amended to incorporate the common law doctrine, properly reports that the section "codifies present law."
The Comment to Tex.R.Ev. 106 says that the rule is not intended to alter the common law doctrine of completeness, a rather clear confession that the rule does not codify that doctrine.
The Texas drafters, recognizing that Rule 106 is not a codification of common law doctrine, added a comment to make clear that the enactment of Rule 106 in Texas does not repeal the common law rule. Wallace, Article I: General Provisions, 1983, 20 Hous.L.Rev. 87, 103.
The Vermont drafters candidly report that the Vermont caselaw doctrine of completeness bears little resemblance to Rule 106. Reporter's Notes, Vt.R.Ev. 106.

Cooper, The Doctrine of Completeness--A Sometimes Too Handy Tool, 1962, 14 Ala.L.Rev. 273.
Comment, Evidence: The Rule of Completeness, 1975, 17 So.Texas L.J. 105, 106.
An A.B.A. reform group claims that Rule 106 is the common law rule. See The Evidence Project, 1997, 171 F.R.D. 330, 337.

FN2 California case
Rosenberg v. Wittenborn, 1960, 3 Cal.Rptr. 459, 178 Cal.App.2d 846.

FN3 Statutory predecessor
Cal.Code Civ.Proc., 1872, § 1854.

FN4 California version
Cal.Evid.Code § 356, quoted in § 5071 n. 14.

Pocket Part FN: FN4 California version
For a case which assumes that the California rule entitles the party to have the evidence introduced as part of the

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opponent's case, see People v. Gineris, 1984, 209 Cal.Rptr. 317, 321, 162 Cal.App.3d Supp. 18.

FN5 Scope of rule
See §§ 5073, 5074.

Pocket Part FN: FN5 Scope of rule
Rule 106 only applies to writings, not oral statements; it is therefore not applicable when prosecution proves that defendants would not voluntarily give palm prints, then tried to bar evidence of their reasons for refusing. U.S. v. Terry, C.A.2d, 1983, 702 F.2d 299, 314.
For a case in which the court, though quoting Rule 106, seems to think it has the same scope as the common law doctrine described by Wigmore and applies to verbal statements as well as writings and recorded statements, see U.S. v. Pintar, C.A.8th, 1980, 630 F.2d 1270, 1284.
People v. Melillo, Colo.App.1998, 976 P.2d 353, 357 (completeness doctrine has never been limited to writings so Rule 106 should not be so limited).
This limitation seems to have been overlooked by the court in National Bank of Commerce Trust & Sav. Ass'n v. Katleman, 1978, 266 N.W.2d 736, 201 Neb. 165 (where evidence introduced that another person had made payments on loan, details admissible under Neb.R.Ev. 106 to avoid any imputation of settlement).
State v. Warren, 1999, 732 A.2d 1017, 1019, 143 N.H. 633 (unlike common law rule, Rule 106 is limited to writings and recorded statements).

Tex.R.Cr.Ev. 107 applies to any matter. Callaway v. State, Tex.App.1991, 818 S.W.2d 816, 827.
Kirkpatrick, Reforming Evidence Law in Oregon, 1980, 59 Ore.L.Rev. 43, 49- 50 (favoring Rule 106 over Oregon provision similar to California statute).
The Advisory Committee's Note to Prop.Mass.R.Ev. 106 concedes that the rule only applies to written or recorded statements, but adds the mysterious comment that the "availability of oral statements is left to the discretion of the court."
The Montana drafters felt that broadening the scope of the rule to include acts, declarations, and conversations was necessary to encompass the common law completeness doctrine. Commission Comment, Mont.R.Ev. 106.
The prior New York completeness doctrine also extended to conversations. Commentary, Prop.N.Y.Evid.Code § 106.

FN6 Standard of completeness
See § 5077.

Pocket Part FN: FN6 Standard of completeness
Records of tests of intoxilyzer for a period prior and after those offered in evidence were not necessary to make those admitted understandable. People v. Gineris, 1984, 209 Cal.Rptr. 317, 321, 162 Cal.App.3d Supp. 18.

FN7 Inadmissible evidence
See § 5078.

Pocket Part FN: FN7.1 Policy considerations
State v. Taylor, 1998, 508 S.E.2d 870, 875, 333 S.C. 159 (explicitly adopting this as rationale for S.C.R.Ev. 106); State v. Keough, Tenn.2000, 18 S.W.3d 175, 182 (concern for fairness found in state's common law cases).
The Commentary to Prop.N.Y.Evid.Code § 106 gives a "two-fold rationale" for the rule: "First, it avoids the danger of mistaken first impressions when evidence is taken out of context. * * * Second, the rule avoids the inadequate remedy of requiring the adverse party to wait until later in the trial to repair his case."

FN8 Shown on cross-examination
In reading the Advisory Committee's Note, it must be recalled that at the time the Note was drafted, Rule 611 permitted wide open cross-examination. Hence the Note implies that the party has a right to put in the related material on cross-examination. In most cases this will undoubtedly be true since the explanatory matter would usually satisfy the narrowed scope of cross-examination provided under the Congressional amendments. However,

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if it does not, the judge would surely exercise his discretion under Rule 611 to permit evidence beyond the scope of the direct to be introduced for this purpose. See the discussion of Rule 611, below.

Pocket Part FN: FN8.1 Rule 611
Court is obligated under Rule 611 to apply the common law completeness doctrine to oral statements not covered by Rule 106. U.S. v. Castro, C.A.2d, 1987, 813 F.2d 571, 576.
Officer testified to statements by defendant at time of arrest; completeness doctrine gave defendant right on cross-examination to go into exculpatory statements to show whole context of evidence elicited by the state. Somerville v. State, Fla.App.1991, 584 So.2d 200, 201.
The reporter for the Minnesota Advisory Committee says that Minn.R.Ev. 106 "is a specialized application of Rule 611(a) * * *." Thompson, Minnesota Practice: Evidence, 1979, p. 52.

15. Not constitutional rule

Howard v. Moore, C.A.4th, 1997, 131 F.3d 399, 415 n. 18.

But see

State v. Hills, 1997, 941 P.2d 404, 408, 24 Kan.App.2d 1 (trial court's admission of inculpatory parts of videotape of defendant's confession while barring exculpatory portions violated defendant's constitutional rights).

FN9 Wide open cross-examination
Prop.F.R.Ev. 611(b), 1973, 56 F.R.D. 183, 273.

FN10 Congressional amendment
See discussion of Rule 611.

FN11 "Res gestae"
6 Wigmore, Evidence, 3d ed. 1940, §§ 1745, 1767; McCormick, Evidence, Cleary ed. 1972, § 288.

FN12 Completeness and res gestae

The point is strongly suggested by the development of English law. The doctrine of res gestae still plays a prominent part in treatises on the English law of evidence, while the indexes show nothing called the completeness doctrine. See, e.g., Phipson, Evidence, 11th ed. 1970, pp. 171-241.

FN13 Proprietorship of witnesses
See discussion under Rule 607.

FN14 Discredited doctrine
See § 5039.

Pocket Part FN: FN14 Discredited doctrine
Cross-examination on a part of a transaction opens door to opposing party to elicit on redirect examination evidence of the whole of the transaction at least to the extent that it relates to the same subject; hence, where the cross-examination concerned the reasons for the witness's decision to talk to the F.B.I., he could explain on cross-examination that he had picked up 100 pounds of marijuana at the request of the defendant and that the defendant had been "seeing" the witness's wife. U.S. v. Barrentine, C.A.5th, 1979, 591 F.2d 1069, 1081.

People v. Melillo, Colo.App.1998, 976 P.2d 353, 357 (invoking doctrine as supplement to Rule 106); Walsh v. State, Fla.App.1992, 596 So.2d 756, 757 (cross-examination about part of accomplice's confession opens door to introduction of the whole thing); Long v. State, Tex.App.2000, 10 S.W.3d 389, 398 (confusing the two rules hopelessly).

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Comment, Evidence: The Rule of Completeness, 1975, 17 So.Texas L.Rev. 105, 116.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

PLAINTIFF'S RESPONSE TO MORGAN STANLEY'S MOTION IN LIMINE NO. 9 TO EXCLUDE REFERENCES TO THE PRIOR MORGAN STANLEY SENIOR FUNDING, INC. LITIGATION

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") respectfully submits this response to Morgan Stanley's Motion in Limine No. 9 to exclude all references to *Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings, Inc., et al.*, No. CA 03-5165 AI, the retaliatory lawsuit that Morgan Stanley's affiliate, Morgan Stanley Senior Funding, Inc. ("MSSF"), filed against CPH and subsequently abandoned. CPH opposes this motion because Morgan Stanley's vexatious litigation tactics are admissible on the issue of punitive damages.[1]

On May 12, 2003, in retaliation against CPH for filing this lawsuit, MSSF filed a complaint against CPH and MacAndrews and Forbes Holdings, Inc., accusing them of fraudulently inflating the price of Coleman stock by allegedly misrepresenting Coleman's "synergies" with Sunbeam. Ex. A, Compl. in *MSSF v. MAFCO*, 5/12/03. Predictably, MSSF was unable to produce any support for its accusations, eventually abandoned its frivolous action, and took a voluntary dismissal. *See* Ex. B, Notice of Voluntary Dismissal, 10/22/04. CPH is entitled to inform the jury of MSSF's frivolous action, which was filed to force CPH to incur

[1] Except where expressly noted, CPH does not concur with the recitations of purported facts in Morgan Stanley's motions in limine.

significant legal expenses, to penalize CPH for seeking to hold Morgan Stanley accountable for its wrongful conduct, and to conceal Morgan Stanley's role in the Sunbeam fraud by falsely pinning blame on CPH.

In *General Motors Corporation v. McGee*, 837 So. 2d 1010 (Fla. 4th DCA 2002), the Fourth District held that a trial court had properly admitted evidence of a defendant's discovery abuses because "a punitive damages award may be justified not only by defendants' actions on [the date in question], but also by their subsequent behavior" in the ensuing litigation. *Id.* at 1035-36 (citing, inter alia, *Davis v. Rennie*, 264 F.3d 85, 115 (1st Cir. 2001)). The *McGee* court distinguished the case Morgan Stanley relies upon, *Amlan, Inc. v. Detroit Diesel Corp.*, 651 So. 2d 701 (Fla. 4th DCA 1995), *cited in* Mot. at 3, on the grounds that "*Amlan* was not a case involving punitive damages; the plaintiff there tried to use the defendant's discovery abuse to prove the defendant's liability." 837 So. 2d at 1036 (emphasis added). Likewise, the other case that Morgan Stanley cites for this proposition, *Strasser v. Yalamanchi*, 783 So. 2d 1087 (Fla. 4th DCA 2001), *cited in* Mot. at 3, is inapposite. In that case, following the passage of dicta that Morgan Stanley quotes, the court went on to distinguish *Amlan* and to admit evidence of the defendant's pretrial misconduct, holding that such evidence was admissible so long as it was relevant (such as, in *Strasser*, when one of plaintiff's claims was for negligent destruction of evidence). 783 So. 2d at 1093. Here, CPH is seeking punitive damages against Morgan Stanley and therefore should be allowed to put in evidence concerning the MSSF litigation.

CONCLUSION

For the foregoing reasons, this Court should deny Morgan Stanley's Motion in Limine No. 9 to Exclude References to the Prior Morgan Stanley Senior Funding, Inc. Litigation.

Dated: January 18, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 18th day of Jan, 2005.

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A

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

MORGAN STANLEY SENIOR FUNDING, INC. Plaintiff, vs. MACANDREWS & FORBES HOLDINGS INC., and COLEMAN (PARENT) HOLDINGS INC. Defendants.	2003CA005165AG Case No. _____ DOROTHY H. WILKEN CLERK CIRCUIT COURT CIVIL DIVISION MAY 12 2003 COPY / ORIGINAL RECEIVED FOR FILING

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Morgan Stanley Senior Funding, Inc., by and through its undersigned counsel, alleges the following against Defendants MacAndrews & Forbes Holdings, Inc. and Coleman (Parent) Holdings, Inc.:

Nature of Action

1. This is an action brought by Morgan Stanley Senior Funding, Inc. ("MSSF") against MacAndrews and Forbes Holdings Inc. ("MAFCO") and its wholly-owned subsidiary, Coleman (Parent) Holdings Inc. ("Coleman-Parent"), for fraud, negligent misrepresentation, and other actionable misconduct arising from Defendants' sale of Coleman Company, Inc. ("Coleman") to Sunbeam Corporation ("Sunbeam") in March 1998. In the course of these transactions, Defendants provided Sunbeam and its lenders with a series of false information about the "synergies" that Sunbeam could expect to achieve from the combination of Sunbeam and Coleman. Defendant's fraudulent synergy projections caused Sunbeam to pay a higher price to acquire Coleman and consequently caused Sunbeam's lenders (including MSSF) to make larger loans to finance the acquisition. When Sunbeam declared bankruptcy in February 2001,

MSSF suffered hundreds of millions of dollars in damages when Sunbeam defaulted on acquisition-related loans.

2. The inflated price that Sunbeam agreed to pay for Coleman ($2.2 billion) resulted from Defendants' misrepresentations of the annual synergies that Sunbeam would achieve from the acquisition. During the negotiations that led to the pricing of the deal, Defendants provided Sunbeam's financial team with a detailed written schedule identifying 15 different areas of synergies between Sunbeam and Coleman and representing that the acquisition would result in post-closing synergies totaling $150.5 million per year. Defendants affirmed these fraudulent synergy figures through additional oral representations to Sunbeam, its agents, and its financial advisors. Through these fraudulently inflated synergy projections, Defendants hoped to make Coleman — a money-losing enterprise — an attractive target that could command a price substantially above market value.

3. Defendants foisted their fraudulent synergy numbers on virtually everyone associated with the acquisition, including Sunbeam, Sunbeam's shareholders, Sunbeam's financial advisors, Sunbeam's accountants and (especially) Sunbeam's lenders, who relied on the inflated synergy numbers in financing the acquisition at the Defendants' fraudulently inflated price. Indeed, Coleman's $2.2 billion purchase price was the proximate result of Defendants' grossly false representations about annual post-closing synergies. To finance the acquisition at this price, Sunbeam sought $1.7 billion in secured loans from MSSF and other lending institutions, including First Union National Bank ("First Union") and Bank of America National Trust ("Bank of America"). Accordingly, in March 1998, MSSF loaned Sunbeam approximately $680 million to be used for the acquisition. First Union loaned Sunbeam approximately $510 million. And Bank of America loaned Sunbeam approximately $510 million. The amounts of these loans relate directly to the $2.2 billion price that Sunbeam agreed to pay for Coleman.

4. Sunbeam has been unable to repay its $680 million loan from MSSF. On February 6, 2001, Sunbeam and several of its subsidiaries filed petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of

New York. As a result of the bankruptcy, MSSF's $680 million loan to Sunbeam was discharged in full. In exchange, as part of the court-approved reorganization plan, MSSF received Sunbeam stock valued at a fraction of the original loan.

5. MSSF now knows that the synergy figures provided by Defendants during the negotiations were grossly overstated. Documents and deposition testimony from Sunbeam's bankruptcy proceeding has confirmed that, although Defendants were representing annual synergy figures of more than $150 million, even *lower* synergy figures — prepared by Sunbeam and its management — were thought by Coleman to be "fictional." Yet it was Defendants' ***higher*** figures that caused Sunbeam to pay a fraudulently inflated price for Coleman, increased the amount of money Sunbeam was required to borrow from MSSF, and increased the damages suffered by MSSF when Sunbeam was unable to repay the loan. Because of these and other injuries suffered by MSSF as a result of Defendants' wrongful conduct, MSSF seeks compensatory damages of several hundred million dollars. In addition, MSSF reserves the right to seek leave to amend its complaint pursuant to Fla. Stat. § 768.72 to assert claims for recovery of punitive damages.

THE PARTIES AND OTHER RELEVANT ENTITIES

6. Plaintiff Morgan Stanley Senior Funding, Inc. ("MSSF") is a financial services company that provides credit services to its clients. In 1998, MSSF entered into a credit agreement with Sunbeam under which MSSF agreed to provide senior secured financing to Sunbeam in connection with Sunbeam's acquisition of Coleman and three smaller competitors. Pursuant to the credit agreement, Sunbeam borrowed $680 million from MSSF, with the borrowings used by Sunbeam to fund certain costs relating to the acquisitions. MSSF is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York.

7. Defendant MacAndrews and Forbes Holdings, Inc. ("MAFCO") is a global investment firm owned and operated by financier Ronald O. Perelman ("Perelman"). Through

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its various subsidiaries and affiliates, MAFCO owns and/or controls a number of multi-billion dollar global corporations, including Revlon, Inc., the international consumer cosmetics company. Prior to March 30, 1998, MAFCO, through its wholly-owned subsidiary Coleman (Parent) Holdings, Inc., owned approximately 81% of Coleman. Representatives from MAFCO directly participated in the fraud alleged in this Complaint, providing Sunbeam and its financial team with false and misleading information regarding Coleman's fair acquisition value. MAFCO is a Delaware corporation, with its principal place of business in New York.

8. Defendant Coleman (Parent) Holdings Inc. ("Coleman-Parent"") is a wholly-owned subsidiary of Defendant MAFCO. Prior to March 30, 1998, Coleman-Parent owned 44,067,520 shares (or approximately 82%) Coleman. Acting on behalf of and in concert with Defendant MAFCO, representatives of Coleman-Parent provided Sunbeam and its financial team with false and misleading information regarding Coleman's fair acquisition value. Coleman-Parent is a Delaware corporation, with its principal place of business in New York.

9. Coleman Company, Inc. ("Coleman") is a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market. On March 30, 1998, Sunbeam, through a wholly owned subsidiary, acquired approximately 81% of the then outstanding shares of Coleman stock from Defendant Coleman-Parent. Coleman is a Delaware corporation, with its principal place of business in Kansas.

10. Sunbeam Corporation ("Sunbeam"), through its operating subsidiaries and affiliates, manufactures, markets, and distributes durable household and outdoor leisure consumer products through mass-market and other consumer channels. In 1998, Sunbeam purchased Coleman-Parent's controlling interest in Coleman for $2.2 billion. Sunbeam is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Boca Raton, Florida. On February 6, 2001, Sunbeam and several of its affiliates filed a petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. Sunbeam has since emerged from bankruptcy and now operates under the name American Household.

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11. Morgan Stanley & Co. Incorporated ("MS & Co.") is a financial services firm that engages in underwriting, investment banking, financial advisory services, securities sales, and trading and research. In late 1997 and early 1998, MS & Co. assisted Sunbeam in identifying potential acquisition targets, and served as Sunbeam's financial advisor with respect to certain aspects of Sunbeam's acquisitions of Coleman, Signature Brands, and First Alert. MS & Co. also served as the underwriter of a $750 million offering of convertible notes that Sunbeam used to finance these acquisitions. MS & Co. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York.

JURISDICTION AND VENUE

12. This Court has jurisdiction over the subject matter of this action pursuant to Fla. Stat. § 26.012(2)(a) because Plaintiff seeks damages in excess of $15,000.00 exclusive of interest, costs and attorneys' fees.

13. This Court has personal jurisdiction over Defendants pursuant to Fla. Stat. § 48.193(2) because Defendants engage in substantial business activities in the State of Florida. Additionally, this Court has personal jurisdiction over Defendants pursuant to Fla. Stat. § 48.193(1)(a) because the cause of action arises out of Defendants' activities in the State.

14. Venue is proper in this Court pursuant to Fla. Stat. § 47.051.

FACTUAL BACKGROUND

Sunbeam Explores A Potential Acquisition Of Coleman

15. In mid-1997, as a part of a restructuring campaign directed by Sunbeam Chief Executive Officer Albert Dunlap, Sunbeam engaged MS & Co. to advise it with respect to a possible sale of its core businesses and / or the initiation of one or more major acquisitions. MS & Co. contacted at least ten potential bidders for Sunbeam but was unable to identify a potential buyer for the company. In the fall of 1997, finding no potential buyers, Sunbeam focused its strategy on acquisitions.

16. MS & Co. quickly identified Coleman as one of three competitors interested in being acquired by Sunbeam. At the time, Coleman was a market-leading durable consumer products company, with separate geographic presence, product lines and brand names. As such, Coleman appeared to offer Sunbeam an opportunity to consolidate the industries in which it competed and leverage the strength of dominant brand names. The other targeted competitors were Signature Brands USA, Inc. ("Signature Brands") and First Alert, Inc ("First Alert"). Signature Brands and First Alert also offered value to Sunbeam, though substantially less than Coleman, which became the focal point of Sunbeam's acquisition strategy.

Defendants Falsely Claim $150.5 Million In Synergies From The Proposed Acquisition

17. The period between September 1997 and March 1998 was critical to assessing the fair acquisition value of Coleman. Due diligence revealed that Coleman suffered net losses of $2.5 million in fiscal-year 1997. Thus, Sunbeam's management concluded that Sunbeam should acquire Coleman only if the acquisition would result in significant "synergies," *i.e.*, post-acquisition gains through increased revenue and/or decreased costs, to offset Coleman's net losses. Sunbeam's management also concluded that any premium paid to acquire Coleman should correlate with annual synergy calculations. Defendants similarly understood that the terms of any proposed transaction would largely revolve around these annual synergy figures.

18. Throughout the negotiations for the Coleman acquisition, approximately 81% of Coleman was owned and controlled by Defendant MAFCO, through its wholly-owned subsidiary Coleman-Parent. Defendants' agents and representatives thus participated directly in the fraud and misrepresentations alleged in this Complaint by, among other things, providing Sunbeam and its financial team with false and misleading information regarding Coleman's fair acquisition value. Defendants' agents and representatives participated in the meetings and discussions which led to Sunbeam acquiring Coleman for $2.2 billion.

19. At all times during the negotiations and due diligence associated with Sunbeam's proposed acquisition of Coleman, Defendants knew or should have known that, unless the proposed acquisition of Coleman would create substantial synergies, Sunbeam would either refuse to acquire Coleman or insist on paying significantly less for Coleman than what Defendants expected to receive. The Defendants thus embarked on a concerted scheme to convince Sunbeam and its financial team that most, if not all, of Coleman's financial difficulties could be offset by merging its operations with those of Sunbeam. Defendants knew such representations would vastly (albeit fraudulently) increase Coleman's purported acquisition value.

20. Indeed, annual synergy figures are critical to evaluating the fair market value of any proposed merger or acquisition of the scale involved here. The higher the annual synergy figure, the higher the value (and price) of the targeted company, in this case Coleman. Defendants knew that by inflating Coleman's annual synergy calculations they could sell the company substantially above its fair market value and thus receive a windfall premium for their shares of Coleman stock. To be sure, where a targeted company represents post-acquisition synergies of $150 million ***per year*** its acquisition value necessarily increases exponentially on the understanding that future cash flow and earnings will adequately compensate any premium paid above the current market price. In this case, on information and belief, Defendants further knew and intended that Coleman's premium price would result (and did result) in enormous windfall payouts to top Coleman officials.

21. To effectuate Defendants' scheme and secure these lucrative benefits for Defendants' and Coleman's senior management, Defendants made a series of false statements to Sunbeam and its financial team (including MS & Co.) regarding the post-closing synergies that Sunbeam would achieve annually if it proceeded with the proposed acquisition of Coleman. Specifically, throughout the negotiations, Defendants repeatedly and falsely represented that the acquisition would result in post-closing synergies of $150.5 million per year. Defendants

presented these fraudulent synergy representations to Sunbeam and MS & Co. verbally and in writing during the negotiations leading up to the acquisition.

Defendants Supply Sunbeam With A Fraudulent Written Schedule Of Purported Synergies

22. Recognizing the importance of synergy figures to the proposed acquisition, Defendants proceeded with their plan to provide Sunbeam with false and inflated synergy figures at the outset — or very near the outset — of the parties' substantive discussions.

23. On or about December 12, 1997, representatives of Sunbeam and Coleman held a meeting at MAFCO's offices in New York. The purpose of the meeting was to discuss the proposed acquisition of Coleman by Sunbeam, and the benefits that would accrue to Sunbeam if the deal went forward. This meeting was attended by, among others, Jerry W. Levin, Coleman's Chairman and Chief Executive Officer, Joseph P. Page, Coleman's Chief Financial Officer, and Paul E. Shapiro, Coleman's General Counsel. Representatives of Sunbeam included Russell A. Kersh, Sunbeam's Chief Financial Officer, David C. Fannin, Sunbeam's Chief Legal Officer, and Peter Langerman, a director of Sunbeam and representative of its then-largest shareholder, Franklin Mutual Advisors, Inc. Coleman's financial advisors were also present for the meeting.

24. During the December 12, 1997 meeting, Defendants provided Sunbeam with a detailed written schedule identifying 15 different areas of synergies between Sunbeam and Coleman. This schedule plainly represented that the acquisition would result in post-closing synergies totaling $150.5 million per year. To maintain the credibility of this representation, Defendants' written schedule included detailed synergy figures for each of the 15 areas of purported synergies, and a detailed "build-up" of these 15 areas totaling $150.5 million:

#	Purported Synergy	Amount
1	"Transfer BBQ License"	$13 million
2	"Synergies re CG BBQ"	$1.5 million
3	"Corporate Staff"	$15 million
4	"International Group Staff"	$2 million
5	"Latin America Staff"	$2 million
6	"[Coleman] Europe Network Sells [Sunbeam] Products"	$20 million
7	"[Coleman] Japan Network Sells [Sunbeam] Products"	$5 million
8	"Factory Outlet Staff"	$1 million
9	"S Catalytic Appliance Line	$ 2 million
10	"Consolidate Division HQ To [Del Ray Beach, FL]"	$33 million
11	"Consolidate Domestic Salesforces"	$20 million
12	"Eliminate $20 million Oracle Expense"	$6.5 million
13	"Additional $25M Writeoffs	$8.5 million
14	"Global Sourcing Raw Materials"	$10 million
15	"Consolidation Logistics & Warehousing"	$10 million
	Total:	$150.5 million Operating Income

A true and correct copy of the synergy schedule furnished by Defendants at the December 12, 1997 meeting is attached to the Complaint as Exhibit A.

25. In the course of the December 12, 1997 meeting, agents and representatives of the Defendants verbally supplemented and affirmed the synergy figures contained in this document by providing additional information and detail about each of the fifteen line-items. These verbal

representations purported to confirm the facts built into each figure and affirmed that the total calculation of $150.5 million was a fair and prudent estimate of synergies to be gained annually from Coleman's acquisition by Sunbeam.

26. In light of their substantial experience and expertise with mergers and acquisitions, Defendants knew and intended that Sunbeam and its financial team would rely on the figure in the written synergy schedule and the oral statements made at the December 12, 1997 meeting to assess Coleman's fair acquisition value. The factual basis for the amounts represented in Defendants' synergy schedule, moreover, was peculiarly within Defendants' knowledge. All parties involved in the Coleman transaction had the same understanding.

Defendants Repeat And Affirm Their Fraudulent Representations Regarding Synergies

27. As the negotiations for the acquisitions progressed, Defendants repeatedly and consistently vouched for the $150.5 million figure represented in their December 12, 1997 synergy schedule, as well as the factual basis from which that figure was purportedly derived. Defendants repeated these false synergy representations during negotiations leading up to the Coleman acquisition.

28. Specifically, on or about January 29, 1998, representatives of Sunbeam and Coleman held another meeting at MAFCO's offices in New York. The purpose of the meeting was to discuss the proposed acquisition of Coleman by Sunbeam, to update the parties' discussions of synergies from the December 12, 1997 meeting, and to discuss the benefits that would accrue to Sunbeam from the proposed acquisition of Coleman. Representatives from MS & Co. also attended the meeting on behalf of Sunbeam. Senior officials from the Defendants, including MAFCO executives James Maher and William Nesbitt, attended the meeting on behalf of Coleman.

29. During the January 29, 1998 meeting, Defendants and Sunbeam once again discussed synergies of the proposed acquisition. All parties in attendance understood that these

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figures were critical to any proposed deal, as well as to the fair acquisition value of Coleman. Once again, Defendants' agents and representatives discussed, affirmed, and ratified the synergy information contained in their December 12, 1997 schedule. Specifically, Defendants' agents and representatives affirmatively declared to both Sunbeam and MS & Co. that $150.5 million was the fair and prudent projection of annual synergies to be gained through Coleman's acquisition by Sunbeam.

Sunbeam Uses Defendants' Fraudulent Synergy Figures To Determine The Price It Would Pay For Coleman

30. Sunbeam and MS & Co. relied on Defendants' fraudulent $150 million synergy figure to assess Coleman's fair acquisition value. Indeed, as Defendants well understood from their experience in buying and selling dozens of multi-billion dollar companies, Coleman's acquisition value hinged on the assessment of synergies (the sum total of cut costs and increased revenue) to be gained from combining Coleman and Sunbeam's operations. Because the particular facts underlying Coleman's operations were within the peculiar knowledge of the Defendants, the Defendants' synergy figures became — as Defendants intended they would — a principal criterion for driving Coleman's acquisition price substantially above the then-market value, ultimately to the final purchase price of $2.2 billion.

31. Defendants knew their fraudulent synergy figures would be significant to inducing Sunbeam to purchase Coleman for $2.2 billion. Indeed, Defendants knew — as Coleman's former CEO has since confirmed — that Coleman's $2.2 billion acquisition price was inflated by more than $ 1 billion on account of Defendants' false statements. Defendants further knew — as Coleman's former CEO has since confirmed — that annual synergy gains following Coleman's acquisition by Sunbeam could not reach $50 to $75 million per year, let alone $150 million. Despite this knowledge, and with a specific intent to defraud, Defendants repeatedly and consistently ***doubled*** and/or ***tripled*** their estimated synergy figures in their representations to

Sunbeam and MS & Co. for the express purpose of establishing a premium price for Coleman that was *twice* what Defendants knew Coleman to be worth.

32. Defendants' fraudulent scheme culminated in March 1998, when Sunbeam, in direct reliance on Defendants' synergy figures and the economic modeling conducted with those figures built-in, agreed to purchase Coleman for what Defendants admit was a fraudulently inflated purchase price of $2.2 billion. Sunbeam thus agreed to pay Defendants $160 million in cash, to assume $584 million in Coleman-related debt, and to provide Defendants with 14,099,749 shares of Sunbeam stock. On the same day, Sunbeam also agreed to purchase Signature Brands and First Alert for approximately $300 million.

Morgan Stanley Senior Funding Relies On Defendants' False Representations In Extending Credit To Sunbeam

33. Sunbeam needed to raise approximately $2.3 billion to refinance existing debt and fund the acquisitions of Coleman, First Alert, and Signature Brands. To accomplish these financing objectives, Sunbeam's management elected to issue $500 million in subordinated convertible notes (an amount later increased to $750 million) (the "Convertible Note Offering") and enter into a new $2.0 billion senior credit agreement (later reduced to $1.7 billion) with secured lenders (the "Bank Facility"). MS & Co. served as the lead underwriter for the Convertible Note Offering. MSSF served as the Syndication Agent for the Bank Facility. MSSF also took the lead in coordinating the Bank Facility with First Union and Bank of America, Sunbeam's other secured lenders.

34. Defendants knew about and accepted these proposed financing arrangements. Specifically, Defendants' knew that the Coleman acquisition would not close unless Sunbeam secured the financing necessary to cover Coleman's acquisition price — a price Defendants knew to be inflated by more than $1 billion as a direct and foreseeable consequence of their false and misleading synergy representations. Indeed, Defendants made these representations with the expectation and intent that the information would be passed on to prospective lenders from whom Sunbeam would seek the capital necessary to finance the $2.2 billion purchase price.

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35. Accordingly, as is customary in any acquisition of the scale at issue here, the synergy figures utilized and relied upon by management of the principal companies and their financial advisors were provided to Plaintiff as the principal lender on the deal. Defendants' false and misleading synergy figures were thus provided to MSSF by representatives of Sunbeam and MS & Co. and relied upon by MSSF when it agreed to proceed with the Bank Facility. Sunbeam and MS & Co. also informed MSSF that Defendants had communicated the inflated synergy figures, and that the acquisition price for Coleman was driven by these synergy representations.

36. MSSF relied upon Defendants' false synergy representations in proceeding with the Bank Facility. To begin with, as would any lender engaged in a deal of this scale, MSSF looked to the synergy projections provided by Sunbeam and the Defendants to evaluate annual cash flow and to assess Sunbeam's ability, following the acquisition, to promptly pay interest and ultimately pay back the loan. MSSF also looked to Defendants' affirmative representations regarding $150.5 million synergies for "comfort" regarding Sunbeam's ability to achieve its own more conservative synergy projections. While Sunbeam and MSSF discounted Defendants' synergy figures by as much as a third, they continued to believe, based on the strength of Defendants' representations, that there was "upside" to their own synergy estimates, and that Sunbeam was likely to achieve even greater synergies than those included on their own conservative models. MSSF directly relied on this "upside" potential, noting the possibility of "upside" in its final analysis of the Bank Facility as a factor in moving forward with the loan.

37. Furthermore, Defendants' fraudulent synergy representations dramatically increased Sunbeam's borrowing requirements for the Bank Facility. According to MSSF's March 5, 1998 commitment letter confirming the Bank Facility, the purpose of the loan was "*to provide part of the financing required to consummate the Acquisition*, to refinance existing indebtedness, to pay related fees and expenses, and to finance ongoing working capital, permitted acquisitions and other general requirements of the Borrowers." But for having to finance the fraudulently inflated $2.2 billion purchase price, the Bank Facility either would not

have been necessary, or would have required a loan for hundreds of millions of dollars less than the $1.7 billion Sunbeam actually borrowed.

38. Defendants knew or should have known that MSSF was the principal participant in the Bank Facility, and that MSSF would be relying on the representations Defendants made to Sunbeam during the negotiations for the acquisition. Indeed, documents issued in connection with the Note Offering clearly stated that "[Sunbeam] is currently negotiating the terms of the New Credit Facility with a group of banks which [Sunbeam] expects will provide for borrowings by [Sunbeam] or one or more of its subsidiaries in the aggregate principal amount of $2.0 billion. *The New Credit Facility is being arranged by an affiliate of [Morgan Stanley].*"

39. Defendants also knew or should have known that MSSF and other lenders determined the terms of the Bank Facility in reliance on Defendants' intentionally misleading synergy calculations. Indeed, reasonable and professional lenders such as Plaintiff, Bank of America, and First Union would not have loaned over $1 billion dollars to any person or entity without strong assurance that their money would be returned. And Defendants, in their substantial experience negotiating multi-billion dollar mergers and acquisitions, understood that Sunbeam's $2.2 billion acquisition of Coleman made financial sense only on account of inflated post-acquisition synergy calculations, which Defendants knew to be false and misleading.

The Acquisition and Bank Facility Close

40. Sunbeam closed its acquisition of Coleman on March 30, 1998. On that date, Sunbeam, through a wholly owned subsidiary, acquired approximately 81% of the then outstanding shares of Coleman common stock from Defendants. These shares were acquired by Sunbeam in exchange for 14,099,749 shares of Sunbeam's common stock and approximately $160,000,000 in cash. In addition, Sunbeam assumed or repaid approximately $1,016,000,000 in debt belonging to Coleman and Coleman-Parent. Included in the repaid debt portion of the transaction was an immediate cash payment by Sunbeam to Coleman-Parent of $590 million. Sums in these amounts simply would not have been paid — and would have required

substantially less financing — but for the Defendants' false financial projections and materially misleading statements and omissions.

41. MSSF and Sunbeam closed the Bank Facility on March 31, 1998. In accordance with the terms of the Bank Facility, MSSF loaned Sunbeam $680 million in immediately available funds to be used for the acquisitions. First Union, which served as the Administrative Agent for the Bank Facility, loaned Sunbeam an additional $510 million. Bank of America, which served as the Documentation Agent for the Bank Facility, loaned Sunbeam an additional $510 million. The amounts of these loans correlated directly to the $2.2 billion price that Sunbeam agreed to pay for Coleman as a result of Defendants' fraudulent synergy representations.

Sunbeam Declares Bankruptcy, Defendants' Fraudulent Scheme Is Revealed, And MSSF Loses Hundreds Of Millions Of Dollars

42. On February 6, 2001, Sunbeam and several of its subsidiaries filed petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York.

43. In the course of Sunbeam's bankruptcy proceeding, a number of key figures involved in negotiating and financing the transaction provided sworn deposition testimony. These figures included Jerry Levin, the former Chief Executive Officer of Coleman, who was deposed in June 2001. Mr. Levin testified that, in his opinion, Sunbeam overpaid by approximately $1.1 billion for Coleman, and that the acquisition value for Coleman never exceeded $1.2 billion. Mr. Levin also reported that, in his opinion, Sunbeam's synergy models, which were based on synergy numbers that were even ***lower*** than the $150 million in annual synergies promised by Defendants, were "fictional" and could not be realistically achieved.

44. Sunbeam emerged from bankruptcy with a complete discharge of its prior debts, including MSSF's $680 million loan. In exchange for this discharge, and as part of the court-approved reorganization plan, MSSF received Sunbeam stock valued at a fraction of its original

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$680 million loan. Thus, MSSF has suffered hundreds of millions of dollars in damages as a result of Defendants' fraudulent scheme.

45. All conditions precedent to the maintenance of this action have occurred or have been waived.

COUNT ONE
(Fraud)

46. Paragraphs 1 through 45 are repeated and realleged as if set forth herein.

47. Repeatedly and on several different occasions, Defendants provided Sunbeam and its financial team with false information regarding the synergies that Sunbeam would achieve from its acquisition of Coleman. Defendants also omitted material facts about Coleman's business required to make the synergy information they provided to Sunbeam and its financial team not misleading.

48. Defendants' fraudulent representations and material misstatements include, but are not limited to, a detailed written schedule identifying 15 different areas of synergies between Sunbeam and Coleman — and representing that the acquisition would result in post-closing synergies totaling $150.5 million per year. Defendants repeatedly reaffirmed this false and misleading synergy information through a series of oral statements and representations made to Sunbeam officials and Sunbeam's financial advisers, including advisors at MS & Co. Defendants made these false statements and representations on several different occasions, including (at a minimum) at two meetings held in MAFCO's New York offices — on December 12, 1997, and on January 29, 1998.

49. Defendants knew that the false synergy information they provided to Sunbeam, and their intentional omission of material facts about the synergies, would be critical to Sunbeam's assessment of Coleman's fair acquisition value. Defendants also knew that the false synergy information they provided to Sunbeam, and their intentional omission of material facts about the synergies, would artificially inflate the acquisition price that Sunbeam was willing to

pay for Coleman and — in turn — the amount of the financing that Sunbeam would need to arrange in order to proceed with the acquisition.

50. Defendants knew that the $150 million annual synergy figures they provided to Sunbeam and MS & Co. were materially false and materially misleading. Defendants further knew and intended that this false and misleading figure would grossly inflate Coleman's acquisition price. All facts underlying the $150 million synergy figures were peculiarly within Defendants' knowledge and willfully misrepresented to Sunbeam and MS & Co. No other party to the transaction — neither Sunbeam, MS & Co., nor MSSF — had the means or ability to know or determine that Defendants' synergy figures were grossly and intentionally inflated.

51. Defendants knew or should have known that Sunbeam and MS & Co. would communicate Defendants' fraudulent misrepresentations and omissions regarding acquisition synergies to Sunbeam's lenders, including MSSF. In fact, Sunbeam and MS & Co. did communicate Defendants' fraudulent misrepresentations and omissions regarding acquisition synergies to Sunbeam's lenders, including MSSF.

52. Defendants knew or should have known that MSSF would justifiably rely upon Defendants' misrepresentations and risk hundreds of millions of dollars for the express purpose of facilitating Sunbeam's purchase of Coleman for $2.2 billion — a price that was artificially inflated by Defendants' fraud, and a price that was roughly double what Defendants' knew Coleman to be worth. In fact, MSSF did risk hundreds of millions of dollars in connection with its loan to Sunbeam for the purpose of acquiring Coleman for the fraudulently inflated price of $2.2 billion.

53. Through their intentional false statements, Defendants defrauded MSSF. Defendants also defrauded MSSF by omitting material facts required to make their synergy statements not misleading.

54. As a direct and proximate result of defendants' fraud, Sunbeam required — and MSSF provided — $680 million in secured lending to finance the acquisition. Sunbeam would not have required such a large loan from MSSF — and MSSF would not have made such a large

loan to Sunbeam — but for Defendants' intentionally false and misleading representations, misstatements and omissions.

55. As a result of Defendants' fraud, MSSF suffered hundreds of millions of dollars in damages when Sunbeam was unable to repay the Bank Facility in full.

COUNT TWO
(Negligent Misrepresentation)

56. Paragraphs 1 through 55 are repeated and realleged as if set forth herein.

57. Repeatedly and on several different occasions, Defendants provided Sunbeam and its financial team with false information regarding the synergies that Sunbeam would achieve from its acquisition of Coleman. Defendants also omitted material facts about Coleman's business required to make the synergy information they provided to Sunbeam and its financial team not misleading.

58. Defendants' negligent representations and material misstatements include, but are not limited to, a detailed written schedule identifying 15 different areas of synergies between Sunbeam and Coleman and representing that the acquisition would result in post-closing synergies totaling $150.5 million per year. Defendants repeatedly reaffirmed this false and misleading synergy information through a series of oral statements and representations made to Sunbeam officials and Sunbeam's financial advisers, including advisors at MS & Co. Defendants made these false statements and representations on several different occasions, including (at a minimum) at two meetings held in MAFCO's New York offices on December 12, 1997, and on January 29, 1998.

59. Defendants knew or should have known that the false synergy information they provided to Sunbeam, and their intentional omission of material facts about that information, would be critical to Sunbeam's assessment of Coleman's fair acquisition value. Defendants also knew or should have known that the false synergy information they provided to Sunbeam, and the negligent and/or reckless omission of material facts about that information, would artificially

inflate the acquisition price that Sunbeam was willing to pay for Coleman and in turn, the amount of the financing that Sunbeam would need to arrange in order to proceed with the acquisition.

60. Defendants knew or should have known that the $150 million annual synergy figures they provided to Sunbeam and MS & Co. were materially false and materially misleading. Defendants further knew or should have known that this false and misleading figure would inflate Coleman's acquisition price. The false and misleading representations and the material omissions contained in the information provided to Sunbeam and its financial team demonstrate (at the very least) that Defendants failed to exercise reasonable care in obtaining or communicating such material information, or in ascertaining the truth and accuracy of the representations that they made.

61. Defendants knew or should have known that Sunbeam and MS & Co. would communicate Defendants' material misrepresentations and omissions regarding acquisition synergies to Sunbeam's lenders, including MSSF. In fact, Sunbeam and MS & Co. did communicate Defendants' material misrepresentations and omissions regarding acquisition synergies to Sunbeam's lenders, including MSSF.

62. Defendants further knew or should have known that MSSF would risk hundreds of millions of dollars for the express purpose of facilitating Sunbeam's purchase of Coleman for $2.2 billion — a price that was artificially inflated by Defendants' material misrepresentations, and a price that was roughly double what Defendants' knew Coleman to be worth. In fact, MSSF did risk hundreds of millions of dollars in connection with its loan to Sunbeam for the purpose of acquiring Coleman for the inflated price of $2.2 billion.

63. These circumstances imposed a special relationship between the Defendants and MSSF and imposed a duty of care on Defendants to provide accurate information concerning Coleman's financial health and synergy profile.

64. Defendants repeatedly and consistently breached this duty through their reckless and/or negligent misrepresentations. Defendants further breached this duty through their

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reckless and/or negligent omission of material facts required to make their synergy statements not misleading.

65. As a direct and proximate result of defendants' misrepresentations and material omissions Sunbeam required — and MSSF provided — $680 million in secured lending to finance the acquisition. Sunbeam would not have required such a large loan from MSSF — and MSSF would not have made such a large loan to Sunbeam — but for Defendants' misrepresentations and material omissions.

66. As a result of Defendants' misrepresentations and material omissions, MSSF suffered hundreds of millions of dollars in damages when Sunbeam was unable to repay the Bank Facility in full.

PRAYER OF RELIEF

WHEREFORE, MSSF requests this Court to provide the following relief:

(a) Compensatory damages in an amount to be determined at trial;

(b) Disgorgement of all gains, profits, and advantages obtained by Defendants as a result of Defendants' fraudulent conduct;

(c) Attorneys' fees and costs incurred in this and related litigation;

(d) Pre-judgment interest; and

(e) All other relief this Court may deem just and appropriate.

(f) MSSF expressly reserves the right to seek leave to amend its complaint pursuant to Fla. Stat. § 768.72 to assert claims for punitive damages.

1. TRANSFER BBQ LICENSE / Char Broil			
	$75 M SALES @ 20%	=	$15M
	LOST ROYALTIES		2M
			$13M
2. SYNERGIES RE CG BBQ / Euro sales			
	$15M SALES @ 10%	=	$ 1.5M
3. CORPORATE STAFF [Allocate to all businesses]			$15M
4. INTERNATIONAL GROUP STAFF [Same]			$ 2M
5. LATIN AMERICA STAFF			$ 2M
6. C EUROPE NETWORK SELLS S PRODUCTS (Keep Hale, change yours.)			
Do 100 in Euro.	$100M SALES @ 20%	=	$20M
7. C JAPAN NETWORK SELLS S PRODUCTS			
Do 100 in Japan	$25M SALES @ 20%	=	$ 5M
8. FACTORY OUTLET STAFF			$ 1M
9. S CATALYTIC APPLIANCE LINE			
	$10M SALES @ 20%	=	$ 2M
10. CONSOLIDATE DIVISION HQ TO DBF			
• EASTPAK – Boston			$ 3M
• POWERMATE – Omaha			$ 5M
• COR – Wichita			$25M
11. CONSOLIDATE DOMESTIC SALESFORCES			$20M
12. ELIMINATE $20M ORACLE EXPENSE (3 YEAR IMPACT) → Have both work on systems.			$ 6.5M
13. ADDITIONAL $25M WRITEOFFS (3 YEAR IMPACT)			$ 8.5M
14. GLOBAL SOURCING RAW MATERIALS			$10M
15. CONSOLIDATION LOGISTICS & WAREHOUSING			$10M
TOTAL IDEAS			$150.5M OPERATING INCOME

SB 089524
Confidential Treatment
Under FOIA Requested

JURY DEMAND

67. MSSF requests a trial by jury on any and all issues raised by this Complaint which are triable of right by a jury.

Dated: May 12, 2003 Respectfully Submitted,

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B

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

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs. CASE NO: CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.
_____/

NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE

Plaintiff Morgan Stanley Senior Funding, Inc., by and through its undersigned counsel, and pursuant to Fla.R.Civ.P. 1.420 hereby files this Notice of Voluntary Dismissal without Prejudice on behalf of Plaintiff Morgan Stanley Senior Funding, Inc. against Defendants MacAndrews & Forbes Holdings Inc. and Coleman (Parent) Holdings Inc. in the above Case No: CA 03-5165 AI. This notice applies to Case No. CA 03-5165 AI only.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 22ND day of October, 2004.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiffs,

CASE NO: 2003 CA 005045 AI

vs.

MORGAN STANLEY & CO., INC.
Defendant.
_____/

NOTICE OF FILING PLEADING UNDER SEAL

COLEMAN (PARENT) HOLDINGS INC. hereby gives notice of the filing of COLEMAN (PARENT) HOLDINGS INC.'S Response to Morgan Stanley's Motion in Limine No. 10 to Exclude Restatement Interview Notes of Non-Party Arthur Andersen and Non-Party Skadden, Filed under Seal on this date.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 18th day of Jan, 2005.

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Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Notice Of Filing Pleading Under Seal
Case No.: 2003 CA 005045 AI

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

MORGAN STANLEY'S RESPONSE TO CPH MOTION IN LIMINE NO. 2 TO BAR EVIDENCE AND ARGUMENT CONCERNING THE WEALTH, NET WORTH, INCOME OR FINANCIAL STATUS OF PERELMAN, GITTIS, OR ANY OTHER MAFCO, CPH OR COLEMAN EMPLOYEES [SIC]

CPH erroneously contends that Morgan Stanley intends to introduce evidence regarding the finances of MAFCO, CPH or Coleman employees to prejudice or mislead the jury. Morgan Stanley does not intend to do so. Morgan Stanley does not dispute that evidence regarding the personal finances of the individuals at issue would not be relevant simply to show that they are millionaires, multi-millionaires, or, even billionaires (Ron Perelman). Morgan Stanley agrees that it will offer evidence relating to these individuals' financial status only when the evidence is relevant to other issues in the case, which it is.

First, such evidence is relevant to show their financial sophistication, which is an issue for the jury in this case. Perelman put his own sophistication and that of his affiliates and representatives squarely at issue in this action when he filed the Complaint against Morgan Stanley. *See DynCorp v. GTE Corp.*, 215 F. Supp. 2d 308, 329 (S.D.N.Y. 2002) (The "special relationship of trust" or confidence necessary to sustain a reliance claim "generally does not exist between sophisticated commercial entities entering into arms-length business transactions."); Aug. 11, 2004 Order on Application of NY Law at 5 (quoting *Schumaker v. Mather*, 133 N.Y.

590, 596 (1892) ("Under New York law, reliance on a fraudulent misrepresentation is not reasonable if the recipient 'has the means available to him of knowing, by the exercise of ordinary intelligence, the truth ....'").

Second, the evidence is relevant to show how CPH came into possession of the Offering Memorandum. For example, according to CPH, William Nesbitt (Perelman's chief analyst and a senior vice-president at MacAndrews & Forbes Holdings Inc.) attended the March 18, 1998 Sunbeam debenture "road show" in New York City and received a copy of the Sunbeam Offering Memorandum. Under 17 C.F.R. § 230.144A(7)(a)(1)(i), only investors that own and invest on a discretionary basis over $100 million in securities could participate in Sunbeam's Rule 144(a) offering. In short, the debenture offering was not a "public offering" of registered securities. It was just the opposite; an offering of "restricted securities" to sophisticated investors. Accordingly, this was not a situation where CPH could have attended the road show solely by virtue of its relationship with Morgan Stanley or as a party to the merger transactions — CPH still had to qualify as a sophisticated investor based on net worth. Thus, Ron Perelman's and his companies' net worth are relevant to explain why Nesbitt was able to get the Offering Memorandum for the debentures, the offering of which is at the heart of CPH's fraud claims in this case.

Third, the evidence is clearly relevant to CPH's claims against Morgan Stanley based on Sunbeam's debenture offering which was underwritten by Morgan Stanley (the "Initial Purchaser"). CPH and its experts (Horton) contend the CPH was entitled to rely upon the debenture offering and the related Offering Memorandum (MS 166), even though CPH did not purchase and debentures. (CPH's contentions are set out in detail in Morgan Stanley's Response to CPH Motion in Limine No. 10.) Moreover, the Offering Memorandum explains in no

uncertain terms that sophisticated investors such as Messrs. Perelman and Gittis have no right to rely on Morgan Stanley — the "Initial Purchaser" — but instead are required to do their own investigation. The Offering Memorandum of the Debentures from Sunbeam is pellucid on this point.

Offering Memorandum ***Strictly Confidential***

$2,014,000,000
Sunbeam

Zero Coupon Convertible Senior Subordinated Debentures Due 2018

* * * *

This Offering Memorandum is highly confidential and has been prepared by the Company [Sunbeam] solely for use in connection with the proposed private placement of the Debentures described herein.... This Offering Memorandum is personal to each offeree and does not constitute an offer to any other person or to the public generally to subscribe for or otherwise acquire the Debentures or the Common Stock issuable upon conversion of the Debentures. Distribution of this Offering Memorandum to any person other than the offeree and those persons, if any, retained to advise such offeree with respect thereto is unauthorized, and any disclosure of any of its contents without the prior written consent of the Company is prohibited.

* * * *

Each person receiving this Offering Memorandum acknowledges that (i) such person has been afforded an opportunity to request from the Company and to review all additional information considered by it to be necessary to verify the accuracy of or to supplement the information herein, (ii) ***it has not relied on the Initial Purchaser [Morgan Stanley] or any person affiliated with the Initial Purchaser in connection with its investigation of the accuracy of such information or its investment decision and*** (iii) no person has been authorized to give any information or to make any representation concerning the Company or the Debentures or the Common Stock issuable upon conversion of the Debentures offered hereby other than as contained or incorporated by reference herein and information given by duly authorized officers and employees of the Company in connection with investors' examination of the Company and the terms of the offering, and, if given or made, such other information or representation should not be relied upon as having been authorized by the Company or the Initial Purchaser.

No representation or warranty, express or implied, is made as to the accuracy or completeness of the information contained or incorporated by

> reference herein and nothing contained in this Offering Memorandum, or incorporated by reference herein, is, or shall be relied upon as, a promise or representation. ***The Initial Purchaser assumes no responsibility for the accuracy or completeness of such information.***

(MS 166 at 2 (Mar. 19, 1998 Offering Memorandum) (emphasis added) (Ex. 1).)

WHEREFORE, Morgan Stanley agrees to CPH's Motion In Limine No. 2, to the extent the motion requests that Morgan Stanley not be permitted to offer evidence of an individual's or company's financial status unless the evidence is relevant on a matter in controversy, such as the plaintiff's status as sophisticated investors and the debenture offering. Morgan Stanley reserves its right to present such evidence in instances where it is specifically relevant to a fact at issue in the case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 18th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

MORGAN STANLEY'S RESPONSE TO CPH'S MOTION IN LIMINE NO. 3 TO EXCLUDE EVIDENCE AND ARGUMENT OF MORGAN STANLEY'S LOSSES IN THE TRANSACTION BETWEEN COLEMAN COMPANY INC. AND SUNBEAM

CPH claims that Morgan Stanley engaged in a massive fraud on CPH and Morgan Stanley's own clients (over $70 million in debenture purchasers) to earn $30 million in investment banking fees and "retain" Sunbeam as a client. At the same time, CPH seeks to exclude evidence and argument about the $680 million that Morgan Stanley ***lost*** after loaning money to Sunbeam as part of the Coleman Transaction. Put simply, CPH contends that it should be able to argue that Morgan Stanley defrauded CPH to earn $30 million, but keep from the jury that the cost was a $680 million loan to Sunbeam that went promptly into default. Unable to dispute this economic absurdity, CPH would have this Court bar the jury from hearing this evidence. Under clearly established New York law, the size of Morgan Stanley's loss is not only relevant — the loss is a key fact that must be considered in determining whether Morgan Stanley had the requisite intent to commit fraud on CPH.

CPH offers three arguments in support of its motion: (1) evidence of Morgan Stanley's loss is irrelevant; (2) Morgan Stanley is judicially estopped from claiming that it suffered a loss; and (3) evidence of Morgan Stanley's loss would create unfair prejudice, confuse the issues, and mislead the jury. None of the arguments withstand scrutiny.

defense against CPH's fraud claim because under New York law such evidence ***conclusively demonstrates*** that the element of scienter has not been established.

5. Evidence that conclusively defeats and element of the alleged offense is the very definition of "evidence tending to prove or disprove a material fact." Fla. Evid. Code. § 90.401.

II. Morgan Stanley Is Not Judicially Estopped From Claiming That It Suffered A Loss.

6. CPH next contends that Morgan Stanley is judicially estopped from arguing that it suffered a loss when Sunbeam went bankrupt. In support of its contention, CPH points to pleadings in the Sunbeam bankruptcy court in which Morgan Stanley Senior Funding ("MSSF"), an affiliate of Morgan Stanley & Co., asserted that it was a legally distinct entity from Morgan Stanley & Co. and, as a result, ought not have Morgan Stanley & Co.'s actions imputed to it.

7. CPH misstates the law of judicial estoppel and selectively quotes the authorities upon which it relies. Those authorities clearly show that the requirements for judicial estoppel have not been met here. The Florida Supreme Court case cited by CPH, *Chase & Co. v. Little*, 156 So. 609, 610 (Fla. 1934), states that "[i]n order to work an estoppel the position assumed in the former trial must have been successfully maintained. In proceedings terminating in a judgment, ***the positions must be clearly inconsistent, the parties must be the same and the same questions must be involved.***" (Emphasis added; internal quotations & citation omitted.)

8. The parties to the bankruptcy proceeding are not the same as those in this case. Moreover, arguing that the actions of Morgan Stanley & Co. Incorporated ought not be imputed to MSSF is not clearly inconsistent with contending that the losses of MSSF ultimately are reflected in Morgan Stanley's consolidated financial statement. Nor are the same questions involved here as were raised in the bankruptcy proceeding.

9. Moreover, CPH — a shell corporation within the "family" of MAFCO holding companies — should not be heard to argue that the losses suffered by an affiliate within the

Morgan Stanley "family" of companies are irrelevant to Morgan Stanley & Co. Incorporated. CPH's own punitive damage claim relies on the consolidated financial statements of Morgan Stanley ***as a whole***, rather than the Morgan Stanley entity against which CPH asserts its claims. CPH cannot play on both sides of the street at the same time.

III. Evidence Of Morgan Stanley's Losses Is Not Unfairly Prejudicial.

10. CPH's final argument in support of its motion is that evidence of Morgan Stanley's losses will "create unfair prejudice, confuse the issues, and mislead the jury." (CPH MIL No. 3 at 3.) The introduction of evidence and testimony about Morgan Stanley's losses will do none of these things. Indeed, the argument borders on silly.

11. Certainly, evidence that Morgan Stanley lost hundreds of millions of dollars is prejudicial to CPH — indeed it's fatal to its fraud claim. But to be excluded, the disputed evidence must be unfairly prejudicial. *See Borden, Inc. v. Florida E. Coast Ry. Co.*, 772 F.2d 750, 756 (11th Cir. 1985) ("[U]nfair prejudice ... cannot be equated with evidence that is simply adverse to the opposing party.") There is nothing unfair about introducing evidence that, under well established New York law, conclusively proves that Morgan Stanley did not have the requisite scienter for fraud.

12. Nor will the evidence of Morgan Stanley's losses confuse the issues or mislead the jury. Indeed, Morgan Stanley's losses go to what is perhaps the central issue in this case: Morgan Stanley's knowledge — rather, its ***lack*** of knowledge — about Sunbeam's fraud.

WHEREFORE, Morgan Stanley respectfully requests that this Court deny CPH's Motion in Limine No. 3.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 18th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.
MORGAN STANLEY & CO. INCORPORATED,
Defendant.

CASE NO: CA 03-5045 AI

MORGAN STANLEY'S RESPONSE TO CPH'S MOTION IN LIMINE NO. 4 TO BAR EVIDENCE AND ARGUMENT CONCERNING MONICA LEWINSKY, WEBSTER HUBBELL, THE GRAND JURY INVESTIGATIONS REGARDING LEWINSKY AND HUBBELL, AND THE REPORT OF THE OFFICE OF THE INDEPENDENT COUNSEL

Morgan Stanley respectfully opposes CPH's attempt to preclude Morgan Stanley from introducing evidence or argument at trial concerning Ronald O. Perelman's dealings with Monica Lewinsky or Webster Hubbell, as well as the investigation of those dealings by the Office of the Independent Counsel ("OIC").

One of Morgan Stanley's principal defenses in this action is that CPH had no legal right to rely on Morgan Stanley's due diligence efforts — either on its own behalf or as an underwriter for the Sunbeam's debenture offering under rule 144A of the Securities Act of 1933. To establish this defense, Morgan Stanley intends to show the jury that: (1) CPH ***could have*** conducted its own due diligence of the finances of the Sunbeam Corporation ("Sunbeam") simply by reading Sunbeam's financial statements; (2) standard business practices demanded that CPH ***should have*** done so; but (3) CPH did not do so. Critical to the jury's understanding of what happened, are the reasons ***why*** the highly-sophisticated and experienced businessmen responsible for directing CPH's due diligence efforts would have neglected to undertake even the most basic investigation of Sunbeam's finances — ***by reading Sunbeam's financial statements.***

One answer is that during a significant portion of the negotiation, due diligence, and closing of the Coleman Transaction, key MAFCO personnel were distracted by other matters, resulting in MAFCO's failing to perform any due diligence on Sunbeam.

For example, Jim Maher — the primary negotiator on behalf of MAFCO — was vacationing in Aspen approximately 24 days in February and March 1998, which were the key months in which the Coleman Transaction occurred. When he was not vacationing in Aspen, Maher, along with another key analyst on the Coleman Transaction, Will Nesbitt, were busy negotiating and closing the Panavision deal.[1] Jerry Levin — the CEO of the Coleman Company and MAFCO's specialist in consumer-branded operating companies like Sunbeam — had virtually no involvement in Coleman's analysis of Sunbeam in the first two months of 1998 up until seven days before the signing of the merger agreements. And finally, from January through April 1998 — contemporaneously with the Coleman Transaction — Perelman and his advisors were scrambling to respond to the barrage of media reports concerning the OIC's investigation of Perelman, Vernon Jordan, whose wife was a Coleman director, and Revlon, Inc. Moreover, the same MAFCO insiders were being forced to respond to the OIC's subpoena of records from Revlon concerning Monica Lewinsky's employment, MAFCO's "consulting" contract with Webster Hubbell, as well as preparing Perelman for his interviews (at which he twice provided sworn testimony) with the OIC. These distractions are directly relevant to a key issue in the case, and therefore should be admitted.

In support of its motion, Morgan Stanley states the following:

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[1] *See* Morgan Stanley's Opposition to Plaintiff's Motion in Limine (No. 12) To Bar Evidence and Argument Concerning the Acquisition of Panavision, Inc. at 6-7.

BACKGROUND

1. On January 21, 1998, Perelman agreed to discuss the potential acquisition of The Coleman Company, Inc. ("Coleman") with Sunbeam. That same day, the national media broke the story about a possible relationship between Monica Lewinsky and President Clinton. The story developed rapidly, was reported widely in the national and international media, and gripped the country's attention for the next calendar year.

2. On January 22, 1998 — the day after Sunbeam-Coleman negotiations were underway in earnest — the national media reported that, in early January 1998, Vernon Jordan had personally contacted Perelman to request that he arrange for Revlon to hire Monica Lewinsky. *See*, *e.g.*, Jill Lawrence, *Clinton's Confidant in Unfamiliar Waters*, USA Today, Jan. 22, 1998, at 9-A, *available at* 1998 WL 5713961; David Willman & Ronald J. Ostrow, *Clinton Under Fire*, Los Angeles Times, Jan. 22, 1998, at A-15, *available at* 1998 WL 2391066; Sam Donaldson, Jackie Judd, Peter Jennings, *Crisis in the White House*, ABC News, Special Report, Jan. 22, 1998, *available at* 1998 WL 8056094.

3. On January 26, 1998, Perelman was called before the Office of Independent Counsel to provide sworn testimony. *See* http://www.cnn.com/icreport/report2/suppp/suppp91.html and http://www.cnn.com/icreport/report2/suppp/suppp92.html.

4. On February 5, 2005, the Chicago Tribune reported the OIC had obtained, relevant documents from Revlon pursuant to a subpoena. *See* Michael Tackett, *Starr Jury Subpoenas Corporate Job Records 3 Lewinsky Interviews May Be Key to U.S. Probe*, Chicago Tribune, Feb. 5, 1998, at 3, *available at* 1998 WL 2822017.

5. On February 6, 2005, the Washington Post published two articles reporting on the OIC's investigation of Perelman's role in these matters. *See* Michael Powell, *The Plutocratic Party; To Ron Perelman, Politics Aren't Important, Just Good Business*, Wash. Post, Feb. 6,

1998, at B-01, *available at* 1998 WL 2466201; Brett D. Fromson, *The Loyal Director Is in Great Demand; Jordan's 10 Board Positions Worth $1.1 Million*, Wash. Post, Feb. 6, 2005, at G-01, *available at* 1998 WL 2466148. The Washington Post also reported that MAFCO had entered into a $100,000 "public relations" contract with Web Hubbell, the former United States Attorney, which it had terminated after Hubbell plead guilty to making false statements in a federal probe. Powell, Wash. Post, at B-01.

6. On February 17, 1998, USA Today reported that Vernon Jordan had gone to Perelman to find work for both Monica Lewinsky and Web Hubbell. Edward T. Pound, *Key Questions Locking In On Jordan's Role*, USA Today, Feb. 17, 1998, at 10-A, *available at* 1998 WL 571639. On February 21, 1998, the New York Times published a first-page article reporting that Vernon Jordan had kept President Clinton personally informed of his efforts to find Monica Lewinsky a job, including his contacts with Perelman. Jeff Gerth & John M. Broder, *Lawyer Says Ally Informed Clinton of Aid for Intern*, New York Times, Feb. 21, 1998, at A-1, *available at* 1998 WLNR 2971901. The articles cited above were merely the tip of the media iceberg; dozens of other stories about the matter appeared in the national press during February and March 1998.

7. In the midst of this media blitz, Perelman was called upon to provide testimony. On April 2, 1998 — three days after Sunbeam's acquisition of Coleman closed — Perelman met with the OIC, and he provided sworn testimony to the OIC on April 23, 1998.

ARGUMENT

8. CPH asserts that evidence relating to Perelman's connection with the matters under investigation by the OIC during January through April 1998 should not be allowed at trial because the prejudicial value of this evidence outweighs its probative value. (*See* CPH MIL No. 4 at 3 (citing Fla. Evid. Code § 90.403).) The Court should reject CPH's arguments.

MAFCO's involvement in the Lewinsky matter — paints a credible explanation for the jury of why a sophisticated businessman like Perelman, surrounded by an army of sophisticated financial, legal, and accounting advisors, failed to conduct due diligence on Sunbeam. Evidence bearing on the reasons why CPH failed to conduct due diligence is clearly relevant to Morgan Stanley's defense against MAFCO's claims and is therefore admissible. *See* Fla. Evid. Code § 90.401 (Relevant evidence is "evidence tending to prove or disprove a material fact."); *Sheen v. Jenkins*, 629 So. 2d 1033, 1035 (Fla. 4th DCA 1993) (holding that in order to be admissible, evidence "must have a logical tendency to prove or disprove [a] fact which [is] of consequence to the outcome" of the litigation); *McMillan v. Reese*, 55 So. 388, 390 (1911) (recognizing that "the mere fact that proferred evidence is not full and complete within itself, but formed only one link in the chain, so that it would have to be supplemented by other evidence in order to avail the party offering it, may not render such evidence incompetent or inadmissible").

12. ***Second***, there is no legal or factual basis to CPH's claim that such evidence will "play upon jurors' emotions and political prejudices." (CPH MIL No. 4 at 3.) As an initial matter, CPH's claim that this evidence is prejudicial does not ring true. Seven years have passed since these events transpired, and to the extent these issues could ever have been considered "politically charged" or prejudicial, they are now merely historical facts. Moreover, contrary to its accusation that Morgan Stanley will seek to use this information to distract the jury with "politically charged digressions," (*id.*), Morgan Stanley will rely upon these unusual events (together with other evidence) for a single purpose: to explain to the jury why CPH — a sophisticated company with a great deal of experience in mergers and acquisitions — could have so inexplicably walked away from its duty to do its own due diligence on Sunbeam, including the most obvious: ***read Sunbeam's financial statements***.

WHEREFORE Morgan Stanley respectfully requests that this Court deny CPH's motion to preclude Morgan Stanley from introducing evidence or argument at trial concerning Perelman's connection with the matters under investigation by the OIC in January through April 1998. This evidence is relevant and is vital to Morgan Stanley's defense that Perleman and his advisors were distracted from the Coleman Transaction by the these high profile matters and therefore failed to conduct ordinary due diligence on the Coleman Transaction.

CERTIFICATE OF SERVICE

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

MORGAN STANLEY'S RESPONSE TO CPH MOTION IN LIMINE NO. 5 TO BAR EVIDENCE AND ARGUMENT CONCERNING THE HEALTH OF A MORGAN STANLEY EXECUTIVE

CPH erroneously argues that Morgan Stanley intends to introduce evidence regarding the health of Ruth Porat, who is a Vice Chairman of Investment Banking for Morgan Stanley and a key witness in this case. In particular, CPH argues that Morgan Stanley will try to inform the jury that Ms. Porat is suffering from cancer in an attempt to prey upon the jurors' sympathies. Morgan Stanley does not intend to do so. Morgan Stanley agrees not to introduce the fact of Ms. Porat's cancer to the jury unless and until CPH opens the door to such testimony. If, for example, CPH questions Ms. Porat about the reasons she did or did not do something, and the truthful response relates to her health, Ms. Porat should be permitted to answer truthfully.

WHEREFORE, Morgan Stanley agrees to CPH's Motion In Limine No. 5, to the extent the motion requests that Morgan Stanley be barred from intentionally eliciting evidence regarding Ms. Porat's cancer. Morgan Stanley reserves its right to introduce such evidence, if and only if, CPH opens the door and puts Ms. Porat's health in at issue.

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
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COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.
MORGAN STANLEY & CO. INCORPORATED,
Defendant.

CASE NO: CA 03-5045 AI

MORGAN STANLEY'S RESPONSE TO CPH MOTION IN LIMINE NO. 7 TO BAR EVIDENCE AND ARGUMENT CONCERNING PLAINTIFF'S SETTLEMENT WITH ARTHUR ANDERSEN

CPH seeks an order from the Court barring Morgan Stanley from introducing any evidence regarding CPH's settlement with Arthur Andersen. Morgan Stanley agrees that the amount of CPH's settlement with Arthur Andersen is inadmissible collateral source evidence, and Morgan Stanley agrees not to introduce the CPH-Arthur Andersen settlement amount at trial. *Gormley v. GTE Prods. Corp.*, 587 So. 2d 455, 458 (Fla. 1991) (per curium). However, Morgan Stanley does not, concede that CPH's lawsuit against Arthur Andersen is inadmissible. To the contrary, the fact that CPH sued Arthur Andersen and accused Arthur Andersen of fraud and misrepresentation is highly relevant to the key issue the jury will decide in this case — whether the fraud about which CPH now complains was committed or concealed by Morgan Stanley, or whether Sunbeam or its auditors Arthur Andersen are the parties responsible for the alleged wrongdoing.

Even though Morgan Stanley agrees with CPH that the amount of the settlement CPH reached with Arthur Andersen would only be relevant to a post-judgment set-off, the fact that CPH sued Arthur Andersen in the first place and accused Arthur Andersen of fraud and misrepresentation bears directly on Morgan Stanley's defense and affirmative defenses in this

action. The fact that CPH sued Arthur Andersen for fraud and misrepresentation has direct relevance to Morgan Stanley's affirmative defenses of waiver, estoppel, comparative negligence and comparative fault, and negligence or fault of third parties for whom Morgan Stanley bears no responsibility. (*See* Jan. 12, 2005 Restated Am. Answer at 22-31.)

In addition, the fact that CPH sued Arthur Andersen and accused Arthur Andersen of the very fraud and misrepresentation it now blames on Morgan Stanley and the admissions contained in CPH's pleadings are proper impeachment material for CPH's witnesses. *See Davidson v. Eddings*, 262 So. 2d 232 (Fla. 1st DCA 1972) (allegations and admissions from prior lawsuits are proper impeachment material when party supplied the information therein). Morgan Stanley is entitled to cross-examine CPH's witnesses about the fact that CPH sued Arthur Andersen and about the admissions contained in its lawsuit, and Morgan Stanley would suffer unfair prejudice if the Court were to bar inquiry into these matters.

Finally, to the extent Arthur Andersen's current or former employees testify at trial, the Settlement Agreement is relevant to show bias, interest, and prejudice. *Flores v. Miami-Dade County*, 787 So. 2d 955, 958 (Fla. 3d DCA 2001) ("Evidence which is inadmissible as impeachment under other methods is admissible if it shows the bias of a witness.") (citing Charles W. Ehrhardt, *Florida Evidence* § 608.5 at 471 (2001).)

WHEREFORE, Morgan Stanley agrees with CPH's Motion In Limine No. 7 to the extent the motion requests that Morgan Stanley be barred from introducing evidence regarding the ***amount*** of CPH's settlement with Arthur Andersen, but requests that the Court deny the motion insofar as it seeks to preclude Morgan Stanley from introducing ***the fact that CPH brought a lawsuit*** against Arthur Andersen alleging that Arthur Andersen made misrepresentations and committed fraud regarding the Coleman-Sunbeam merger.

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IN THE FIFTEENTH JUDICIAL CIRCUIT
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COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,
Defendant.

MORGAN STANLEY'S RESPONSE TO CPH MOTION IN LIMINE NO. 8 TO BAR EVIDENCE AND ARGUMENT CONCERNING THE VALUE OF MAFCO'S SETTLEMENT WITH SUNBEAM CORPORATION

CPH erroneously argues that Morgan Stanley intends to introduce evidence regarding "***the value*** of MAFCO's settlement with Sunbeam." (CPH MIL No. 8 at 1 (emphasis added).) Morgan Stanley does not intend to do so. Morgan Stanley agrees that the ***amount*** of MAFCO's settlement with Sunbeam is inadmissible collateral source evidence. *Gormley v. GTE Prods. Corp.*, 587 So. 2d 455, 458 (Fla. 1991) (per curium).

Morgan Stanley does not agree that the dispute or the settlement can be excluded. That MAFCO sued Sunbeam and accused Sunbeam of fraud and misrepresentation is directly relevant to the key issue the jury will decide in this case — whether the fraud about which CPH now complains was committed or concealed by Morgan Stanley, or whether Sunbeam is the party responsible for the alleged wrongdoing. Even though Morgan Stanley agrees that the amount of the settlement MAFCO reached with Sunbeam would only be relevant to a post-judgment set-off, the fact that CPH sued Sunbeam and accused Sunbeam of fraud and misrepresentation bears directly on Morgan Stanley's defense in this case.

The fact that CPH sued Sunbeam for fraud and misrepresentation also has direct relevance to Morgan Stanley's affirmative defenses of waiver, estoppel, comparative negligence and comparative fault, and negligence or fault of third parties for whom Morgan Stanley bears no responsibility. (*See* Jan. 12, 2005 Restated Am. Answer at 22-31.) In addition, the fact that CPH sued Sunbeam and accused Sunbeam of the very fraud and misrepresentation it now blames on Morgan Stanley and the admissions contained in CPH's pleadings are proper impeachment material for CPH's witnesses. *See Davidson v. Eddings*, 262 So. 2d 232 (Fla. 1st DCA 1972) (allegations and admissions from prior lawsuits are proper impeachment material when party supplied the information therein). Morgan Stanley is entitled to cross-examine CPH's witnesses about the fact that CPH sued Sunbeam and about the admissions contained in its lawsuit, and Morgan Stanley would suffer unfair prejudice if the Court were to bar inquiry into these matters.

WHEREFORE, Morgan Stanley agrees with CPH's Motion In Limine No. 8 to the extent the motion requests that Morgan Stanley be barred from introducing evidence regarding the ***amount*** of MAFCO's settlement with Sunbeam. To the extent the motion seeks to preclude evidence of the fact of the lawsuit, the motion should be denied.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.
MORGAN STANLEY & CO. INCORPORATED,
Defendant.

CASE NO: CA 03-5045 AI

MORGAN STANLEY'S RESPONSE TO CPH'S MOTION IN LIMINE NO. 9 TO BAR EVIDENCE AND ARGUMENT CONCERNING THE ABSENCE OF AN ENFORCEMENT ACTION AGAINST DEFENDANT BY THE SECURITIES AND EXCHANGE COMMISSION

Morgan Stanley respectfully requests that this Court deny CPH's Motion in Limine No. 9 To Bar Evidence and Argument Concerning the Absence of an Enforcement Action Against Defendant by the Securities and Exchange Commission. While Morgan Stanley agrees that evidence and argument concerning the Securities and Exchange Commission's ("SEC") enforcement action against Sunbeam, its officers, and accountants is inadmissible for the reasons set forth in Morgan Stanley's Motion in Limine No. 2, Morgan Stanley opposes this motion insofar as CPH seeks to preclude Morgan Stanley from referencing the absence of ***civil*** enforcement against Morgan Stanley following the SEC's investigation of Sunbeam.

In support of its position, Morgan Stanley states the following:

1. On May 15, 2001, the SEC initiated ***civil*** administrative proceedings against several officers of Sunbeam and Phillip Harlow, the Arthur Andersen partner responsible for the Sunbeam audit. Contemporaneously, the SEC accepted offers of settlement from David Fannin, Sunbeam's former General Counsel, and the Sunbeam Corporation. These ***civil*** proceedings were the end result of an extensive investigation by the SEC into the events at Sunbeam under

the leadership of Albert Dunlap, former Chief Executive Officer and Chairman of Sunbeam — including the period during which Morgan Stanley was engaged as Sunbeam's financial advisor and served as underwriter for the March 1998 Zero Coupon Convertible Debenture Offering used by Sunbeam to finance a portion of the Sunbeam-Coleman transaction.

2. Morgan Stanley should be allowed present evidence to the jury that the SEC did not pursue an administrative proceeding against Morgan Stanley after its thorough investigation of Sunbeam. Florida Evidence Code section 90.401 defines as relevant "evidence tending to prove or disprove a material fact." Section 90.402 provides that "[a]ll relevant evidence is admissible, except as provided by law." CPH has alleged in its complaint that Al Dunlap engaged in massive fraud while at Sunbeam and that Morgan Stanley was complicit in perpetrating and covering up this fraud. (*See* May 8, 2003 Compl. ¶¶ 17-28, 33-36, 87, 91.) The fact that the SEC did not initiate a civil administrative proceeding against Morgan Stanley is direct evidence that Morgan Stanley was not complicit in the fraud at Sunbeam.

3. The cases cited by CPH to support the its relevancy argument are inapposite. Both *Heckler v. Chaney*, 470 U.S. 821 (1985), and *Kixmiller v. S.E.C.*, 492 F.2d 641 (D.C. Cir. 1974), deal with the ability of a court to review a federal agency's decision not to take enforcement action, and have no bearing on the issue of admissibility. Moreover, the Supreme Court in *Heckler* expressly limited the effect of the language CPH cites, cautioning that "[w]e of course only list the above concerns to facilitate understating of our conclusion that an agency's decision not to take enforcement action should be presumed immune from judicial review under § 701(a)(2)." *Heckler*, 470 U.S. at 832.

4. Nor can CPH make the requisite showing that the introduction of relevant evidence concerning the SEC's absence of a ***civil*** enforcement against Morgan Stanley following

its extensive investigation of Sunbeam will create prejudice that ***substantially outweighs*** its probative value. *See Grau v. Branham*, 761 So. 2d 375, 378 (Fla. 4th DCA 2000) ("All relevant evidence is admissible unless its probative value is substantially outweighed by the danger of unfair prejudice ....").

5. CPH offers a generic objection that the introduction of this relevant evidence creates a "danger of unfair prejudice, confusion of the issues, and misleading the jury." (CPH MIL No. 9 at 3.) In support of its stock argument, CPH attempts to analogize the institution of a civil administrative proceeding by the SEC to "conduct that could have been prosecuted criminally." (*Id.*) Such analogy cannot withstand scrutiny.

6. The ***very cases cited by CPH*** demonstrate why this analogy lacks logical application here, and why Morgan Stanley should be permitted to introduce evidence in this case that the SEC did not initiate a civil administrative proceeding against Morgan Stanley. Using partial quotations, CPH cites cases that are ***all*** based on an ***underlying criminal proceedings*** — without explaining the careful distinction drawn by these courts that actually undercuts CPH's argument. Although the general rule is that evidence of non-prosecution in a ***criminal*** matter is typically inadmissible in ***civil*** action regarding the same conduct, the "rule is primarily based on the fact that criminal and civil trials require different burdens of proof for proving guilt and liability, respectively." *Johnson v. Elk Lake Sch. Dist.*, 283 F.3d 138, 147 (3d Cir. 2002). Indeed, had CPH bothered to fully quote its cherry-picked passage from *American Home Assurance Co. v. Sunshine Supermarket, Inc.*, CPH would have seen that the Third Circuit actually held that "[t]he evidence of non-prosecution is of very limited probative value in showing that there was no arson ***because of the higher burden of persuasion in a criminal case***." 753 F.2d 321, 325 (3d Cir. 1985) (emphasis added).

7. Here, there is no such problem with the burden of persuasion — both the SEC and Florida civil courts utilize the lower standard of "preponderance of the evidence." *Compare Steadman v. SEC*, 450 U.S. 91, 96 n.10 (1981) (affirming SEC's use of a preponderance of the evidence in administrative proceeding and rejecting an argument that, for a "Commission proceeding involving allegations of fraud," the SEC should have to "prove violations of the antifraud provisions of the securities laws by clear and convincing evidence") *with Wieczoreck v. H & H Builders, Inc.*, 475 So. 2d 227, 228 (Fla. 1985) (holding that the burden of proof in a fraud action is "preponderance or greater weight of the evidence") (internal quotations & citation omitted). Thus, the jury may fairly weigh the SEC's decision not to bring a civil administrative proceeding against Morgan Stanley, and CPH's claims of unfair prejudice are unfounded. *See Borden, Inc. v. Florida E. Coast Ry. Co.*, 772 F.2d 750, 756 (11th Cir. 1985) ("[U]nfair prejudice as used in Rule 403 cannot be equated with evidence that is simply adverse to the opposing party.").

8. Likewise, Morgan Stanley's use of the fact that the SEC did not initiate an administrative proceeding against Morgan Stanley following its investigation of Sunbeam will not confuse or mislead the jury. "Confusion of the issues and misleading the jury may be bases for exclusion of evidence in instances where evidence ... would require the trier of fact to engage in intricate, extraordinary, or impossible mental gymnastics in order to comprehend the import of the evidence or to evaluate its weight. William R. Eleazer & GlennWeissenberg, *Florida Evidence* at 152 (2004 Courtroom Manual). Such instances do not exist here. CPH's supporting cases are inapplicable and fail to acknowledge that the SEC would have applied the same standard as this Court in determining Morgan Stanley's liability. Given the identical standards, the fact that the SEC did not initiate a civil administrative proceeding against Morgan

Stanley after conducting an exhaustive investigation is probative of material issues in this case and is not sufficiently confusing or misleading to warrant exclusion based on Florida Evidence Code section 90.403.

9. "[A] trial judge does not have discretion to refuse to admit relevant testimony that is not merely cumulative, unless it is inadmissible by virtue of some recognized rule of evidence, such as hearsay or opinion rules." *Spencer v. Spencer*, 242 So. 2d 786, 789 (Fla. 4th DCA 1970), *cert. denied* 248 So. 2d 169 (Fla. 1971). Here, CPH has not sufficiently articulated a reason under the Florida Evidence Code as to why otherwise relevant evidence concerning the SEC's decision to not initiate a civil administrative proceeding against Morgan Stanley following its investigation of Sunbeam should be excluded. CPH's Motion in Limine No. 9 should be denied.

WHEREFORE, Morgan Stanley respectfully requests that this Court deny CPH's Motion in Limine No. 9 To Bar Evidence and Argument Concerning the Absence of an Enforcement Action Against Defendant by the Securities and Exchange Commission insofar as it seeks to preclude Morgan Stanley from referencing the absence of civil enforcement against Morgan Stanley following the SEC's exhaustive investigation of Sunbeam.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 18th day of January, 2005.

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INCORPORATED,
Defendant.

MORGAN STANLEY'S OPPOSITION TO CPH'S MOTION IN LIMINE NO. 11 TO BAR EVIDENCE AND ARGUMENT CONCERNING ALLEGED BUSINESS PRACTICES OF REVLON, INC.

Morgan Stanley respectfully requests that this Court enter an order denying CPH's Motion In Limine No. 11 To Bar Evidence And Argument Concerning Alleged Business Practices of Revlon, Inc. The Motion seeks to exclude evidence highly relevant to two key issues in this case: (1) the financial and business sophistication of Ro O. Perelman and his advisors in the Coleman Transaction; and (2) the failure of Perelman and his advisors to do any due diligence investigation of Sunbeam despite their familiarity with the risk factors inherent in Sunbeam's business at the time of the Coleman Transaction. This evidence is vital to Morgan Stanley's defenses in this action, and excluding Morgan Stanley's evidence would unfairly prejudice Morgan Stanley and prevent the jury from seeing the "entire picture" on two important issues on which it is charged with making findings of fact.

In support of its position, Morgan Stanley states the following:

ARGUMENT

I. Perelman's Financial Sophistication Is Squarely At Issue In This Action.

1. Perelman put his own sophistication — including his familiarity and experience with sales tactics, operations, and finances of an operating company — squarely at issue in this

action when he filed the Complaint against Morgan Stanley. *See DynCorp v. GTE Corp.*, 215 F. Supp. 2d 308, 329 (S.D.N.Y. 2002) (The "special relationship of trust" and confidence necessary to sustain a reliance claim "generally does not exist between sophisticated business entities entering into arms-length business transactions."); Aug. 11, 2004 Order on Application of N.Y. Law at 5 (quoting *Schumaker v. Mather*, 133 N.Y. 590, 596 (1892) ("Under New York law, reliance on a fraudulent misrepresentation is not reasonable if the recipient 'has the means available to him of knowing, by the exercise of ordinary intelligence, the truth ....'").)

2. Because the jury is charged with making fact findings regarding the sophistication Perelman and his other advisors on the Coleman Transaction, any evidence tending to prove or disprove their sophistication is relevant. *See Great Harbour Cay Realty & Inv. Co. v. Carnes*, 862 So. 2d 63, 66 (Fla. 4th DCA 2003) (holding that when the jury is "specifically charged" with determining an issue in the case, "[i]t is illogical to suggest" that evidence bearing on that issue is irrelevant).

3. Perelman's business practices at Revlon — in 1998 — are directly related to his financial and business sophistication in the Coleman Transaction. Perelman is the owner and chief decision-maker of a massive empire of holding and operating companies, and there is no question that under New York law Perelman's business experience and expertise (and that of his advisors) is relevant to the question of sophistication. *See Congress Fin. Corp. v. John Morrell & Co.*, 790 F. Supp. 459, 472 (S.D.N.Y. 1992) (recognizing the relevancy of *all* evidence of a party's revenues, expertise, and resources to the determination of that party's sophistication, including evidence of the sophistication of that party's parent corporation). For this reason, CPH's argument that Revlon is a "third party" immune from this litigation is a red herring. As of 1998, Revlon was directly controlled by Perelman, and MacAndrews & Forbes was its 83%

majority shareholder. (Nov. 17, 2004 Perelman Dep. at 172, 177 (Ex. 1).) Moreover, at least four of CPH's primary witnesses — Jerry Levin, Donald Drapkin, Paul Shapiro, and Bruce Slovin — have held positions at Revlon.

4. In short, Morgan Stanley is entitled to present all evidence bearing on Perelman's business and financial sophistication, regardless of the context. See Fla. Evid. Code § 90.401 ("Relevant evidence is evidence tending to prove or disprove a material fact."); *Sheen v. Jenkins*, 629 So. 2d 1033, 1035 (Fla. 4th DCA 1993) (In order to be admissible, evidence must "have a logical tendency to prove or disprove a fact which [is] of consequence to the outcome" of the litigation); *McMillan v. Reese*, 55 So. 388, 390 (Fla. 1911) ("The mere fact that proferred evidence is not full and complete within itself, but formed only one link in the chain, so that it would have to be supplemented by other evidence in order to avail the party offering it, may not render such evidence incompetent or inadmissible.").

II. Evidence Relating To Revlon's Business Practices Shows That Perelman And His Advisors Were Knowledgeable About The Risks Inherent In Sunbeam's Business Strategies.

5. Evidence regarding Revlon's business practices is ***particularly*** relevant because during the time period of the Coleman Transaction, Revlon was engaging in the exact same business strategies — such as "bill and hold transactions" and "channel stuffing" — that Sunbeam engaged in and of which CPH now feigns ignorance. (*See* Oct. 15, 2004 Eltrich Dep. at 213 ("[Revlon] had incentivized the channel to over-order for what they could sell, and thereby artificially increasing their sales in the previous quarters, and then when the third quarter came, the channel had too much product and did not reorder, and consequently they missed their numbers.") (Ex. 2).)

6. Because Revlon, one of Perelaman's own companies, engaged in these same business strategies, Perelman and his advisors were well-positioned to: (1) recognize "bill and

hold" accounting and "channel stuffing" from balance sheets and financial statements; and (2) understand the risk of such strategies, which were disclosed in Sunbeam's form 10K for the year ending December 28, 1997, which was filed with the Securities and Exchange Commission March 6, 1998. (MS 208 (1997 Sunbeam 10-K Annual Report)(Ex. 3).) In Sunbeam's 10K, Sunbeam and its auditors, Arthur Andersen, disclosed that Sunbeam was engaging in "bill and hold" transactions in 1997 and that Sunbeam had an "early buy" program for its grill sales.[1] Evidence that Revlon was engaging in "bill and hold" transactions and "early buy" programs will help the jury understand that at the time Sunbeam released its Form 10K for 1997, Perelman and his advisors were knowledgeable about "bill and hold sales" and "early buy" or "channel stuffing" programs, and thus were in a position to understand the implications of the disclosure made by Sunbeam in its 10K.

7. Evidence of Revlon's own "bill and hold" and "channel stuffing" practices is also relevant to show that Perelman's failure to request and review Sunbeam's interim financial statements for January and February 1998, before closing the Coleman Transaction was irrational and irresponsible. (MS 807 (Apr. 5, 1998 Sunbeam Corporation Closing Analysis Profit and Loss Statement, Period: February 1998) (Ex. 3); MS 808 (Feb. 16, 1998 Sunbeam Corporation Closing Analysis Profit and Loss Statement, Period: January 1998) (Ex. 4).) At the time Sunbeam disclosed its business strategies, Perelman ***knew the risks*** of "channel stuffing" and "bill and hold" sales based on his own business experience at Revlon, yet he failed to do any meaningful due diligence on Sunbeam. His failure goes to the heart of Morgan Stanley's defense

[1] "Early buy" programs are synonymous with "channel stuffing" — both refer to providing incentives to customers to pre-order products.

in this case. *See Abrahami v. UPC Constr. Co.*, 638 N.Y.S.2d 11, 14 (App. Div. 1996) ("Where a party has means available to him for discovering, by the exercise of ordinary intelligence, the true nature of a transaction he is about to enter into, he must make use of those means, or he will not be heard to complain that he was induced to enter into the transaction by misrepresentations.") (internal quotations & citation omitted); *Congress Fin. Corp.*, 790 F. Supp. at 471 ("Where sophisticated businessmen engaged in major transactions enjoy access to critical information but fail to take advantage of that access, New York courts are particularly disinclined to entertain claims of justifiable reliance."); *Aaron Ferer & Sons Ltd. v. Chase Manhattan Bank, N.A.*, 731 F.2d 112, 123 (2d Cir. 1984) (rejecting a claim of reliance because "all of the information that plaintiffs now claim was concealed from them was either a matter of public record, was not pursued by the plaintiffs, or was disclosed, at least in part, by [defendant].").

III. The Relevance of Revlon's Business Practices Outweighs Any Purported Prejudice To CPH.

8. CPH cannot meet its burden of showing that the probative value of evidence of Revlon's business practices as described is ***substantially*** outweighed by its prejudicial or misleading effect. *See* Fla. Evid. Code § 90.403 (evidence may be excluded under § 90.403 ***if and only*** if the probative value of the evidence is ***substantially*** outweighed by its prejudicial or misleading effect) (emphasis added). CPH cannot claim "unfair prejudice" simply because evidence of Revlon's business practices is adverse to CPH. *Borden, Inc. v. Florida E. Coast Ry. Co.*, 772 F.2d 750, 756 (11th Cir. 1985) (citing *Dollar v. Long Mfg., N.C., Inc.*, 561 F.2d 613 (5th Cir. 1977)); *see also Dollar,* 561 F.2d at 618 ("Of course, 'unfair prejudice' as used in Rule 403 is not to be equated with testimony simply adverse to the opposing party. Virtually all evidence is prejudicial or it isn't material. The prejudice must be 'unfair.'").

9. Forcing the jury to make a determination about Perelman's financial sophistication and the extent of his due diligence of Sunbeam given his knowledge of the Sunbeam's business strategy will be misleading and confusing to the jury and unfairly prejudicial to Morgan Stanley unless the jury is allowed to know that Perelman was pursuing the ***very same business strategies*** at Revlon. *See Great Harbour Cay Realty*, 862 So. 2d at 66; F.S.J.I. § 2.2. Because Perelman's financial sophistication and ability to access information is directly relevant to the claims he brought against Morgan Stanley and Morgan Stanley's defenses, and the jury should have access to all of the information bearing on that sophistication and knowledge.

WHEREFORE, Morgan Stanley respectfully requests that the Court enter an order denying CPH's Motion In Limine No. 11 To Bar Evidence Concerning Alleged Business Practices of Revlon, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 18th day of January, 2005.

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Exhibit 1

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

----------x

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. Case No. CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendants.

----------x

ORIGINAL

RONALD O. PERELMAN

New York, New York

Wednesday, November 17, 2004

Reported by: Steven Neil Cohen, RPR

Job No. 167561

about that company. That is the plaintiff here, right?

A. Yes.

Q. When we look at item number 2 it lists out a number of companies.

A. Where are you?

Q. It would be the page numbered 5 in the center. The pagination is not always easy to follow.

Are you there?

A. Yes.

Q. At least as of June of 1998 were you, as described in this paragraph, were you the chairman of the board of Revlon Inc.?

A. Yes.

Q. Were you the chairman of the board of Meridian Sports Incorporated?

A. Yes.

Q. Meridian Sports Incorporated was the boat building company we talked about?

A. Yes.

Q. As chairman of the board of Revlon Inc., Revlon Inc. had many subsidiaries below it?

My understanding is you don't know what that company is, right?

A. Correct.

Q. It says, however, that --

A. I know it is one of our holding companies. I don't know where it fits into the chain.

Q. Who keeps track of your companies, where the various companies fit into the chain of ownership? Who is in charge of doing that?

A. The lawyers.

Q. That would be Mr. Schwartz?

A. And Mr. Gittis.

Q. And Mr. Gittis.

As I understand it, reading this form, MAFCO Holdings owns 83 percent of Revlon, is that right?

A. As of this time, yes.

Q. That is Revlon Inc., the ultimate Revlon company?

A. The operating company, yes.

Q. So -- even though you don't know where MAFCO Holdings fits in the ownership chain you ultimately are the owner of

Exhibit 2

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,

Defendant(s).

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendants(s)

COPY

Case No.
CA 03-5045 AI

VIDEOTAPED DEPOSITION OF KAREN HAYCOX-ELTRICH

New York, New York

Friday, October 15, 2004

Reported by:
JOAN WARNOCK
JOB NO. 166116

that they would meet earnings estimates?
A. That is correct.
MR. BRODY: Object to the form.
A. Actually, I'm sorry. That is not correct. They actually outright missed numbers in October of 1998. They did not preannounce. They simply completely missed their forecast.
Q. And you referred to something called "stuffing the trade"?
A. Yes.
Q. Could you explain what you were referring to?
MR. BRODY: Object to form.
A. The process that they had undergone was they had incentivized the channel to over-order for what they could sell, and thereby artificially increasing their sales in the previous quarters, and then when the third quarter came, the channel had too much product and did not reorder, and consequently they missed their numbers.
Q. And when you say "they," you're referring to Revlon?
A. I am referring to Revlon.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,
Defendant.

MORGAN STANLEY'S RESPONSE TO CPH'S MOTION IN LIMINE NO. 13 TO EXCLUDE EVIDENCE AND ARGUMENT CONCERNING THE NONRELIANCE CLAUSE IN THE FEBRUARY 23, 1998 CONFIDENTIALITY AGREEMENT

In a transparent attempt to evade contractual language that is fatal to the plaintiff's case, CPH has filed a motion in limine seeking to bar evidence and argument concerning the February 23, 1998 Confidentiality Agreement that CPH, through its wholly owned subsidiary, The Coleman Company, Inc. ("Coleman"), entered into with Sunbeam. That Agreement explicitly states that "***neither the Company [Sunbeam] nor its Representatives [including Morgan Stanley] will have any liability to you [Coleman and CPH] or any of your Representatives resulting from the use of the Evaluation Material by you or your representatives.***" (MS 134 at 4 (CPH MIL No. 13 at Ex. A) (emphasis added).) The Agreement defines "Evaluation Material" expansively to include "all information, whether in oral, written, electronic or other form, which the Company [Sunbeam] or any agents, representatives (including attorneys, accountants, bankers and financial advisors), directors, officers or employees (collectively "Representatives") of the Company furnishes to you or your Representatives with respect to the Business, whether before or after the date hereof." (*Id.* at 1.)

CPH would like to prevent the jury from hearing anything about this case-dispositive language and advances two arguments in support of its motion to exclude. CPH argues, first,

that it is not a party to the February 23 Confidentiality Agreement and so should not be bound by its terms, and, second, that the February 23 Confidentiality Agreement was never executed and so is not a valid agreement. Neither of these arguments withstands scrutiny.

In support of its position, Morgan Stanley states the following:

I. The Terms Of The Confidentiality Agreement Expressly Bind CPH.

1. CPH has repeatedly asserted that it was "not even a party to the February 23 ... Agreement." (CPH MIL No. 13 at 2; *see also* Dec. 23, 2004 CPHs Resp. in Opp. to MS Mot. for Summ. J. at 61.) CPH evidently believes that the mere repetition of that "fact" conclusively proves that CPH cannot be subject to the terms of the Confidentiality Agreement. The plain language of the Agreement — as well as clearly established New York law — dictate otherwise.

2. In the very first paragraph of the February 23 Confidentiality Agreement, it states that "[t]he term 'you' is, for all purposes of this Agreement, deemed to include ***all of your affiliates that are involved in the possible Transaction***." (MS 134 at 1 (emphasis added).) Unless CPH is willing to concede that it was not an "affiliate[]" of Coleman "involved in the possible Transaction [with Sunbeam]," CPH cannot in good faith contend that it is not subject to the terms of the Confidentiality Agreement.

3. Thus, when the Confidentiality Agreement states that "[y]ou agree that neither the Company nor its Representatives will have any liability to you or any of your representatives," MS 134 at 4, CPH was included among the collective "you." Arguing over whether CPH was a "party" to the February 23 Agreement is therefore utterly beside the point. Party or not, the Agreement explicitly bars the very claims CPH now makes against Morgan Stanley, premised as they are on "Evaluation Material" as defined in the Confidentiality Agreement — material upon which CPH was, by the clear terms of the agreement, barred from relying.

4. Because the February 23 Confidentiality Agreement so clearly bars CPH from relying on any Evaluation Material provided by Morgan Stanley, who was or was not a party to the Agreement is less important than the disclaimer of reliance. As New York law makes abundantly clear, "where [a] plaintiff, 'in the plainest language announced ... that it is not relying on any representations as to the very matter as to which it now claims it was defrauded,' the plaintiff's fraud claim should be dismissed." *DynCorp v. GTE Corp.*, 215 F. Supp. 2d 308, 319 (S.D.N.Y. 2002) (quoting *Danann Realty Corp. v. Harris*, 5 N.Y.2d 317, 320 (1959)).

II. CPH Has Expressly Acknowledged The Existence Of The February 23 Confidentiality Agreement.

5. Unable to end run the terms of the February 23 Confidentiality Agreement, CPH's second quibble is to contest the very existence of the Agreement, arguing that the Agreement was never signed and therefore cannot bind CPH. (CPH MIL No. 13 at 3.)

6. Under Florida law, however, an original or copy of the executed version of the February 23 Confidentiality Agreement is not required to prove the contents of the Agreement, if the original has been lost or destroyed, particularly when the parties have acknowledged its existence in another executed document. Fla. Evid. Code § 90.954(1); *see also Consolidated Resources Healthcare Fund I, Ltd. v. Fenelus*, 853 So. 2d 500, 503 (Fla. 4th DCA 2003) ("A contract may be binding on a party despite the absence of a party's signature. The object of a signature is to show mutuality of assent, but these facts may be shown in other ways, for example, by the acts or conduct of the parties.") (quoting *Gateway Cable T.V., Inc. v. Vikoa Constr. Corp.*, 253 So. 2d 461, 463 (Fla. 1st DCA 1971)); *Sosa v. Shearform Mfg.*, 784 So. 2d 609, 610 (Fla. 5th DCA 2001) ("Even if parties do not sign a contract, they may be bound by the provisions of the contract, if the evidence supports that they acted as if the provisions of the

contract were in force.") (citations omitted). Here, evidence of "mutuality of assent" to the terms of the February 23 Confidentiality Agreement is abundant.

7. ***First***, an identical reciprocal Confidentiality Agreement between Sunbeam and Coleman — which included the same expansive definition of Evaluation Material, the same inclusive definition of "you" encompassing all affiliates and advisors (including CPH and Morgan Stanley), and the same broad disclaimer of reliance — was executed on February 4, 1998.

8. ***Second***, CPH acknowledges that parties to a sophisticated transaction such as the Coleman-Sunbeam transaction customarily exchange cross-confidentiality agreements. (Finding ¶ 107.)

9. ***Third***, CPH ***expressly ratified*** the February 23 Confidentiality Agreement in the CLN Merger Agreement — the Merger Agreement that CPH signed. Section 12.5 of that Agreement states that "[t]his Agreement (including all Schedules and Exhibits hereto contains the entire agreement among the parties hereto) with respect to the subject matter hereof and supersedes all prior agreements and understanding, oral or written, with respect to such matters, ***except for the Confidentiality Agreements which will remain in full force and effect for the term provided therein.***" (MS 93 § 12.5 (Feb. 27, 1998 CLN Merger Agreement) (Ex. 1) (emphasis added).)

10. Citing section 6.7 of the CLN Merger Agreement, CPH contends that the incorporation of the Confidentiality Agreements into the Merger Agreement extends only to the confidentiality provisions of the Confidentiality Agreements and not to the nonreliance clause. CPH's contention is based on an untenable reading of section 6.7 — in which the parties provide each other full access to books, records, properties, plants, and personnel (access CPH never

availed itself of) while ensuring the confidentiality of any information disclosed — and outright refusal to acknowledge the plain language of section 12.5. The latter section clearly states that the "Confidentiality Agreements … ***will remain in full force and effect*** for the term provided for therein." (MS 93 § 12.5 (emphasis added).)

11. CPH bargained for and assented to the unequivocal language of section 12.5 of the CLN Merger Agreement. Rather than cherry-picking some sections of the Confidentiality Agreement for incorporation while discarding others, section 12.5 instead is "a clear manifestation of an intent to be bound by the terms of the ***incorporated*** instrument." *Federated Mut. Ins. Co. v. Woodstock '99, LLC*, 140 F. Supp. 2d 225, 228 (N.D.N.Y. 2001). Indeed, "[i]f the language here used is not sufficient to ***estop*** a party from claiming that he entered the contract because of fraudulent representations, then no language can accomplish that purpose. To hold otherwise would be to say that it is impossible for two businessmen dealing at arm's length to agree that the buyer is not buying in reliance on any representations of the seller as to a particular fact." *Danann Realty Corp. v. Harris*, 5 N.Y.2d 317, 323 (1959) (emphasis added).

12. Far from being irrelevant, the terms of the February 23 Confidentiality Agreement, as incorporated in the CLN Merger Agreement signed by CPH, are dispositive of CPH's core claims of fraud and negligent misrepresentation if not this entire action.

WHEREFORE, Morgan Stanley respectfully requests that this Court enter an order denying CPH's Motion in Limine No. 13.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 18th day of January, 2005.

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Exhibit 1

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.
MORGAN STANLEY & CO. INCORPORATED,
Defendant.

CASE NO: CA 03-5045 AI

MORGAN STANLEY'S RESPONSE TO CPH'S MOTION IN LIMINE NO. 14 TO BAR EVIDENCE AND ARGUMENT THAT THE "COMFORT LETTERS" REFERRED TO IN THE PUBLIC MERGER AGREEMENT OR THE HOLDINGS MERGER AGREEMENT INCLUDE THE MARCH 19, 1998 AND MARCH 25, 1998 COMFORT LETTERS

Morgan Stanley agrees with CPH's Motion in Limine No. 14 as written, insofar as the motion seeks to preclude Morgan Stanley from arguing to the jury that the "comfort letters" referred to in the Public Merger Agreement (involving Sunbeam and Coleman) or the Holdings Merger Agreement (involving Sunbeam and CPH) are the March 19, 1998 and March 25, 1998 "comfort letters" that Arthur Andersen prepared for Morgan Stanley in connection with Morgan Stanley's underwriting of Sunbeam's subordinated debenture offering. However, Morgan Stanley reserves the right to offer evidence regarding the references to "comfort letters" in the Public Merger Agreement and the Holdings Merger Agreement for separate purposes.

Specifically, the references to "comfort letters" at issue in this motion are relevant to Morgan Stanley's arguments that: (1) CPH was knowledgeable about "comfort letters" in general; (2) CPH was sophisticated enough to contract for the provision of comfort letters in connection with the Sunbeam Merger; (3) CPH must have known about the existence of the March 19 and March 25 comfort letters provided to Morgan Stanley by Arthur Andersen; and (4) CPH could have requested and received copies of those comfort letters if it had chosen to do so.

In support of its position, Morgan Stanley states the following:

1. CPH's knowledge of comfort letters in general, and CPH's knowledge regarding the availability of the March 19 and March 25, 1998 comfort letters Morgan Stanley received from Arthur Andersen are directly relevant to Morgan Stanley's defense of CPH's claims for fraudulent and negligent misrepresentation. On both counts, CPH alleges that Morgan Stanley deceived CPH by withholding information about Sunbeam's 1998 first quarter sales after receiving information about those sales figures in the March 19 and March 25 comfort letters.

2. Morgan Stanley will argue at trial that CPH cannot establish justifiable reliance on any of its statements regarding Sunbeam's first quarter sales figures. *See, e.g., Cayuga Partners, LLC v. 150 Grand, LLC*, 759 N.Y.S.2d 347, 348 (App. Div. 2003) ("To sustain a cause of action alleging fraud, a party must show ... justifiable reliance of the other party on the misrepresentation or material omission ...."); *Hydro Investors, Inc. v. Trafalgar Power Inc.*, 227 F.3d 8, 20 (2d Cir. 2000) ("Under New York law, the elements for a negligent misrepresentation claim are that ... (5) the plaintiff reasonably relied on it to his or her detriment.").

3. New York law is clear that there is no justifiable reliance sufficient to support a claim for either fraud or negligent misrepresentation when the plaintiff was a sophisticated party that had the means to determine the truth itself. *See, e.g., UST Private Equity Fund, Inc. v. Salomon Smith Barney*, 733 N.Y.S.2d 385, 386 (App. Div. 2001) (affirming dismissal of fraud and negligent misrepresentation claims because "[a]s a matter of law, a sophisticated plaintiff cannot establish ... justifiable reliance on an alleged misrepresentation if that plaintiff failed to make use of the means of verification that were available to it, such as reviewing the files of other parties"); *Schlaifer Nance & Co. v. Estate of Warhol*, 119 F.3d 91, 98 (2d Cir. 1997) ("'Where sophisticated businessmen engaged in major transactions enjoy access to critical information but fail to take advantage of that access, New York courts are particularly

disinclined to entertain claims of justifiable reliance.'") (quoting *Grumman Allied Indus. v. Rohr Indus.*, 748 F.2d 729, 737 (2d Cir. 1984)).

4. Morgan Stanley will argue that CPH, as a sophisticated investor familiar with comfort letters, did not make use of all information available to verify the accuracy of Morgan Stanley's representations. CPH could have, and should have, requested Sunbeam's interim financial Statements for January and February 1998. These statements contain the same information as conferred in the comfort letters regarding the two line items CPH continually claims were concealed from it: ***Net Sales and Net Income*** for the first quarter of 1998.

5. The information in the comfort letters comes directly from one source — the interim financial statements of Sunbeam for January 1998 (MS 808 (Ex. 1)), and the interim financial statements of Sunbeam for February 1998 (MS 807 (Ex. 2)). This data was then "represented" to Arthur Andersen in "representation letters" by Sunbeam's management. (MS 30 (Ex. 3) and MS 34 (Ex. 4).) Arthur Andersen, in turn, reviewed the same interim financial statements and repeated the same information to Morgan Stanley pursuant to its request for the comfort letters (MS 9 (Ex. 5) and MS 10 (Ex. 6)) in connection with its underwriting of the debentures.

6. Morgan Stanley had no reason to believe that CPH would not look at Sunbeam's financial statements or request: (i) its own comfort letter from Andersen; or (ii) a copy of Andersen's letters to Morgan Stanley. Indeed, Morgan Stanley had every reason to believe a sophisticated investor like Perelman would obtain this information from Sunbeam as part of CPH's due diligence and its contractual right to inspect the "books and records" of Sunbeam.

7. CPH's own agreement to provide and receive comfort letters from Sunbeam in connection with the merger, *see* MS 117 § 7.3 (Feb. 27, 1998 Public Merger Agreement) (Ex. 7); MS 93, Ex. A § 2.4(a)(12) (Feb. 27, 1998 Holdings Merger Agreement) (Ex. 8), is evidence that

CPH had specific knowledge of comfort letters in general, that CPH was well aware that comfort letters are routinely use in merger transactions such as that at issue here, and that CPH had notice that Sunbeam would likely provide a comfort letter to Morgan Stanley in connection with its debenture offering. Indeed, the record is undisputed the Ernst & Young LLP provided Morgan Stanley, as underwriter, with a comfort letter on Coleman's financial statements.

8. CPH ***could have and should have*** asked Sunbeam or Morgan Stanley for a copy of the March 19 or March 25 comfort letters or the information contained therein. (*See* Dec. 7, 2004 Expert Report of George Fritz at 1-2, 7-9, 23-24 (Ex. 9) (concluding that CPH had ample reason in March 1998 to request information regarding Sunbeam's First Quarter 1998 sales and could have obtained that information from the Andersen comfort letters to Morgan Stanley or numerous other sources).) Consequently, the comfort letter provisions in the Public Merger Agreement (MS 117) and Holdings Merger Agreement (MS 93) are relevant to Morgan Stanley's argument that CPH's professed reliance on Morgan Stanley's representations about Sunbeam's 1998 first quarter sales was not justifiable.

9. The existence of comfort letter provisions in those two agreements that Coleman and CPH signed establish CPH's sophistication regarding comfort letters and their knowledge of and access to the March 19 and March 25 comfort letters provided to Morgan Stanley. These facts are necessary to Morgan Stanley's defense that CPH did not conduct adequate due diligence concerning Morgan Stanley's alleged misrepresentations. *See* Fla. Evid. Code § 90.401 (evidence "tending to prove or disprove a material fact" is relevant and admissible).

10. CPH's argument that evidence of these comfort letter references will confuse and mislead the jury holds no water. Contrary to CPH's assertions, Morgan Stanley does not intend to elicit testimony that the comfort letter references in the documents at issue refer specifically to the March 19, 1998 or the March 25, 1998 comfort letters Morgan Stanley received from Arthur

Andersen. Moreover, CPH is free to cross-examine Morgan Stanley's witnesses to the extent that CPH wants to clarify this point to the jury. In addition, CPH could request a simple jury instruction from the Court on the limited purpose for which the comfort letter provisions of the Public Merger Agreement and Holdings Merger Agreement will be admitted which would eliminate any possibility of jury confusion from the admission of the evidence.

11. In any event, the probative value of this evidence of CPH's sophistication and knowledge of comfort letters far outweighs any danger of jury confusion. Indeed, Florida law requires the admission of this evidence unless the danger of jury confusion ***substantially outweighs*** the probative value of the evidence. *See* Fla. Evid. Code § 90.403. CPH's failure to take advantage of its access to available information to verify the accuracy of Morgan Stanley's alleged misrepresentations is one of Morgan Stanley's principal defenses in this case. Any restriction on Morgan Stanley's ability to present relevant evidence in support of this defense would be far more prejudicial than any danger of jury confusion regarding different comfort letters.

WHEREFORE, while Morgan Stanley agrees with CPH's Motion in Limine No. 14 as written, and agrees not to present argument or testimony that the comfort letter references in the Public Merger Agreement and Holdings Merger Agreement refer specifically to the March 19, 1998 or the March 25, 1998 comfort letters Morgan Stanley received from Arthur Andersen, Morgan Stanley reserves its right to offer evidence of the "comfort letter" provisions in Public Merger Agreement and the Holdings Merger Agreement in support of its separate argument that CPH, a sophisticated entity well aware of the comfort letters to Morgan Stanley, failed to request copies of those letters or the information contained therein, and thus cannot establish justifiable reliance on Morgan Stanley's alleged misrepresentations.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 18th day of January, 2005.

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EXHIBIT 1

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

CASE NO: CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

EXPERT REPORT OF GEORGE P. FRITZ

I. Purpose of This Report

The purpose of this report is to express my opinion as to the several ways by which Coleman (Parent) Holdings Inc. ("CPH") could have obtained, prior to the sale of its interest in The Coleman Company, Inc. ("Coleman") to Sunbeam Corporation ("Sunbeam"), information relating to first quarter 1998 sales and earnings of Sunbeam. In two letters issued on March 19 and March 25, 1998,[1] Arthur Andersen LLP ("Andersen"), then the independent auditors of Sunbeam, informed Morgan Stanley & Co. Incorporated ("Morgan Stanley") that Sunbeam's sales and earnings for specified periods in the first quarter of 1998 had declined from the corresponding periods in 1997. Those two letters are commonly referred to as "comfort letters."

I will address whether CPH should have known (i) that the Andersen comfort letters existed and (ii) that the letters would have addressed declines, if any, in interim sales and earnings. I will discuss whether authoritative auditing standards in the United States would

[1] *See* March 19, 1998 Letter from Arthur Andersen LLP to Morgan Stanley, MS 9 ("March 19 Andersen Comfort Letter"); March 25, 1998 Letter from Arthur Andersen LLP to Morgan Stanley, MS 10 ("March 25 Andersen Comfort Letter").

have permitted Andersen to furnish the same or similar letters to CPH, had CPH requested them. Finally, I will review how CPH otherwise could have obtained the interim Sunbeam information.

My opinion, summarized in Section IV herein, is based on the facts and data in Section V and the detailed analyses in Sections VI and VII. My qualifications and the terms of my engagement are outlined in Section II.

II. Information About Expert

A. *Qualifications*

I am a founding member and managing director of Accounting & Auditing Consultants LLC ("A²C"), a specialized consulting firm formed in early 2004. The members of A²C are former partners of the "Big 4" accounting firms with a broad cross-section of professional experiences.

I have been a certified public accountant ("CPA") in New York, Connecticut, and Kentucky. In June 1959, I began my career in the public accounting profession after graduating *magna cum laude* from Xavier University, Cincinnati. In 1961, I became a CPA. I spent my entire career with Coopers & Lybrand L.L.P. ("C&L"), beginning with a regional firm that merged with C&L in 1970. I was admitted as a partner in 1971 and retired in 1997, although I continued until early 1999 as a full-time consultant to C&L and PricewaterhouseCoopers LLP ("PwC," the firm that was formed as the result of the 1998 merger of C&L and Price Waterhouse LLP).

Since my retirement from C&L/PwC, I have remained active in service to the public accounting profession. In 1999, I joined the staff of the Panel on Audit Effectiveness ("Panel"), commissioned by the Public Oversight Board ("POB"), a private

4. Sunbeam's periodic SEC filings, including its

   - 1997 Annual Report on Form 10-K (dated March 6, 1998);[13]
   - Quarterly Report on Form 10-Q for the first quarter of 1998 (dated May 15, 1998); and
   - Amended Quarterly Report on Form 10-Q/A for the first quarter 1998.[14]

5. Sunbeam press releases related to the first quarter 1998.[15]

In addition, I have reviewed professional auditing literature to the extent that I considered necessary and relevant, and have cited certain of that literature in this report. Exhibit C contains a list of cited Statements on Auditing Standards issued by the ASB and effective in 1998, the related AICPA codification references, and certain superseded authoritative documents mentioned for historical perspective.

IV. Opinion

My opinion is summarized below, and is based on the facts and data in Section V and the detailed analyses set forth in Sections VI and VII of this report.

In my opinion, prior to March 30, 1998 (the date on which Sunbeam acquired CPH's interest in Coleman), CPH had both the contractual right and multiple avenues of access to obtain Sunbeam's interim first quarter financial data, including access to the Andersen comfort letters. The merger agreement between CPH and Sunbeam provided both Sunbeam and CPH with reasonable access to the other party's books, records, and personnel *and* to the other party's financial advisers, legal counsel, accountants,

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[13] *See* Sunbeam Form 10-K for the Fiscal Year Ended December 28, 1997 (dated March 6, 1998), MS 12.

[14] *See* Sunbeam Amended Quarterly Report on Form 10-Q/A for the First Quarter 1998 (dated Nov. 25, 1998), MS 282.

[15] *See* March 19, 1998 Press Release, MS 39; April 3, 1998 Press Release, MS 58; May 11, 1998 Press Release, MS 115.

consultants, and other representatives.[16] In addition, Sunbeam was required to notify Coleman in the event of any material adverse changes to its financial performance, and CPH owed a corresponding contractual duty to Sunbeam.[17] Thus, CPH had the right to speak with anyone at Andersen or Sunbeam about Sunbeam's accounting policies and practices, and also about Sunbeam's 1998 interim first quarter financial data.

Accordingly, at any time prior to the sale, CPH could have requested that Sunbeam provide:

- Copies of the Andersen comfort letters issued to Morgan Stanley.[18] (The merger agreement gave CPH the right later to obtain similar comfort letters pursuant to CPH's registration rights[19]);
- Copies of the representation letter(s) Sunbeam furnished to Andersen, which were the source of much of the interim disclosures information contained in the Andersen comfort letters;[20]
- A comfort letter (or an equivalent letter) from Andersen addressed to CPH as an "other requesting party,"[21] covering the same matters as in the comfort letters to Morgan Stanley; or
- Pursuant to its contractual rights of access, any interim financial statements or other interim financial data for the first quarter of 1998.

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[16] *See* Merger Agreement § 6.7, MS 93.

[17] *See id.* § 6.8.

[18] *See* March 19 Andersen Comfort Letter, MS 9; March 25 Andersen Comfort Letter, MS 10.

[19] *See* March 29, 1998 Registration Rights Agreement, § 2.4(12), MS 278.

[20] *See* March 16 Sunbeam Representation Letter, CPH 120; March 23 Sunbeam Representation Letter, CPH 124.

[21] "Other requesting party" is discussed in Section VI.F, *infra*, of this report under "SAS 72: Comfort Letters Available to Other Requesting Parties."

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Any such request for copies of Sunbeam letters of representation to Andersen would have been reasonable because Coleman's auditors, Ernst & Young ("E&Y"), issued contemporaneous comfort letters to Morgan Stanley, and Coleman (or its parent company) furnished similar representations about interim financial data to E&Y.[22] In addition to seeking copies of comfort or representation letters, CPH could have asked Sunbeam to allow Andersen or Coleman's auditors to perform specified procedures to seek to identify sales or earnings declines at Sunbeam.[23]

The authoritative standards that guide auditors in these areas (*i.e.*, GAAS) would have allowed Andersen to issue comfort or equivalent letters to CPH that would have identified the interim sales and earnings declines. Among other things, those standards specifically provide for the issuance of comfort letters to buyers and sellers in acquisitions where there is an exchange of shares,[24] as occurred in the Sunbeam/CPH transaction.

V. Facts and Data Relied Upon

The following is a summary of transactions and events from Sunbeam's first quarter of 1998 that are relevant to my opinion. A chronology of events cited herein is summarized in Exhibit B.

On February 27, 1998, Sunbeam agreed to acquire Coleman.[25] CPH indirectly owned over 80% of Coleman, and the balance was owned by public shareholders. The acquisition was to be accomplished in two steps, the first of which was the purchase on

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[22] *See* March 20 E&Y Comfort Letter, MS 243.

[23] As would have been permitted by the relevant standard then in effect, *viz.*, Statement on Auditing Standards No. 75, *Engagements to Apply Agreed-Upon Procedures to Specified Elements, Accounts, or Items of a Financial Statement* ("SAS 75").

[24] *See* AICPA Codification of Auditing Standards, AU § 634.05, *Letters for Underwriters and Certain Other Requesting Parties.*

[25] *See* Merger Agreement, MS 93; Company Merger Agreement, MS 117.

16div-010172

Securities Act does not apply to such transactions, many participants in exempt offerings nonetheless refer to it defensively as a standard against which violations of Rule 10b-5 may be measured. Thus, underwriters and financial intermediaries in exempt offerings generally require the receipt of comfort letters for due diligence purposes.

Before SAS 72 was adopted in 1993, practice had varied with respect to auditors' responses to requests for comfort letters by parties other than underwriters or in connection with exempt offerings. Accordingly, in February 1993, in order to provide for uniformity of practice, the AICPA's Auditing Standards Board issued SAS 72, which authoritatively stated for the first time (i) the conditions under which auditors could issue comfort letters to parties other than underwriters and for transactions not subject to the Securities Act, and (ii) guidelines for the content of those letters. SAS 72 acknowledged that there was a strong demand for comfort letters in a wide variety of circumstances.

G. ***Comfort Letters to Buyers or Sellers in Business Combinations***

Of particular relevance to this report, SAS 72 specifically permits auditors to issue comfort letters to buyers or sellers (or both) in connection with acquisition transactions in which there is an exchange of stock. (SAS 72 cites as an example cross-comfort letters in a typical Form S-4 or merger proxy transaction.[60]) To obtain such comfort letters, requesting buyers or sellers must provide a letter to the auditor representing that they are knowledgeable with respect to the due diligence process under the Securities Act and that their review process is substantially consistent with that process. However, if such a representation cannot be made, a substantially similar version of a comfort letter

[60] Form S-4 is used to register securities with the SEC in connection with business combinations and exchange offers, and may be used as the proxy/information statement for the transaction.

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nonetheless may be issued.[61] This form of letter is different only in that information as to absence of changes in certain items of financial position and operations in the "change period" is attributed to management's positive assertions rather than the auditor's expressions of negative assurance.

SAS 72 also notes that a requesting party who does not meet the conditions for receipt of a comfort or equivalent letter still may engage an auditor to perform specified procedures and report on the results of those procedures.[62] That sort of limited service, referred to as an "agreed-upon procedures" engagement, is less than an audit or a review and consists of procedures applied by the accountant to specified financial statement accounts or elements. The requesting party and the accountant "agree upon" the procedures that the requesting party believes are appropriate for its purposes.

Many of the procedures requested in a comfort letter (or different procedures) could be performed in an agreed-upon procedures engagement. For example, a requesting party could ask the auditor to compare sales and earnings in the most recent available interim

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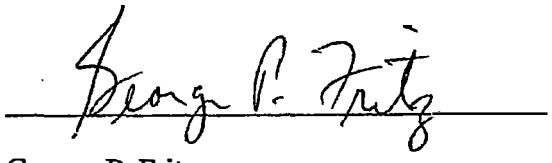
[61] *See* SAS 76, *Amendment to Statement on Auditing Standards No. 72, Letters for Underwriters and Certain Other Requesting Parties*, issued in September 1995. SAS 76 provided guidance on the form of report that could be issued to a qualified requesting party (including a buyer and seller in an acquisition) who could not furnish the representations required by SAS 72 regarding knowledge of the Securities Act due diligence process and performance of a review substantially consistent with that process. A "SAS 76" letter covers the same matters as a "standard" comfort letter; however, the accountant may not express negative assurance as to absence of changes in certain items of financial position and operations in the "change period" as in a "standard" letter. Rather, the accountant reports on the same information as the results of management inquiries. In a "standard" letter the accountant would state that "nothing came to *our* attention that there had been a decline in sales or earnings ...." However, in a "SAS 76" letter, the accountant would indicate that *officials of the company* stated that "there had been no decline in sales or earnings ...." In the codified AU § 634, the SAS 76 report example is Example Q.

[62] *See* SAS 75, *Engagements to Apply Agreed-Upon Procedures to Specified Elements, Accounts, or Items of a Financial Statement*, issued in September 1995 ("SAS 75"), superseding a similar standard issued in 1981. In 2000, the Auditing Standards Board withdrew SAS 75 in order to consolidate the guidance applicable to agreed-upon procedures engagements in what are called the "attestation" standards applicable to a variety of engagements to report on financial assertions other than financial statements. (SAS 75 was consolidated into Section 201, *Agreed-Upon Procedures Engagements*, of the AICPA's Codification of Statements on Standards for Attestation Engagements.) Unlike SAS 72 and 76, SAS 75 did not require that an accountant have an "audit base" of knowledge of an entity's control structure to perform agreed-upon procedures.

Fourth, CPH had contractual rights of access to Sunbeam records, personnel, accountants and other advisers and could have requested information directly from Sunbeam or its representatives, including Andersen.

Fifth, instead of a comfort letter, CPH could have requested, and the authoritative auditing standards would have sanctioned, that an accountant perform specified or "agreed upon" procedures with respect to Sunbeam financial statement accounts directed at determining, *e.g.*, if declines in interim sales and earnings had occurred.

Respectfully submitted



December 7, 2004

George P. Fritz

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

MORGAN STANLEY'S RESPONSE TO CPH MOTION IN LIMINE NO. 15 TO BAR EVIDENCE AND ARGUMENT THAT SUNBEAM ASSUMED DEBT OF THE COLEMAN COMPANY, INC. AS MERGER CONSIDERATION TO CPH

CPH contends that Morgan Stanley intends to argue that Sunbeam's assumption of The Coleman Company, Inc.'s ("Coleman") debt ($477,779,000 as of Dec. 31, 1997) was part of the consideration that CPH received in the Coleman Transaction. There is no dispute that Sunbeam, in effect, assumed this debt, when it purchased 82 percent of Coleman's common stock as part of the merger transactions on March 30, 1998.

Morgan Stanley agrees that for purposes of calculating damages, the market price of Coleman's common stock on the New York Stock Exchange does reflect this debt. Morgan Stanley further agrees that the Coleman debt is not a separate line item of consideration to CPH. Morgan Stanley agrees, therefore, only to introduce evidence relating to the Coleman Company debt as it relates to other issues in the case, including Perelman's economic motivation to enter into the transaction with Sunbeam and accept the economic risks inherent in Sunbeam's common stock.

Sunbeam in fact assumed that debt, and refinanced the debt with part of the funds it borrowed from the banks, including Morgan Stanley Senior Funding, Inc., and the proceeds of the debenture offering. When Sunbeam assumed that debt, the debt came off CLN Holdings Inc.

consolidated financial statements, along with the CLN Holdings long term debt of over $500 million, which Sunbeam also assumed and paid off in cash — not Sunbeam stock. The jury is entitled to hear evidence relating to the assumption of the Coleman debt in the context of the mechanics of the transaction. In addition, Sunbeam's assumption of the Coleman debt is relevant to explain the reasons why Perelman's advisors dumped their Sunbeam stock within days of the close of the transaction. Debt is a risk and the insiders knew this and more. *See, e.g., In re Smith Gardner Sec. Litig.*, 214 F. Supp. 2d 1291, 1303 (S.D. Fla. 2002) ("[C]oupled with other evidence, sales of stock by insiders in suspicious amounts or at suspicious times is probative of scienter.").

WHEREFORE, Morgan Stanley agrees that to the extent CPH's Motion In Limine No. 15 requests that Morgan Stanley be barred from arguing that Sunbeam's assumption of the Coleman Company debt is a "set-off" to damages or a "line item" of the consideration received by CPH. Morgan Stanley reserves its right to present such evidence in instances where it is specifically relevant to other facts at issue in the case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 18th day of January, 2005.

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Date: January 19, 2005

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From: Michael T. Brody
312 923-2711

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January 19, 2005

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By Telecopy

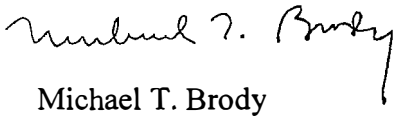
Thomas A. Clare, Esq.
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Tom:

I enclose an amended notice of deposition setting the Rule 1.310 deposition on punitive damages for January 25, 2005. Please advise us by close of business January 21, 2005 whether Morgan Stanley intends to any evidence or testimony concerning the possible effect of an award of punitive damages on its operations or solvency.

Very truly yours,



Michael T. Brody

MTB:cjg
cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

AMENDED NOTICE OF TAKING VIDEOTAPED DEPOSITION

To:

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
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Washington, D.C. 20005

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Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following party pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co., Inc. on topics identified on Exhibit A.	January 25, 2005 at 9:30 a.m.

The deposition will be conducted at Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017. The deposition will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The deposition will be taken before a person authorized to administer oaths and will continue day to day until completed.

With respect to the deposition identified above, please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List this 19th day of January 2005.

Dated: January 19, 2005

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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Client/Matter No.: 47877/14092 **Employee No.:**

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Message:

To follow please find a copy of Morgan Stanley's Motion to Extend Time to Depose Donald Uzzi, without exhibits.

☐ *Original to follow Via Regular Mail* ☐ *Original will Not be Sent* ☑ *Original will follow via Overnight Courier*

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INC.

Defendant.
_____/

MORGAN STANLEY & CO. INCORPORATED'S
MOTION TO EXTEND TIME TO DEPOSE DONALD UZZI

Defendant, Morgan Stanley & Co. Incorporated ("Morgan Stanley"), by and through its undersigned attorneys, hereby moves this Court for an order extending the time to depose a non-party witness, Donald Uzzi. In support, Morgan Stanley states as follows:

1. On December 15, 2004, Morgan Stanley filed a Motion for Leave to Take Deposition of Donald R. Uzzi, concerning the deposition of Donald Uzzi. A copy of the Motion is attached hereto as Exhibit "A." On December 22, 2004, the Court entered an order granting the Motion, in part, permitting Morgan Stanley to depose Donald Uzzi on or before January 19, 2005. A copy of the Order is attached hereto as Exhibit "B."

2. Morgan Stanley obtained service on Mr. Uzzi on January 12, 2005 for a deposition to take place on January 19, 2005. Morgan Stanley's counsel was unable to confirm the deposition with Mr. Uzzi and, as a result of a request from Plaintiff's counsel, Morgan Stanley informed Plaintiff's counsel that the deposition would not proceed on January 19, 2005 to avoid the unnecessary expenses associated with travel for the deposition.

3. On January 19, 2005, Morgan Stanley arranged for local counsel in Texas to be present at the time and location designated in the subpoena for Mr. Uzzi's deposition. Mr. Uzzi did not appear for his deposition.

4. Morgan Stanley has made every possible effort to obtain the deposition of Mr. Uzzi as quickly as possible. It is clear that Mr. Uzzi is evading service and refusing to appear for his deposition. Any delay in obtaining the deposition of Mr. Uzzi is not the result of any actions by Morgan Stanley.

5. Because Mr. Uzzi has failed to appear for his deposition, Morgan Stanley respectfully requests that the Court extend the time to depose Mr. Uzzi.

6. If the Court denies this Motion, the effect is to strike Mr. Uzzi from Morgan Stanley's witness list. This Court may "properly exclude the testimony of a witness whose name has not been disclosed in accordance with a pretrial order." *Binger v. King Pest Control*, 401 So.2d 1310, 1313-14 (Fla. 1981). However, in order to strike this witness, Plaintiff must demonstrate that it will be prejudiced by the deposition. Until the deposition is taken, there is no way to determine whether any prejudice will be suffered.

WHEREFORE, Morgan Stanley respectfully requests that this Court enter an order extending the time for Morgan Stanley to depose Mr. Uzzi and for such other and further relief as is just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 19th day of January, 2005.

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#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

Case No. CA 03-5045 AI

ORDER ON MORGAN STANLEY'S MOTION FOR PROTECTIVE ORDER DATED JANUARY 12, 2005

THIS CAUSE having come to be considered upon Morgan Stanley's Motion for Protective Order dated January 12, 2005, and the Court having reviewed the file and being fully advised in the premises, it is hereby,

ORDERED and ADJUDGED: the Motion's Granted, in part and denied, in part. If Defendant intends to present evidence or testimony concerning the possible effect of any award of punitive damages on its operations or solvency, it will provide a representative competent to testify on topic 3. If it elects in writing not to present evidence or testimony on this topic, it will be relieved of the responsibility to produce a deponent on that topic. In all other respects the Motion is Denied.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this 19 day of J-, 2005.

ELIZABETH T. MAASS
CIRCUIT COURT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

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00001

IN THE FIFTEENTH JUDICIAL CIRCUIT COURT IN AND FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION
CASE NO.: 03 CA 005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

- - -

TRANSCRIPT OF THE PROCEEDINGS BEFORE THE HONORABLE ELIZABETH T. MAAS

- - -

West Palm Beach, Florida
Wednesday, January 19, 2005
8:24 a.m. - 8:44 a.m.

00002

APPEARANCES:

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BY: JOSEPH T. IANNO, ESQUIRE

SEARCY, DENNEY, SCAROLA, BARNHART, & SHIPLEY, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33401
Counsel for the Plaintiffs
BY: JACK SCAROLA, ESQUIRE

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BE IT REMEMBERED that the foregoing proceedings were had before the HONORABLE ELIZABETH T. MAAS, in Chambers, in the Palm Beach County Courthouse, West Palm Beach, Florida, on Wednesday, January 19, 2005, starting at 8:24 a.m., with appearances as hereinabove noted, to wit:

* * *

MR. IANNO: I think -- I hesitate to say this, Judge, but I think we'll be brief this morning.

THE COURT: Okay. That's all relative, I'm sure. But what are we here on?

MR. IANNO: It's just we have a couple of issues. The only motion is a written motion that's before Your Honor.

THE COURT: Okay. First of all, I know I had my judicial assistant call your secretaries yesterday. Plaintiff had not filed a motion for summary judgment; is that right?

MR. IANNO: That's correct.

THE COURT: I can't find your findings of fact. And I know I have them repeated in plaintiff's opposition. Do we know where they are? Do you have another copy?

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MR. IANNO: I can send a copy over this morning. I don't have them with me this morning, but I'll have them sent right over.

This is our motion for protective order, Judge, and Coleman's response is also attached.

THE COURT: Okay. Give me a second to look at it.

THE COURT: Okay. What did you want to say in support of the motion?

MR. IANNO: Judge, at the beginning I'd like to acknowledge -- well, there's three

deposition topics. The first one was resolved by agreement. The primary reason we're here is topic number three, which admittedly -- which I know the court has entered an order previously on the notice as regards to topic two. Topic three is new. We consider that a prejudgment discovery tactic for execution.

The only response that Coleman has to that is in one motion in limine regarding net worth evidence. We said there's no

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question Morgan Stanley has the ability to satisfy a punitive damage judgment. That does not give them the right to conduct prejudgment execution type discovery on whether or not Morgan Stanley has the ability to satisfy the punitive damage judgment.

THE COURT: Let me ask you this. In two, when we talk about global holdings, do we agree that includes what the specific assets are that defendant holds?

MR. IANNO: I don't know what their --

THE COURT: I mean, if it includes cash in bank accounts, it includes real estate, it includes information on whether there are mortgages on real estate, if we agree all of that is included in global holdings, I'm not sure what three adds.

And I can ask you.

MR. IANNO: Part of the problem I have with two that I argued to the court before is that I don't know what they really are trying to get at because we've produced to them since that hearing the financial statements that list all of the assets. I

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don't know what type of detail they're trying to get at in this discovery. Are they just trying to find an amount? Because the topic just says, "Morgan Stanley's net worth." I mean, that's all set forth in numbers in the financial statements.

THE COURT: Okay. And I assume three could be read so broadly to say we need somebody to testify about the domestic law of, you know, India to see if these are recoverable, attachable assets from an American judgment or something. Tell me what three adds to two.

MR. SCAROLA: Your Honor, I'm not sure

that three adds anything to two except for Morgan Stanley's own position with regard to its liquidity.

THE COURT: Well, that's why I was asking the nature -- if global assets in two includes specific information about specific assets, you guys can figure that out as well as they can.

MR. SCAROLA: Clearly we have the ability to draw our own conclusions from

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the information that we seek to obtain with regard to topic number two.

And let me first ask directly, the motion seeks a protective order with regard to both topic two and topic three. Do I understand Mr. Ianno now to be conceding topic two?

THE COURT: I think he's conceding that there's no point in offering any argument on two.

MR. IANNO: My point is I would hope the court would revisit in light of the production. But if the court isn't going to --

THE COURT: I think he was just acknowledging the inevitable.

MR. SCAROLA: If we get all of the information that we are seeking with regard to topic number two, clearly we are able to draw our own conclusions. But we're also entitled to know whether Morgan Stanley draws from those documents different conclusions than we draw with regard to its ability to satisfy a punitive damage judgment in this case.

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Meaning, are you going to be arguing at trial that a figure above a certain level will impose such an economic hardship on the defendant that it is unreasonable to assess a punitive damage judgment in that amount because it will bankrupt the company, because it will drastically impact upon our ability to conduct business on an ongoing basis, because the assets that we have, although they may appear to be liquid to you, are really not liquid assets, and we are not able to gather those funds necessary to satisfy that judgment, and, therefore, will have an unreasonable adverse impact upon the financial circumstances of the company? Those are the kinds of things we are

looking at with regard to topic number three.
THE COURT: Let me ask you this. If I found that type of inquiry to be expert testimony and required disclosure on it, would that get you where you need to go? And why wouldn't it be expert testimony?
MR. IANNO: Well, I don't know if the

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court questioned --
THE COURT: You know, I'm just -- I understand what you're telling me. I'm just trying to figure out how --
MR. SCAROLA: Well, I don't know that the defendant's own position with regard to its financial circumstances is necessarily expert testimony.
THE COURT: But if you wanted to put -- I'm not so sure it's not because a lot of what you're suggesting would be testified to in the form of opinion. A lot of it really -- well, you know, I would assume this would be a mixed sort of expert and fact witness. A lot of it, I think, is really expert opinion. And certainly if you were going to contradict it, you would have an expert who would testify as to the effect on the corporations. I don't know why their testimony wouldn't be expert.
MR. SCAROLA: And we have designated an expert with regard to these areas.
THE COURT: I assume they have not.
MR. SCAROLA: I don't know whether they have designated an expert in that area or

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not.
MR. IANNO: I don't know that the damages expert is going to speak to that or not, Judge.
MR. SCAROLA: Regardless of whether there's a third-party expert designated to address those issues, I would think we're entitled to know whether the defendant itself has a position with regard to those issues. And that's what we're seeking to find out.
THE COURT: A position that they're going to be able to present to the jury. What's your client's position.
MR. IANNO: Your Honor, the way this is worded, our ability to satisfy punitive damages judgment and what amount, at what time, when is it going to be collected.
THE COURT: Presumably those are things

that could be posed in the form of a hypothetical to the witness.
MR. IANNO: But you're talking about what is Morgan Stanley's financial condition going to be in 30 days, 60 days, 90 days. It's pure speculation.

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THE COURT: It's not pure speculation.
MR. IANNO: Well, I mean, the market. I mean, Morgan Stanley is partially market driven.
THE COURT: So are you stipulating now you're going to offer no evidence as to the effect of any specific dollar amount punitive damages award on operations of the client?
MR. IANNO: I can't do that until I know what they're going to put on. I don't know what dollar amount they're going to put on for a punitive damages claim. They go first, Judge. That's the problem. They need to tell us what they're going to put on. I don't know. I think this -- I haven't done the research on this, but I think they would be post-trial issues, not during trial. But it could be during trial depending on what the plaintiff actually gets into evidence during their case in chief.
THE COURT: I would think some of this would be relevant at trial with regard to the punitive damages amount.

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MR. IANNO: I just don't know what they're going to put on.
THE COURT: In all honesty, if defendant intends to present any evidence as to the effect of an award of punitive damages in any specific dollar amount against defendant on its, you know, operations or financial health, I think they get to depose you on it, because I do think that's expert testimony.
MR. IANNO: But then they need to tell us exactly what they're looking for. And just their ability to satisfy -- I mean, punitive damages could be $100.
THE COURT: And then presumably the witness is going to say we could pay that easy.
MR. IANNO: The problem is they're all hypotheticals until they tell us exactly what they're going to ask for and when --
THE COURT: That part I disagree with.

MR. IANNO: Okay.
THE COURT: Did you have a proposed order?
MR. SCAROLA: I do, Your Honor, yes.

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THE COURT: Let me see if I can scribble on it.
MR. SCAROLA: Just a blank order.
THE COURT: I'm not addressing the timing of the depo?
MR. IANNO: We'll get him there ASAP, Judge. The only problem with this week is we have everyone here for summary judgment so it will be next week if that's okay.
THE COURT: Okay. Are we doing -- are we doing motions on expert testimony as well?
MR. IANNO: We sent a letter on that yesterday, Judge. You may not have received it. Mr. Scarola and I have agreed to put that off to the pretrial conferences because we've agreed on an expert motion schedule.
THE COURT: Okay.
MR. IANNO: Instead we wanted to do -- and we sent it over to the court yesterday -- a motion in limine regarding the procedure for use of depositions at trial --
THE COURT: Okay.

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MR. IANNO: -- to try to get that resolved.
THE COURT: I have that coming?
MR. IANNO: It was sent over by hand delivery yesterday.
THE COURT: I have envelopes. Those are extra.
MR. IANNO: Judge, one other --
THE COURT: Let me finish writing this.
MR. IANNO: I'm sorry.
THE COURT: Okay. What this says -- it's granted in part and denied in part -- "If the defendant intends to present any evidence or testimony concerning the possible effect of an award of punitive damages on its operations or solvency, it shall provide a representative competent to testify on topic three. If it elects in writing not to present evidence or testimony on this topic, it shall be relieved of the responsibility to produce a deponent on that topic. In all other respects the motion is denied."

What else?
MR. IANNO: Your Honor, about -- I

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don't know if it was a couple of weeks, maybe in December, if you recall Mr. Uzzi, you gave us until today to get him served and deposed.
THE COURT: Yeah, yeah, yeah, yeah.
MR. IANNO: We did get him served, and I apologize for not having time to put together a written motion. With the holiday on Monday it was difficult. We did get him served last week; however, we haven't been able to get him contacted to see if he was going to show up in Dallas. So rather than incur the expense of Jenner flying down, we postponed the depo hoping the court would give us until next Friday to contact him and have him deposed rather than lawyers go there not knowing if he's going to show up.
THE COURT: Next week. You mean a week from Friday?
MR. IANNO: Yes. And this is my ore tenus motion.
THE COURT: Do you have a copy of my order?
MR. IANNO: I don't have it with me.

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You gave us until the 19th to get him deposed.
THE COURT: I think I would need a written motion. I mean, you know, I remember a discussion about this. I don't remember all the pieces as I sit here.
MR. IANNO: Okay.
THE COURT: And I don't -- this is really sort of like a motion for rehearing, and I need it in writing. Sorry.
MR. IANNO: It's actually a motion for extension of time is the way I would phrase it.
MR. SCAROLA: In order to avoid the procedural difficulties.
THE COURT: I need to see the pieces to recreate how we got where we did when I entered that order. Because I know there was substantial discussion on it. I just can't recall it all as I sit here.
MR. IANNO: Okay. I'll try to get that over to you today, then, the original motion and your order.
THE COURT: What's today? I can see

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you Thursday. I'll be here.
MR. IANNO: You want us to come back to uniform motion calendar on that if you want?
THE COURT: I can tell you it's not something I'm going to do ex parte, so if you're going to pursue it, I'm going to need you back with a written motion.
MR. IANNO: Housekeeping matters, Judge, have you thought how you want us to proceed on Friday? We have four hours reserved. As far as allocation to openings, things of that nature.
THE COURT: No, I hadn't given any thought. Had you guys?
MR. IANNO: I'll be -- since we're coming back tomorrow perhaps Mr. Scarola and I could talk about it.
MR. SCAROLA: Could I suggest that rather than come back tomorrow since what they're asking for is a postponement until next week, and apparently they have already cancelled the deposition that was supposed to be set for today, can't we just deal with this on Friday rather than
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make an extra trip, although it's a pleasure to see you every morning?
THE COURT: I'm sure it is. Any objection?
MR. IANNO: I don't have an objection to that, Judge. Thursday or Friday.
THE COURT: Then we still need to discuss how we want to proceed on Friday.
MR. IANNO: How we want to handle Friday.
THE COURT: Do either of you have suggestions?
MR. SCAROLA: I'm really not sure what the concern is. An allocation of the time?
MR. IANNO: We have a couple motions to strike that were still pending. They moved to strike our statement of facts. We moved to strike their response. I don't know if the court wants to do openings and then allocate a certain amount of time to argument and closings. That's really what I was trying to get at, if the court had any concerns -- if the court doesn't have any --
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THE COURT: I don't have concerns about

getting it done in the amount of time. I am --

MR. SCAROLA: Procedurally, my suggestion is that we take this one claim at a time; address each of the claims; have them present their argument; we'll present our response; they can present a response to that response.

THE COURT: The only problem with that is to the extent some of the facts overlap the claims.

MR. SCAROLA: Clearly they will.

MR. IANNO: Intentional and negligent misrepresentation, certainly some of those are going to overlap and the conspiracy.

THE COURT: I don't know if it's better to argue first the undisputed facts relevant to the claims and then go back and argue each claim based on those facts.

MR. SCAROLA: That's fine.

MR. IANNO: Okay.

THE COURT: I understand. I don't have strong feelings.

MR. IANNO: Okay.

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MR. SCAROLA: I think there have been in Morgan Stanley's moving papers seven assertions of key undisputed facts. And maybe the best way to deal with it is to first focus on those seven assertions, make a determination as to whether they are or are not undisputed, and the extent to which they were or are not key, and then apply it to the individual claims.

THE COURT: I think it probably does make sense to do the fact sort of part first.

MR. IANNO: I was trying to get some guidance to assist the court.

THE COURT: That probably does make sense because then I have straight in my mind what are the facts I believe are disputed and what are the ones I need to go back and look at and hear the legal arguments so I know how they all fit in.

MR. IANNO: Okay. Thank you, Judge.

(The proceedings were concluded at 8:44 a.m.)

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C E R T I F I C A T E

THE STATE OF FLORIDA)

)
COUNTY OF PALM BEACH)

I, Barbara Gallo, RMR-CRR, Registered Merit Reporter-Certified Realtime Reporter, do hereby certify that I was authorized to and did report the foregoing proceedings at the time and place herein stated, and that the foregoing is a true and correct transcription of my stenotype notes taken during said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this_____day of_____, 2005

_____

BARBARA GALLO, RMR-CRR
Registered Merit Reporter
Certified Realtime Reporter

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IN THE FIFTEENTH JUDICIAL CIRCUIT COURT IN AND FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION
CASE NO.: 03 CA 005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

- - -

TRANSCRIPT OF THE PROCEEDINGS BEFORE THE HONORABLE ELIZABETH T. MAAS

- - -

West Palm Beach, Florida
Wednesday, January 19, 2005
8:24 a.m. - 8:44 a.m.

00002

APPEARANCES:

CARLTON, FIELDS, WARD
EMMANUEL, SMITH & CUTLER, P.A.
222 Lakeview Avenue
Suite 1400
West Palm Beach, Florida 33401
Counsel for the Defendants
BY: JOSEPH T. IANNO, ESQUIRE

SEARCY, DENNEY, SCAROLA, BARNHART, & SHIPLEY, P.A.
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West Palm Beach, Florida 33401
Counsel for the Plaintiffs
BY: JACK SCAROLA, ESQUIRE

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BE IT REMEMBERED that the foregoing proceedings were had before the HONORABLE ELIZABETH T. MAAS, in Chambers, in the Palm Beach County Courthouse, West Palm Beach, Florida, on Wednesday, January 19, 2005, starting at 8:24 a.m., with appearances as hereinabove noted, to wit:

* * *

MR. IANNO: I think -- I hesitate to say this, Judge, but I think we'll be brief this morning.

THE COURT: Okay. That's all relative, I'm sure. But what are we here on?

MR. IANNO: It's just we have a couple of issues. The only motion is a written motion that's before Your Honor.

THE COURT: Okay. First of all, I know I had my judicial assistant call your secretaries yesterday. Plaintiff had not filed a motion for summary judgment; is that right?

MR. IANNO: That's correct.

THE COURT: I can't find your findings of fact. And I know I have them repeated in plaintiff's opposition. Do we know where they are? Do you have another copy?

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MR. IANNO: I can send a copy over this morning. I don't have them with me this morning, but I'll have them sent right over.

This is our motion for protective order, Judge, and Coleman's response is also attached.

THE COURT: Okay. Give me a second to look at it.

THE COURT: Okay. What did you want to say in support of the motion?

MR. IANNO: Judge, at the beginning I'd like to acknowledge -- well, there's three

deposition topics. The first one was resolved by agreement. The primary reason we're here is topic number three, which admittedly -- which I know the court has entered an order previously on the notice as regards to topic two. Topic three is new. We consider that a prejudgment discovery tactic for execution.

The only response that Coleman has to that is in one motion in limine regarding net worth evidence. We said there's no

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question Morgan Stanley has the ability to satisfy a punitive damage judgment. That does not give them the right to conduct prejudgment execution type discovery on whether or not Morgan Stanley has the ability to satisfy the punitive damage judgment.

THE COURT: Let me ask you this. In two, when we talk about global holdings, do we agree that includes what the specific assets are that defendant holds?

MR. IANNO: I don't know what their --

THE COURT: I mean, if it includes cash in bank accounts, it includes real estate, it includes information on whether there are mortgages on real estate, if we agree all of that is included in global holdings, I'm not sure what three adds. And I can ask you.

MR. IANNO: Part of the problem I have with two that I argued to the court before is that I don't know what they really are trying to get at because we've produced to them since that hearing the financial statements that list all of the assets. I

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don't know what type of detail they're trying to get at in this discovery. Are they just trying to find an amount? Because the topic just says, "Morgan Stanley's net worth." I mean, that's all set forth in numbers in the financial statements.

THE COURT: Okay. And I assume three could be read so broadly to say we need somebody to testify about the domestic law of, you know, India to see if these are recoverable, attachable assets from an American judgment or something. Tell me what three adds to two.

MR. SCAROLA: Your Honor, I'm not sure

that three adds anything to two except for Morgan Stanley's own position with regard to its liquidity.

THE COURT: Well, that's why I was asking the nature -- if global assets in two includes specific information about specific assets, you guys can figure that out as well as they can.

MR. SCAROLA: Clearly we have the ability to draw our own conclusions from

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the information that we seek to obtain with regard to topic number two.

And let me first ask directly, the motion seeks a protective order with regard to both topic two and topic three. Do I understand Mr. Ianno now to be conceding topic two?

THE COURT: I think he's conceding that there's no point in offering any argument on two.

MR. IANNO: My point is I would hope the court would revisit in light of the production. But if the court isn't going to --

THE COURT: I think he was just acknowledging the inevitable.

MR. SCAROLA: If we get all of the information that we are seeking with regard to topic number two, clearly we are able to draw our own conclusions. But we're also entitled to know whether Morgan Stanley draws from those documents different conclusions than we draw with regard to its ability to satisfy a punitive damage judgment in this case.

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Meaning, are you going to be arguing at trial that a figure above a certain level will impose such an economic hardship on the defendant that it is unreasonable to assess a punitive damage judgment in that amount because it will bankrupt the company, because it will drastically impact upon our ability to conduct business on an ongoing basis, because the assets that we have, although they may appear to be liquid to you, are really not liquid assets, and we are not able to gather those funds necessary to satisfy that judgment, and, therefore, will have an unreasonable adverse impact upon the financial circumstances of the company? Those are the kinds of things we are

looking at with regard to topic number three.
THE COURT: Let me ask you this. If I found that type of inquiry to be expert testimony and required disclosure on it, would that get you where you need to go? And why wouldn't it be expert testimony?
MR. IANNO: Well, I don't know if the

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court questioned --
THE COURT: You know, I'm just -- I understand what you're telling me. I'm just trying to figure out how --
MR. SCAROLA: Well, I don't know that the defendant's own position with regard to its financial circumstances is necessarily expert testimony.
THE COURT: But if you wanted to put -- I'm not so sure it's not because a lot of what you're suggesting would be testified to in the form of opinion. A lot of it really -- well, you know, I would assume this would be a mixed sort of expert and fact witness. A lot of it, I think, is really expert opinion. And certainly if you were going to contradict it, you would have an expert who would testify as to the effect on the corporations. I don't know why their testimony wouldn't be expert.
MR. SCAROLA: And we have designated an expert with regard to these areas.
THE COURT: I assume they have not.
MR. SCAROLA: I don't know whether they have designated an expert in that area or

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not.
MR. IANNO: I don't know that the damages expert is going to speak to that or not, Judge.
MR. SCAROLA: Regardless of whether there's a third-party expert designated to address those issues, I would think we're entitled to know whether the defendant itself has a position with regard to those issues. And that's what we're seeking to find out.
THE COURT: A position that they're going to be able to present to the jury. What's your client's position.
MR. IANNO: Your Honor, the way this is worded, our ability to satisfy punitive damages judgment and what amount, at what time, when is it going to be collected.
THE COURT: Presumably those are things

that could be posed in the form of a hypothetical to the witness.
MR. IANNO: But you're talking about what is Morgan Stanley's financial condition going to be in 30 days, 60 days, 90 days. It's pure speculation.

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THE COURT: It's not pure speculation.
MR. IANNO: Well, I mean, the market. I mean, Morgan Stanley is partially market driven.
THE COURT: So are you stipulating now you're going to offer no evidence as to the effect of any specific dollar amount punitive damages award on operations of the client?
MR. IANNO: I can't do that until I know what they're going to put on. I don't know what dollar amount they're going to put on for a punitive damages claim. They go first, Judge. That's the problem. They need to tell us what they're going to put on. I don't know. I think this -- I haven't done the research on this, but I think they would be post-trial issues, not during trial. But it could be during trial depending on what the plaintiff actually gets into evidence during their case in chief.
THE COURT: I would think some of this would be relevant at trial with regard to the punitive damages amount.

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MR. IANNO: I just don't know what they're going to put on.
THE COURT: In all honesty, if defendant intends to present any evidence as to the effect of an award of punitive damages in any specific dollar amount against defendant on its, you know, operations or financial health, I think they get to depose you on it, because I do think that's expert testimony.
MR. IANNO: But then they need to tell us exactly what they're looking for. And just their ability to satisfy -- I mean, punitive damages could be $100.
THE COURT: And then presumably the witness is going to say we could pay that easy.
MR. IANNO: The problem is they're all hypotheticals until they tell us exactly what they're going to ask for and when --
THE COURT: That part I disagree with.

MR. IANNO: Okay.
THE COURT: Did you have a proposed order?
MR. SCAROLA: I do, Your Honor, yes.

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THE COURT: Let me see if I can scribble on it.
MR. SCAROLA: Just a blank order.
THE COURT: I'm not addressing the timing of the depo?
MR. IANNO: We'll get him there ASAP, Judge. The only problem with this week is we have everyone here for summary judgment so it will be next week if that's okay.
THE COURT: Okay. Are we doing -- are we doing motions on expert testimony as well?
MR. IANNO: We sent a letter on that yesterday, Judge. You may not have received it. Mr. Scarola and I have agreed to put that off to the pretrial conferences because we've agreed on an expert motion schedule.
THE COURT: Okay.
MR. IANNO: Instead we wanted to do -- and we sent it over to the court yesterday -- a motion in limine regarding the procedure for use of depositions at trial --
THE COURT: Okay.

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MR. IANNO: -- to try to get that resolved.
THE COURT: I have that coming?
MR. IANNO: It was sent over by hand delivery yesterday.
THE COURT: I have envelopes. Those are extra.
MR. IANNO: Judge, one other --
THE COURT: Let me finish writing this.
MR. IANNO: I'm sorry.
THE COURT: Okay. What this says -- it's granted in part and denied in part -- "If the defendant intends to present any evidence or testimony concerning the possible effect of an award of punitive damages on its operations or solvency, it shall provide a representative competent to testify on topic three. If it elects in writing not to present evidence or testimony on this topic, it shall be relieved of the responsibility to produce a deponent on that topic. In all other respects the motion is denied."

What else?
MR. IANNO: Your Honor, about -- I

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don't know if it was a couple of weeks, maybe in December, if you recall Mr. Uzzi, you gave us until today to get him served and deposed.
THE COURT: Yeah, yeah, yeah, yeah.
MR. IANNO: We did get him served, and I apologize for not having time to put together a written motion. With the holiday on Monday it was difficult. We did get him served last week; however, we haven't been able to get him contacted to see if he was going to show up in Dallas. So rather than incur the expense of Jenner flying down, we postponed the depo hoping the court would give us until next Friday to contact him and have him deposed rather than lawyers go there not knowing if he's going to show up.
THE COURT: Next week. You mean a week from Friday?
MR. IANNO: Yes. And this is my ore tenus motion.
THE COURT: Do you have a copy of my order?
MR. IANNO: I don't have it with me.

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You gave us until the 19th to get him deposed.
THE COURT: I think I would need a written motion. I mean, you know, I remember a discussion about this. I don't remember all the pieces as I sit here.
MR. IANNO: Okay.
THE COURT: And I don't -- this is really sort of like a motion for rehearing, and I need it in writing. Sorry.
MR. IANNO: It's actually a motion for extension of time is the way I would phrase it.
MR. SCAROLA: In order to avoid the procedural difficulties.
THE COURT: I need to see the pieces to recreate how we got where we did when I entered that order. Because I know there was substantial discussion on it. I just can't recall it all as I sit here.
MR. IANNO: Okay. I'll try to get that over to you today, then, the original motion and your order.
THE COURT: What's today? I can see

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you Thursday. I'll be here.
MR. IANNO: You want us to come back to uniform motion calendar on that if you want?
THE COURT: I can tell you it's not something I'm going to do ex parte, so if you're going to pursue it, I'm going to need you back with a written motion.
MR. IANNO: Housekeeping matters, Judge, have you thought how you want us to proceed on Friday? We have four hours reserved. As far as allocation to openings, things of that nature.
THE COURT: No, I hadn't given any thought. Had you guys?
MR. IANNO: I'll be -- since we're coming back tomorrow perhaps Mr. Scarola and I could talk about it.
MR. SCAROLA: Could I suggest that rather than come back tomorrow since what they're asking for is a postponement until next week, and apparently they have already cancelled the deposition that was supposed to be set for today, can't we just deal with this on Friday rather than
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make an extra trip, although it's a pleasure to see you every morning?
THE COURT: I'm sure it is. Any objection?
MR. IANNO: I don't have an objection to that, Judge. Thursday or Friday.
THE COURT: Then we still need to discuss how we want to proceed on Friday.
MR. IANNO: How we want to handle Friday.
THE COURT: Do either of you have suggestions?
MR. SCAROLA: I'm really not sure what the concern is. An allocation of the time?
MR. IANNO: We have a couple motions to strike that were still pending. They moved to strike our statement of facts. We moved to strike their response. I don't know if the court wants to do openings and then allocate a certain amount of time to argument and closings. That's really what I was trying to get at, if the court had any concerns -- if the court doesn't have any --
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THE COURT: I don't have concerns about

getting it done in the amount of time. I am --

MR. SCAROLA: Procedurally, my suggestion is that we take this one claim at a time; address each of the claims; have them present their argument; we'll present our response; they can present a response to that response.

THE COURT: The only problem with that is to the extent some of the facts overlap the claims.

MR. SCAROLA: Clearly they will.

MR. IANNO: Intentional and negligent misrepresentation, certainly some of those are going to overlap and the conspiracy.

THE COURT: I don't know if it's better to argue first the undisputed facts relevant to the claims and then go back and argue each claim based on those facts.

MR. SCAROLA: That's fine.

MR. IANNO: Okay.

THE COURT: I understand. I don't have strong feelings.

MR. IANNO: Okay.

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MR. SCAROLA: I think there have been in Morgan Stanley's moving papers seven assertions of key undisputed facts. And maybe the best way to deal with it is to first focus on those seven assertions, make a determination as to whether they are or are not undisputed, and the extent to which they were or are not key, and then apply it to the individual claims.

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THE COURT: That probably does make sense because then I have straight in my mind what are the facts I believe are disputed and what are the ones I need to go back and look at and hear the legal arguments so I know how they all fit in.

MR. IANNO: Okay. Thank you, Judge.

(The proceedings were concluded at 8:44 a.m.)

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C E R T I F I C A T E

THE STATE OF FLORIDA)

)
COUNTY OF PALM BEACH)

I, Barbara Gallo, RMR-CRR, Registered Merit Reporter-Certified Realtime Reporter, do hereby certify that I was authorized to and did report the foregoing proceedings at the time and place herein stated, and that the foregoing is a true and correct transcription of my stenotype notes taken during said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this_____day of_____, 2005

_____

BARBARA GALLO, RMR-CRR
Registered Merit Reporter
Certified Realtime Reporter

#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiffs,

vs.

MORGAN STANLEY & CO., INC.

Defendant.

CASE NO: 2003 CA 005045 AI

/

NOTICE OF INTENT TO RELY UPON ADDITIONAL AUTHORITY IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Plaintiff hereby gives notice of its intent to rely upon the following additional cases in opposition to the Defendant's Motion for Summary Judgment with respect to the Defendant's position on Plaintiff's reliance on circumstantial evidence:

Tucker Bros., Inc. v. Menard, 90 So.2d 908 (Fla. 1956)

Voelker v. Combined Insurance Company of America, 73 So.2d 403 (Fla. 1954)

Gonzalez v. B&B Cash Grocery Stores, Inc., 692 So.2d 297 (4 DCA 1997)

Streeter v. Bondurant, 563 So.2d 729 (1 DCA 1990)

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 20th day of Jan., 2005.

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Coleman Holdings, Inc. vs Morgan Stanley & Company
Notice Of Intent To Rely Upon Additional Authority In Opposition To Defendant's Motion For Summary Judgment
Case No.: 2003 CA 005045 AI

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Westlaw.
90 So.2d 908
90 So.2d 908
(Cite as: 90 So.2d 908)

Supreme Court of Florida, Special Division A.

TUCKER BROTHERS, Inc., a corporation, and Pearlwood Construction Company, a corporation, Appellants,
v.
Lewis Arthur MENARD, III, a minor, by his mother and next friend, Mrs. Helen Menard, and Lewis Arthur Menard, II, Appellees.

Nov. 28, 1956.

Action by child, by his mother and next friend, for injuries received by being burned in fire on vacant lot, and by father to recover medical expenses. The Circuit Court, Duval County, Claude Ogilvie, J., rendered judgment for plaintiffs and defendants appealed. The Supreme Court, Thornal, J., held that recovery was authorized on theory of attractive nuisance resulting from condition of the area as a whole, regardless of whether fire was an attractive nuisance, but that circuit court did not have jurisdiction of father's claim.

Judgment for father reversed and judgment for child affirmed.

West Headnotes

[1] **Negligence** 1204(1)
272k1204(1) Most Cited Cases
(Formerly 272k39)

[1] **Negligence** 1205(7)
272k1205(7) Most Cited Cases
(Formerly 272k39)

Where lumber, tools and other construction materials were placed on vacant lot where trash was burned, and children were in fact attracted to the area over a period of weeks, lot owner and building contractor could be held liable for burns suffered by child on theory of attractive nuisance, regardless of whether fire itself was an attractive nuisance, especially where fire was not a glowing flame but a large bed of ashes covering red-hot coals.

[2] **Negligence** 1664
272k1664 Most Cited Cases
(Formerly 272k134(2))

Circumstantial evidence was sufficient to show that burning of child occurred on defendant's vacant lot, where trash was being burned.

[3] **Criminal Law** 552(1)
110k552(1) Most Cited Cases

[3] **Evidence** 587
157k587 Most Cited Cases

An ultimate fact can be established by circumstantial evidence in a civil action just as in a criminal case.

[4] **Evidence** 587
157k587 Most Cited Cases

The rule as to quantum of circumstantial evidence in civil cases is not so burdensome as in criminal cases; it being sufficient if particular inference of fact essential to recovery outweighs all contrary inferences to the extent that it amounts to a preponderance of all reasonable inferences that might be drawn from the same circumstances.

[5] **Evidence** 587
157k587 Most Cited Cases

If proved circumstances justify an inference pointing to essential fact, which outweighs all reasonable inferences to the contrary, a conclusion as to existence of the ultimate fact is justified by the circumstantial evidence.

[6] **Courts** 121(2)
106k121(2) Most Cited Cases

[6] **Infants** 75
211k75 Most Cited Cases

Where action for injuries to child was brought by child, by his mother and next friend, father, who entered the action separately as an individual to recover medical expenses was not within statute authorizing parent to add claims in his own right in action brought by parent and child for injury to child, in respect of which child is "necessarily joined" as coplaintiff, and hence father's claim, which was actually for only $474 though judgment for $100,000 was prayed, must be rejected by circuit court as being below minimum jurisdictional amount. F.S.A. § 46.09.

[7] **Courts** 121(2)
106k121(2) Most Cited Cases

Jurisdiction with reference to amount in controversy is determined by the sum in good faith demanded or actually put in issue, not by the amount of ultimate recovery.

[8] **Witnesses** 276
410k276 Most Cited Cases

Under rule authorizing officer, director or managing

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agent of corporate adverse party to be interrogated by leading questions and contradicted or impeached as if called by adverse party, "managing agent" is not necessarily an officer or in nature of a general manager, but may be managing representative of the corporation in connection with the particular matter under consideration. 30 F.S.A.Rules of Civil Procedure, rule 1.37(a).

[9] Witnesses 276
410k276 Most Cited Cases
Construction company's foreman, who was in charge of men and materials on construction job in which trash was burned on vacant lot, and who acted as corporation's representative in trial of action for injuries to child burned on such lot, being permitted to remain in courtroom and advise with attorneys though other witnesses were placed under the rule, was within rule authorizing examination of "managing agent" of corporate adverse party as if called by the adverse party. 30 F.S.A.Rules of Civil Procedure, rule 1.37(a).

[10] Appeal and Error 1042(2)
30k1042(2) Most Cited Cases
The striking of asserted defenses was not prejudicially erroneous as depriving defendants of opportunity to prove wilful misconduct of injured infant plaintiff, where trial court specifically provided that such defenses were provable under other defenses alleged.

*909 Elmer M. Norton, Lewis Rhea Baxter and Rogers, Towers, Bailey & Jones, Jacksonville, for appellants.

Sistrunk & Parrish, Jacksonville, for appellees.

THORNAL, Justice.

Appellants who were defendants below seek reversal of a judgment in favor of Lewis Arthur Menard, III, a minor, and his father, Lewis Arthur Menard, II, plaintiffs below, in an action arising out of the alleged negligent injury of the above named minor.

The principal points for us to determine are: (a) whether the situation revealed by the record constituted an attractive nuisance; (b) whether there was adequate evidence of the causal relationship between the injury and the negligence alleged; and (c) whether the trial court had jurisdiction of the claim asserted by Lewis Arthur Menard, II, the father. Other incidental questions are disposed of by the opinion.

About 5:15 p. m. on March 10, 1954, Lewis Arthur Menard, III, just under seven years of age, ran home to his mother screaming. Examination revealed that his legs had been severely burned. In the immediate vicinity of the home of the plaintiffs, the appellant Tucker owned a parcel of land on which it was constructing a dwelling. Appellant Pearlwood was the contractor actually doing the building. Directly across the street Tucker owned a vacant lot upon which Pearlwood had been permitted to construct a small shed. *910 Also located on this lot were a pile of lumber, drainpipe, tools, trucks, cement blocks, cans, mortar boxes, wire and other materials commonly used in the building trade. In addition for some period of time Pearlwood had used the lot to dispose of trash from the building operation. This was done by burning. The record shows that for a considerable period of time the small children in the neighborhood had used the second-described lot as a playing area. The Foreman, a man named Shuff, had been requested on numerous occasions to take precautions against the fire in the interest of the safety of the children. He had warned the children to stay away. Parents had warned them to stay away. They, nonetheless, were permitted by the appellants to use the area as a playground. On the day in question immediately after the boy ran home to his mother severely burned, an investigation showed that in the area in question there was a bed of red-hot coals covered by a layer of gray ashes. Across the bed of coals was the charred remains of a freshly burned stick, one end of which was not completely burned but was still smoking.

Alleging that the boy was attracted to the area by the condition generally described above and while so attracted stepped into the fire and was seriously burned, the plaintiff Lewis Arthur Menard, III, joined by his mother and next friend, sought damages for the resulting injury. In the course of the development of the pleadings, Lewis Arthur Menard, II, as father, joined in the complaint and by a separate count claimed compensation for medical expenses paid out by him for the treatment of the child. The case was tried before a jury. A verdict of $10,000 was rendered for the child, and the verdict of $474 was awarded to the father under the second count. Judgment was entered on the verdict. The judgment for $10,000 was in favor of the minor joined by his mother as next friend, and separately in favor of the father for the medical expenses. Reversal of this judgment is now sought.

Appellants contend for reversal on the proposition

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that a fire is obviously dangerous and therefore cannot constitute an attractive nuisance. In addition they contend that the record fails to establish that the boy actually was burned on the land in question. It is further asserted that the amount of the father's claim was below the jurisdiction of the Circuit Court.

The appellees contend for affirmance on the proposition that the condition of the area described constituted an attractive nuisance, that the circumstantial evidence was adequate to sustain the conclusion that the boy was injured on the property of appellant Tucker, and finally that the claim of the father was properly disposed of in this cause.

Appellants, by an exhaustive brief, present many cases from other jurisdictions holding to the proposition that there can be no recovery under the attractive nuisance doctrine where the injury complained of was the product of an obvious or patent danger. They rely on a rule summarized in 38 Am.Jur., Negligence, Sec. 151, p. 818. From this rule they reason that a fire is obviously dangerous and that even when a child of tender years is involved, it would tend to repel rather than attract. It is unnecessary for us here to determine whether a fire in and of itself would constitute an attractive nuisance under the interpretation of that doctrine heretofore announced by this court.

[1] In the case before us the appellees relied upon the general condition of the area. It was shown that appellants had placed on the land in question all manner of materials and devices that would attract playing children. Furthermore the so-called 'fire' was actually not a burning, glowing flame. It consisted of a large bed of ashes surrounding and covering a bed of red-hot coals. Instead of repelling *911 the children, the situation in this particular case suggests justification for the conclusion that the tools, blocks, woodpile, trucks and the like merely served as an invitation that in effect led the child into what might be termed a 'booby trap'.

We do not find here justification for applying the rule that might otherwise be applicable to an obvious peril. On the contrary, the record clearly suggests adequate justification for the conclusion evidently reached by the jury that the children, including the minor appellee, had been attracted to the area over a period of weeks, that appellants and their Foreman in charge had been requested to guard against the possibility of the particular injury that here apparently resulted. There is little, if anything, to distinguish this case from Carter v. Livesay Window Co., Fla.1954, 73 So.2d 411; and Cockerham v. R. E. Vaughan, Inc., Fla.1955, 82 So.2d 890.

[2][3][4][5] Appellants' contention that there was no direct and positive proof that the child was injured on the Tucker land has caused us more concern. It is true that no one testified that he actually saw the child on this particular lot at the time of his injury. Nevertheless, this record abounds in circumstantial evidence that certainly weighs heavily in favor of the jury's conclusion that the land of the appellant Tucker was the locus upon which the injury occurred. An ultimate fact can be established by circumstantial evidence in a civil action just as it can be done in a criminal case. The difference is the quantum of proof necessary to justify the inference that the ultimate fact actually existed. In a criminal case the rule is that the circumstantial evidence must point to guilt to the exclusion of any reasonable hypothesis of innocence. The rule in civil cases is not so burdensome. In a civil action when circumstantial evidence is relied upon to prove a fact essential to recovery, the particular inference of the existence of such fact arising from the circumstances established by the evidence adduced must outweigh all contrary inferences to the extent that it amounts to a preponderance of all reasonable inferences that might be drawn from the same circumstances. In other words, if the proved circumstances justify an inference pointing to the essential fact, which inference outweighs all reasonable inferences to the contrary, then it can be said that a conclusion as to the existence of the ultimate fact is justified by the circumstantial evidence. Voelker v. Combined Ins. Co. of America, Fla.1954, 73 So.2d 403; Byers v. Gunn, Fla.1955, 81 So.2d 723.

Applying this principle to the case before us we are of the view that the circumstantial evidence was adequate to justify the conclusion of the jury that the child was injured on the property of the appellant Tucker. It is shown that this property was in the immediate vicinity of the child's home; the minor involved, as well as other small children had for weeks used the land to play on; they had been seen on the lot on numerous occasions and had been directed by appellants' Foreman to stay off. The existence of fire or hot coals on the land was observed immediately after the injury. There was no evidence of any fire anywhere else around the immediate community. One witness diligently searched the area promptly after the child was injured. No other fire could be found. From all of the circumstances reflected by the record, we feel that the jury was justified in concluding that the inference

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of injury on appellants' land far outweighed any inference to the contrary.

[6] On the proposition that the claim of the father could not be disposed of within the jurisdiction of the Circuit Court, we feel that the position of the appellants must be sustained. The appellees rely on Section 46.09, Florida Statutes, F.S.A. Eliminating irrelevant portions, the applicable provisions read as follows:

> 'In any action brought by a * * * parent * * * and child for an injury *912 done to the * * * child, in respect of which the * * * child is necessarily joined as co-plaintiff, the * * * parent * * * may add thereto claims in their [his] own right * * *.'

Appellees submit that the father joined in the complaint by amendment in order to assert his claim for medical expenses paid by him in bringing about his child's recovery. They state that the complaint of the father arose out of the same transaction or injury which constituted the basis of the claim of the child. They then conclude that under the quoted statute, the father was entitled to join in the action even though the amount of his claim was below the $3,000 jurisdictional minimum applicable to the Duval County Circuit Court. It is necessary to examine the complaint and carefully analyze the statute. Admittedly, on the surface the statute appears to be applicable. The complaint, however, shows that the action was instituted by 'Lewis Arthur Menard, III, a minor, *by his mother and next friend*, Mrs. Helen Menard, and Helen Menard'. In the original complaint, the mother was a plaintiff, as 'next friend' of her minor son and also as an individual. By the original fourth count, the mother individually claimed recovery of medical expenses. By the amended complaint, the father joined in the action purely as an individual to recover the medical expenses paid by him. Reverting to the statute above quoted and applying it to the instant case, it will be noted that the 'parent' who joined in that portion of the action in respect of which the child 'is necessarily joined as a co-plaintiff' was the mother. Under such circumstances if the mother had sought recovery of expenses paid by her, she could have maintained the cause for the reason that she was the one who was necessarily joined by the minor co-plaintiff. However, when the father entered the action separately and as an individual and not likewise as 'next friend' of the minor, he was not 'necessarily joined' by the child as a co-plaintiff. Consequently, the statute in this instance was not applicable to the father's claim in view of the fact that it was for an amount obviously below the jurisdictional minimum of a Circuit Court.

[7] We do not lose sight of the fact that the father claimed a judgment in the amount of '$100,000'. However, we have held that jurisdiction of a court with reference to the amount in controversy is determined by the sum in good faith demanded or actually put in issue and not by the amount of the ultimate recovery. A. Mortellaro & Co. v. Atlantic Coast Line R. Co., 91 Fla. 230, 107 So. 528. Obviously, here the amount of the good faith demand was only $474. Mr. Menard must have known this when he entered the case. He came into the cause in his individual capacity alone. He did not enter the case as 'parent and next friend' of the minor. He was not substituted for the mother in this capacity. Under the circumstances in this particular situation, the child was not a *necessary co-plaintiff* with the father. The statute therefore did not apply and the judgment in favor of the father for medical expenses will have to be reversed.

Appellants further contend that the trial judge committed error in permitting the appellees to call the witness Shuff under 30 F.S.A.Rule 1.37(a), Florida Rules of Civil Procedure. This rule authorizes a party to examine an adverse or hostile witness by leading questions. It also permits a party to call as a witness 'an officer, director, or managing agent' of a corporate adverse party and to interrogate him by leading questions and to contradict or impeach him in all respects as if he had been called by an adverse party. Appellants state that Mr. Shuff was not an officer or director of either corporation nor was he their 'managing agent'. The record shows that in answer to interrogatories both defendants stated that Mr. Shuff was their representative in charge *913 of the entire area involved in this case. He was their Foreman and in charge of the men and materials. In addition to this he was designated by the corporate appellants to serve as their representative at the trial of the cause. When all other witnesses were placed under the Rule he was permitted to remain in the courtroom and advise with attorneys for the appellants on the handling of the case.

[8][9] We do not construe the expression 'managing agent' to require that the corporate representative be an officer or in the nature of a general manager. So far as this particular rule is concerned, it is sufficient if he is the managing representative of the corporation in connection with the particular matter under consideration. Certainly, the witness Shuff occupied this latter status. In addition to his employment status, it seems to us that the fact that he

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was the designated representative of the corporations in the trial of the case would be sufficient to justify calling him under Rule 1.37(a), Florida Rules of Civil Procedure.

[10] We have considered the other alleged errors relied upon by the appellants, including the alleged prejudicial remarks of the trial judge, their attempt to plead the wilful misconduct of the injured boy, and charges of the court. Careful consideration of these objections, together with the record, fails to convince us that any error was committed in these particulars. On the effort to plead the wilful misconduct of the boy, the trial judge, in striking asserted defenses, specifically provided that it was his view that these defenses were provable under other defenses alleged. The appellants were therefore not deprived of any opportunity to prove the claimed defenses.

The judgment for appellee, Lewis Arthur Menard, II, is hereby reversed.

The judgment in favor of Lewis Arthur Menard, III, a minor, by his mother and next friend, Mrs. Helen Menard, is hereby affirmed.

Reversed in part and affirmed in part.

DREW, C. J., TERRELL, J., and CARROLL, Associate Justice, concur.

90 So.2d 908

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73 So.2d 403
73 So.2d 403
(Cite as: 73 So.2d 403)

Supreme Court of Florida, Division B.

VOELKER
v.
COMBINED INS. CO. OF AMERICA.
VOELKER
v.
LIFE & CASUALTY INS. CO. OF TENNESSEE.

June 25, 1954.

Suits on policies insuring against loss by accidental bodily injuries and death were consolidated for trial. The Circuit Court for Palm Beach County, Joseph S. White, J., entered final judgments on motions by defendants for directed verdicts after entry of judgment on jury's verdict in favor of plaintiff, and plaintiff appealed. The Supreme Court, Hobson, J., held that inference from circumstantial evidence that insured was involved in an accident was inescapable and warranted further inference that he sustained bodily injuries while driving or riding in his automobile, but that second inference was not such as would warrant further inference that such injuries were sole cause of death within policy provision for payment of $500 for death of insured caused solely by bodily injuries sustained while driving or riding in any automobile.

Judgments in favor of defendants affirmed.

West Headnotes

[1] **Evidence** 587
157k587 Most Cited Cases
Where circumstantial evidence is relied upon in a civil case, any reasonable inference deducible therefrom which would authorize recovery must outweigh every contrary reasonable inference if plaintiff is to prevail.

[2] **Evidence** 587
157k587 Most Cited Cases
The rule in civil cases when circumstantial evidence alone is relied upon differs from and is less stringent than the rule which governs in criminal cases.

[3] **Evidence** 596(1)
157k596(1) Most Cited Cases

[3] **Trial** 139.1(20)
388k139.1(20) Most Cited Cases
(Formerly 388k139(1))
That circumstantial evidence is relied upon in a civil action at law does not alter the rules that it is solely within the province of jury to evaluate or weigh the evidence and that plaintiff has burden of establishing a right of recovery by preponderance of the evidence.

[4] **Trial** 142
388k142 Most Cited Cases
Where the circumstances established by the evidence in a civil action at law are susceptible of a reasonable inference or inferences which would authorize recovery and are also capable of equally reasonable contrary inference or inferences, a jury question is presented.

[5] **Trial** 142
388k142 Most Cited Cases
If none of the inferences in favor of one party deducible from the circumstances established by the evidence in a civil action at law accords with logic and reason or human experience, while an inference which does square with logic and reason or human experience is deducible from the evidence in favor of opposing party, the question is one of law for the court and not for jury.

[6] **Evidence** 54
157k54 Most Cited Cases
Where the evidence is such that a particular inference therefrom is inescapable and no contrary inference may reasonably be indulged, such inference is elevated for the purpose of further inference to the dignity of an established fact and another inference may be based thereon.

[7] **Evidence** 54
157k54 Most Cited Cases
The purpose of rule that one inference may not be based upon another is to protect litigants against verdicts or judgments based upon speculation and the rule should not be applied without reference to such purpose.

[8] **Evidence** 595
157k595 Most Cited Cases
Ordinarily, an ultimate fact may not be established in a civil action by basing one inference upon another, unless the basic inference is established to the exclusion of any other reasonable theory.

[9] **Insurance** 2604
217k2604 Most Cited Cases
(Formerly 217k467.1(3), 217k665(5))
Inference from situation and condition of insured's

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automobile found on bank of canal and finding of his body floating in canal nearby that insured had been involved in accident was inescapable and warranted further inference that he sustained bodily injuries while driving or riding in automobile, but second inference was not such as would warrant further inference that such injuries were sole cause of death within policy provision for payment of $500 for death of insured caused solely by bodily injuries sustained while driving or riding in any automobile.

[10] Evidence ⚷14
157k14 Most Cited Cases
Supposition that body of a person who drowns will not float until sufficient time has elapsed for decomposition to set in is not an open and notorious fact of which Supreme Court may take judicial notice.

[11] Insurance ⚷2591
217k2591 Most Cited Cases
(Formerly 217k455(1), 217k455)
Policy provision excluding from coverage injuries of which there was no visible external contusion or wound causing death was clear and not ambiguous and hence could not be given any construction other than that which was evidenced from a reading thereof.

[12] Contracts ⚷143(3)
95k143(3) Most Cited Cases
(Formerly 95k143)
Courts may not write a new contract for the parties on the pretext of construing terms thereof when the language employed is plain, crystal clear and unambiguous.

[13] Insurance ⚷2591
217k2591 Most Cited Cases
(Formerly 217k467.2, 217k668(11))
In suit on policy which excluded from coverage injuries of which there was no visible contusion or wound on exterior of body of insured causing death, trial court properly directed a verdict for insurer where uncontroverted evidence established that there were no visible marks or abrasions on exterior of body of deceased insured.

*404 Mizell & Carmichael, West Palm Beach, for appellant.

Earnest, Lewis, Smith & Jones, West Palm Beach, for appellee.

HOBSON, Justice.

These cases were consolidated for trial in the circuit court and are likewise consolidated upon appeal. The suit against Combined Insurance Company of America is a common law action predicated upon two policies of insurance which were issued to Edward H. Voelker on April 4, 1946. The suit against Life and Casualty Insurance Company of Tennessee is upon an insurance policy issued by that company to Edward H. Voelker during his lifetime.

Although the evidence in each case is the same, we are forced, because of a difference in language used in the policies issued by the two insurance companies, to separate this opinion into two divisions, the first of which will deal with the case of Voelker v. Combined Insurance Company of America and the second with the case of Voelker v. Life and Casualty Insurance Company of Tennessee.

Edward H. Voelker left West Palm Beach, Florida, at approximately 10:30 or 11:00 P.M., on the 13th day of February, 1952, for a trip to Dunedin, Florida. He was driving his own automobile when he departed from West Palm Beach and while on this trip he met his death at a point near Six Mile Bridge on State Road 80, in Palm Beach County. At about 1:20 A.M., on February 14, 1952, one C. S. Clements and his wife discovered the automobile driven by Voelker, which evidently had been involved in some type of accident, on the south side of the canal that borders State Road 80.

Since there were no eyewitnesses to the ostensible accident which either caused or immediately preceded Edward Voelker's death, the testimony is composed entirely of circumstantial evidence. According to the witnesses who observed the automobile as well as the scene of the tragedy, the physical facts indicated that Voelker's car, which *405 was a 1941 black Pontiac, had proceeded to cross Six Mile Bridge, thereafter obviously had made a sharp curve to the left and had run down the bank before coming to rest on the edge of the canal and in the position heretofore outlined. The left front tire of the car contained about one half its normal air capacity. The front and rear fenders on the left side of the car were scraped and battered. The back fender which 'looked like it had been sideswiped' was bent in slightly 'with some of what looked like grey paint' on it. The door handle on the left front door was broken down, the lock was jammed, the left front headlight was broken and some glass which matched the glass of this headlight was found near the end of the bridge. The ignition switch was turned off, and the light switch, which was of the pull and push button type, was also in the 'off' position. The right front door of the automobile was open wide and the car was out of gear. About twenty feet from the end

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of the bridge the witness F. O. Cole found a headlight rim, with grey paint upon it, which had been run over and looked 'like it came off a Model A Ford.'

Mr. Clements, who, with his wife, discovered the wrecked car, reported the matter to the Highway Patrol. Patrolman Joseph P. Bertrand made an investigation and found Voelker's body floating in the canal about eight feet in front of the car. He caused the automobile to be towed into Belle Glade, Florida. Constable Whitlock also made an investigation at the scene of the accident and ordered the body released to the Berry Funeral Home, of Belle Glade and Pahokee, Florida. Voelker's body was immediately embalmed and later delivered to the Scobee-Vogel Funeral Home in West Palm Beach. No witness who examined or observed the body of Edward Voelker found or saw any marks or abrasions thereon, or, indeed, any other indications of external injury, and Voelker's eyeglasses were still in place.

These cases were tried before a jury which rendered verdicts in favor of the appellant. The appeal in each case is from the final judgment entered by the trial judge upon motion of counsel for appellee for a directed verdict after entry of the original final judgment rendered pursuant to the jury's verdict.

Each of the policies issued by the Combined Insurance Company of America insured Voelker 'against loss caused by bodily injuries which are not caused or contributed to by disease, and are effected exclusively by accidental means'. Section B of each policy provides: 'If Such Injuries shall be sustained by the Insured, and shall within thirty days from the date of the accident causing Such Injuries be the *sole* cause of loss of life by the Insured, and provided Such Injuries to the Insured shall occur: * * * While actually driving or riding in any automobile, * * * the Company will pay the sum of $500.00.' (Italics supplied.)

[1] As aforestated, all of the evidence relied upon by appellant is circumstantial in character. In the comparatively recent case of City of Jacksonville v. Waldrep, Fla., 63 So.2d 768, we re-affirmed the rule that when circumstantial evidence is relied upon in a civil case as a method of proof any reasonable inference deducible therefrom which would authorize recovery must outweigh each and every contrary reasonable inference if the plaintiff is to prevail. We quote from our opinion in the case of King v. Weis-Patterson Lumber Co., 124 Fla. 272, 168 So. 858, 859: 'Where circumstantial evidence is relied on in a civil case to prove an essential fact or circumstance essential to recovery, the rule is that the particular inference of the existence of the fact relied on as arising from the circumstances established by the evidence adduced, shall outweigh all contrary inferences to such extent as to amount to a preponderance of all of the reasonable inferences that might be drawn from the same circumstances.' See Fireman's Fund Indemnity Co. v. Perry, 149 Fla. 410, 5 So.2d 862, and cases cited in our opinion in City of Jacksonville v. Waldrep, supra.

[2] For the sake of emphasis we again call attention to the fact that in the cases of Fireman's Fund Indemnity Co. v. Perry, supra, and City of Jacksonville v. Waldrep, supra, we receded from our opinion in the ***406** case of Florida East Coast R. Co. v. Acheson, 102 Fla. 15, 135 So. 551, 137 So. 695, 140 So. 467, wherein we had invoked in a civil case the rule with reference to circumstantial evidence which prevails in criminal cases. We also state anew that in this jurisdiction the rule in civil cases when circumstantial evidence alone is relied upon differs from and is less stringent than the rule which governs in criminal cases.

[3][4][5] The fact that circumstantial evidence is relied upon in a civil action at law does not alter either the rule that it is solely within the province of the jury to evaluate or weigh the evidence or that the burden of establishing a right of recovery by a preponderance of the evidence is upon the plaintiff. Consequently, in such a case if the circumstances established by the evidence be susceptible of a reasonable inference or inferences which would authorize recovery and are also capable of an equally reasonable inference, or inferences, contra, a jury question is presented. We cannot overemphasize our use of the adjective 'reasonable' as modifying the noun 'inference'. Of course if none of the inferences on the one hand accords with logic and reason or human experience, while on the other hand an inference which does square with logic and reason or human experience is deducible from the evidence, the question is not for the jury but is one of law for the court.

There are several reasonable inferences which we feel might have been drawn by the jury from the circumstantial evidence in this case. Edward Voelker might have suffered a heart attack [which we believe might properly be classified as an internal bodily injury] following the accident and might conceivably have died from such attack while standing on the edge of the canal and his dead body have fallen into the water. He could have received internal bodily

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injuries, such as a brain concussion, spinal cord injury or, indeed, even a broken neck, and after leaving his automobile could have walked around the front thereof to appraise the situation, and while standing at the bank of the canal might have dropped dead into the water. Such inferences pre-suppose that Voelker received bodily injuries 'while actually driving or riding' in the car and they might permit the conclusion that his death was attributable solely to such bodily injuries. There is, however, another equally reasonable contrary inference that he received no bodily injuries either external or internal, alighted from his car, walked around to the front thereof to perform the very normal act of evaluating the predicament in which he found himself and without realizing his proximity to the waters of the canal may accidentally have stepped, or tripped and fallen, therein and have drowned as a consequence thereof. Assuming that the latter inference explains the manner in which he must his death, the appellant could not have prevailed in this suit because such inference excludes the essential premise that Edward Voelker received bodily injuries which caused his death 'while actually driving or riding' in his automobile. Again the evidence was susceptible of another contrary inference, that Voelker was addled or semiconscous as a result of internal bodily injuries and while in such condition might have slipped or tripped and fallen into the canal and drowned. This inference does not exclude the theory that the decedent received bodily injuries 'while actually driving or riding' in his automobile, but does negative the thought that bodily injuries were the 'sole' cause of loss of his life.

It is obvious that from the fact the car showed it had been damaged, as hereinbefore outlined, the jury inferred that Voelker had met with an accident 'while actually driving or riding' in his automobile. It is also patent that the jury predicated upon such inference the further inference that he received bodily injures in such accident. Will this court under any circumstances sanction such action, which appears to violate the general rule that inference may not be founded upon inference any more readily than presumption may be predicated upon presumption? In search of the proper answer to this query we have pursued the thought that perhaps there is or should be an exception to the rule which prohibits the pyramiding of inferences.

*407 [6][7][8] It is our considered judgment that when an inference, such as the inference that Voelker experienced an accident while driving his automobile across Six Mile Bridge, is inescapable, that is to say when no contrary *reasonable* inference may be indulged, such inference is elevated for the purpose of further inference to the dignity of an established fact. We are also convinced that this principle creates an exception to which the often-stated rule against laying inference upon inference must yield, or perhaps it would be more accurate to say that the rule itself should never be applied without reference to its purpose, which is nothing more nor less than to protect litigants from verdicts or judgment based upon speculation. We do not believe that the 'inference upon inference' rule, whose common acceptance has been justly and appropriately criticized by Professor Wigmore (1 Wigmore on Evidence, 3d Ed., Sec. 41, pp. 434-441), should be construed to mean that under no conceivable circumstances may one inference be deduced from another. We think, however, that such method of establishing an ultimate fact should not ordinarily be indulged unless the first inference meets a test which may be analogized to the criminal rule concerning circumstantial evidence, i. e., in the ordinary case, only if the prior or basic inference is established to the exclusion of any other reasonable theory should another be drawn from it. See 1 Wigmore on Evidence, Sec. 41, supra, and New York Life Ins. Co. v. McNeely, 52 Ariz. 181, 79 P.2d 948, which is interestingly similar to the present case on its basic facts.

[9] Although it has not always been admitted by the courts, it can no longer be doubted that cases may and do exist wherein circumstantial evidence is as convincing of an asseverated fact as is testimonial evidence. This we believe to be such a case, and we hold that the jury would have been entirely justified to have inferred, from its prior inescapable inference that Voelker met with an accident, that he received bodily injuries 'while actually driving or riding' in his automobile. The latter inference however, is not the last which must be drawn before appellant may be said to have proven her right to recover under the policies of insurance here involved.

Appellant is not entitled to a favorable decision unless the inference that Voelker received bodily injuries 'while actually driving or riding' in his automobile is the *only* reasonable inference which may be drawn from the prior inference that Voelker met with an accident. In other words, this second inference must meet the test of the criminal rule, as did the first inference, if it is to be a proper predicate for the further inference that 'bodily injuries' were the *sole* cause of loss of Voelker's life. Is this second inference one which may be said to exclude all other

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reasonable theories? We think not.

In view of the fact that no bruises or abrasions were found upon Voelker's body, it is equally reasonable to assume that he received no bodily injuries and that he, as aforementioned, walked around to the edge of the canal to appraise this situation, slipped or tripped into the waters of the canal and drowned, or that he and the person driving the other car involved in the accident had an altercation and that such person pushed or shoved Voelker, intentionally or unintentionally, into the canal, and fled the scene, whereupon Voelker met his death by drowning.

[10] The theory that Voelker met his death by drowning cannot be excluded, for there is no evidence upon the question whether water was found in his lungs and none which even suggests that credence should be given to the supposition that the body of a person who meets death by drowning will not float until sufficient time has elapsed for decomposition to set in. If indeed this supposition be more than folk-lore, it is not an open and notorious fact of which this Court can take judicial notice. There may be other reasonable inferences, which we do not at the moment envisage, that may be drawn from the inescapable inference that Voelker had an accident with another motor vehicle. However, ***408** if there were but one reasonable inference other than that Voelker received bodily injuries in the accident the jury would not have been justified in inferring that Voelker's internal bodily injuries were the *sole* cause of his death.

We are forced to agree with the learned trial judge that the circumstantial evidence contained in this record is not as conclusive in character as it is required to be to justify the jury's verdict in favor of appellant. The final judgment in the case of Voelker v. Combined Insurance Company of America must therefore be affirmed.

We next turn our attention to the case against the Life and Casualty Insurance Company of Tennessee. We quote from the policy issued by that company upon the life of Edward Voelker, deceased: 'This policy does not cover * * * injuries either fatal or nonfatal of which there is no visible contusion or wound on the exterior of the body of the insured causing the death * * *'.

[11][12] Counsel for appellant contend that this policy should be construed most strictly against the insurance company. The above quoted provision of nonliability is clear and not ambiguous, and consequently we are not permitted to give any construction to it other than that which is evident from a reading thereof. Courts are not authorized to write a new contract for the parties on the pretext of construing the terms thereof when the wording employed is plain, crystal clear and unambiguous. Goldsby v. Gulf Life Ins. Co., 117 Fla. 889, 158 So. 502. See also the Mississippi case of Jackson Steam Laundry v. Aetna Casualty & Surety Co., 156 Miss 649, 126 So. 478, and Kansas City Life Insurance Co. v. Freeman, 5 Cir., 120 F.2d 106.

[13] Since the evidence is uncontroverted that there were no visible marks or abrasions on the 'exterior of the body' of the deceased, the final judgment in favor of appellee must be affirmed.

The final judgment in each of the cases herein considered should be and is hereby----

Affirmed.

ROBERTS, C. J., DREW, J., and TAYLOR, Associate Justice, concur.

73 So.2d 403

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692 So.2d 297
692 So.2d 297, 22 Fla. L. Weekly D1081
(Cite as: 692 So.2d 297)

C

District Court of Appeal of Florida,
Fourth District.

Blanca GONZALEZ, Appellant,
v.
B & B CASH GROCERY STORES, INC., a/k/a U-Save, Appellee.

No. 96-1419.

April 30, 1997.

Plaintiff brought personal injury action against grocery store to recover for injuries she sustained when she slipped on wax allegedly applied the night before by store's independent contractor. The Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County, John J. Hoy, J., granted store's motion for summary judgment, and plaintiff appealed. The District Court of Appeal, Pariente, J., held that fact issues existed as to whether substance that caused plaintiff to fall was wax and whether it was wax applied by independent contractor the night before.

Reversed and remanded.

West Headnotes

[1] **Negligence** 1670
272k1670 Most Cited Cases
(Formerly 272k134(7))
In premises liability case, constructive notice may be established by circumstantial evidence, such as evidence leading to inference that substance has been on floor for sufficient length of time such that defendant in exercise of reasonable care should have known of condition.

[2] **Negligence** 1089
272k1089 Most Cited Cases
(Formerly 272k48)
Plaintiff in premises liability case had to establish defendant's constructive notice of condition since plaintiff did not contend that defendant's employees created dangerous condition or that defendant had actual notice of dangerous condition, but instead contended that condition was created by defendant's independent contractor.

[3] **Judgment** 180
228k180 Most Cited Cases

[3] **Judgment** 185(2)
228k185(2) Most Cited Cases
Motions for summary judgment should be cautiously granted in negligence actions; moving party bears burden to show conclusively the absence of any genuine issue of material fact.

[4] **Judgment** 181(33)
228k181(33) Most Cited Cases
Genuine issues of material fact existed in premises liability action against grocery store as to whether substance that caused plaintiff to fall was wax and whether it was wax applied by independent contractor the night before as plaintiff claimed, precluding summary judgment for store.

[5] **Judgment** 181(2)
228k181(2) Most Cited Cases
Existence of reasonable inferences contrary to those asserted by plaintiff should not result in entry of summary judgment; rather, it is for jury to determine whether a preponderance of the evidence supports inferences suggested by plaintiff.

*298 Mark F. Kasperovich of Kasperovich & Kasperovich, P.A., Fort Lauderdale, for appellant.

Michele I. Nelson of Paxton, Crow, Bragg, Smith & Keyser, P.A., West Palm Beach, for appellee.

PARIENTE, Judge.

Plaintiff, Blanca Gonzalez, appeals a summary judgment entered in favor of defendant, B & B Cash Grocery Stores, Inc. We reverse, finding that defendant did not successfully carry its burden of conclusively demonstrating the absence of genuine issues of material fact regarding both the identity of the substance and defendant's constructive notice of the dangerous condition.

Plaintiff slipped and fell on a slippery substance that she claims was wax. The night before the incident, while the store was closed, an independent contractor hired by defendant stripped, waxed and buffed the floor. Prior to the store's opening that morning, defendant's agents inspected the floors. The trial court granted summary judgment after concluding that plaintiff would be unable to establish how long the wax had been on the floor. In its written order, the trial court stated that it was just "as possible that the wax was on the floor for two minutes, 20 minutes or two hours."

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[1][2] At trial, plaintiff will have to prove defendant's constructive notice of the dangerous condition. [FN1] *See Wal-Mart Stores, Inc. v. King*, 592 So.2d 705 (Fla. 5th DCA 1991), *review denied*, 602 So.2d 942 (Fla.1992); *Brooks v. Phillip Watts Enters., Inc.*, 560 So.2d 339 (Fla. 1st DCA), *review denied*, 567 So.2d 435 (Fla.1990). The lack of direct evidence as to the length of time the wax was on the floor, however, is not fatal to plaintiff's claim, nor does it mandate summary judgment. Constructive notice may be established by circumstantial evidence, such as "evidence leading to an inference that a substance has been on the floor for a sufficient length of time" such that a defendant in the exercise of reasonable care should have known of the condition. *Thoma v. Cracker Barrel Old Country Store, Inc.*, 649 So.2d 277, 278 (Fla. 1st DCA 1995); *see Brooks*, 560 So.2d at 341.

> FN1. Constructive notice must be established because plaintiff does not contend that defendant's employees created the dangerous condition or that defendant had actual notice of a dangerous condition. Neither has plaintiff argued an independent basis for holding defendant liable for the negligence of its independent contractor. *See generally McCall v. Alabama Bruno's, Inc.*, 647 So.2d 175 (Fla. 1st DCA 1994).

In discussing inferences in circumstantial evidence cases, our supreme court in *Voelker v. Combined Insurance Co. of America*, 73 So.2d 403, 406 (Fla.1954), enunciated these basic principles:

> [I]f the circumstances established by the evidence be susceptible of a reasonable inference or inferences which would authorize recovery and are also capable of an equally reasonable inference, or inferences, contra, a jury question is presented. We cannot overemphasize our use of the adjective '***299** reasonable' as modifying the noun 'inference'. Of course if none of the inferences on the one hand accords with logic and reason or human experience, while on the other hand an inference which does square with logic and reason or human experience is deducible from the evidence, the question is not for the jury but is one of law for the court.

[3] In tandem with these principles governing inferences, we are guided by the axiom that motions for summary judgment should be cautiously granted in negligence actions. *Moore v. Morris*, 475 So.2d 666, 668 (Fla.1985); *Greenleaf v. Amerada Hess Corp.*, 626 So.2d 263 (Fla. 4th DCA 1993); *Brooks*. The moving party bears the burden to "show conclusively the absence of any genuine issue of material fact." *Moore*, 475 So.2d at 668; *Greenleaf; Brooks*. Certainly at the summary judgment stage of the proceedings "*the court must draw every possible inference in favor of the party against whom a summary judgment is sought.*" *Moore*, 475 So.2d at 668 (emphasis supplied); *Brooks*. [FN2] Summary judgment is not proper if the evidence is susceptible to different reasonable inferences. *Voelker; Gonzalez v. Tallahassee Med. Ctr., Inc.*, 629 So.2d 945, 946 (Fla. 1st DCA 1993).

> FN2. *Winn Dixie Stores, Inc. v. White*, 675 So.2d 702 (Fla. 4th DCA 1996), and *Publix Super Markets, Inc. v. Schmidt*, 509 So.2d 977 (Fla. 4th DCA 1987), relied on by defendant, were cases decided either by directed verdict or after a jury verdict and not at the summary judgment stage of the proceedings. *See generally Montgomery v. Florida Jitney Jungle Stores*, 281 So.2d 302 (Fla.1973).

[4] In this case, the record reveals that the substance that caused plaintiff to fall may have been wax, and plaintiff's description establishes wax as a likely possibility. If a jury determines, based on the evidence presented, that the substance was wax, it will not have to engage in sheer speculation to determine the length of time that the condition existed. Because it is undisputed that the floors were waxed the night before the incident, the jury could reasonably conclude that the condition existed for at least several hours and thus that defendant was negligent in not discovering the slippery condition through inspection before the store opened in the morning. *See Gonzalez*.

The fact that there is undisputed evidence that the floor had been waxed the night before the incident distinguishes this case from other cases involving a foreign substance where the plaintiff was unable to establish by any direct evidence or reasonable inference from the evidence either the identity of the substance or how long the dangerous condition had existed. *See, e.g., Food Fair Stores, Inc. v. Trusell*, 131 So.2d 730 (Fla.1961); *Miller v. Big C Trading, Inc.*, 641 So.2d 911 (Fla. 3d DCA), *review denied*, 650 So.2d 990 (Fla.1994); *Schaap v. Publix Supermarkets, Inc.*, 579 So.2d 831 (Fla. 1st DCA 1991).

[5] Defendant contends that even if the substance were wax, there is no proof that the slippery

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condition causing plaintiff's fall resulted from the waxing of the floors the night before. Defendant suggests, as another possibility, that the slippery condition could be the result of leakage from one of its store's wax products. This possibility, however, involves sheer speculation without any basis in the record. Even if this were a reasonable inference, the existence of reasonable inferences contrary to those asserted by plaintiff should not result in the entry of summary judgment. *Thoma*, 649 So.2d at 279; *Gonzalez*, 629 So.2d at 946; *see also Voelker*, 73 So.2d at 406. Rather, it would be for a jury to determine whether a preponderance of the evidence supports the inferences suggested by plaintiff. *Thoma*, 649 So.2d at 279.

None of the inferences raised by plaintiff are at odds with logic and reason. The actual identity of the substance, and whether defendant had constructive notice of its existence, should not have been resolved adversely to plaintiff as a matter of law based on the current record.

REVERSED AND REMANDED

KLEIN and SHAHOOD, JJ., concur.

692 So.2d 297, 22 Fla. L. Weekly D1081

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Westlaw.
563 So.2d 729
563 So.2d 729, 15 Fla. L. Weekly D1515
(Cite as: 563 So.2d 729)

C

District Court of Appeal of Florida,
First District.

Carolyn B. STREETER, as Personal Representative of the Estate of Eric Byron Streeter, deceased, Appellant,
v.
Robert E. BONDURANT, M.D., Appellee.

No. 88-2474.

June 5, 1990.

Widow brought medical malpractice action against physician who had inserted endotracheal tube into patient who subsequently died. The Circuit Court, Escambia County, Nicholas Geeker, J., entered summary judgment in favor of physician, and appeal was taken. The District Court of Appeal, Smith, J., held that substantial issues of material fact existed as to whether physician had inserted endotracheal tube into esophagus rather than into trachea, precluding summary judgment.

Reversed and remanded.

West Headnotes

Judgment 🔑 **181(33)**
228k181(33) Most Cited Cases
Substantial issues of material fact existed as to whether doctor negligently placed endotracheal tube into patient's esophagus instead of into trachea, precluding summary judgment in medical malpractice action.

*729 Richard P. Warfield of Warfield, Crosby & Santurri, P.A., Pensacola, for appellant.

Danny L. Kepner of Shell, Fleming, Davis & Menge, Pensacola, for appellee.

SMITH, Judge.

Appellant, plaintiff below, seeks reversal of summary judgment entered in favor of the appellee, one of the defendants in a medical malpractice suit. We reverse.

During the course of his duties as an Escambia County Deputy Sheriff, appellant's husband was shot in the chest, abdomen and buttocks. Emergency surgery *730 was performed at Baptist Hospital, following which Officer Streeter was placed in intensive care. An endotracheal tube was inserted into the officer's trachea to assist his breathing. At some point afterward, the endotracheal tube became blocked, and the appellee, a pulmonary specialist, was called in to assist. The appellee replaced the tube after a paralytic drug, Pavulon, was administered at the instruction of another physician, Dr. Tugwell. Unfortunately, the officer subsequently died. The next day his body was taken to another hospital where an autopsy was performed by Dr. McConnell, the pathologist, who found the endotracheal tube in the deceased's esophagus, rather than in the trachea. It was also established that the bulb at the end of the tube was inflated, and that the tube was tied in place by a string around the patient's neck.

In a second amended complaint, appellant sued Baptist Hospital, Dr. Tugwell and the appellee. In the amended complaint, appellant alleged that the appellee negligently performed his professional duties in failing to promptly and properly evaluate the patient's respiratory distress, to properly diagnose the cause of respiratory distress, and to properly treat the distress. Appellant further alleged that the appellee was negligent when he incorrectly inserted the endotracheal tube into the patient's esophagus knowing the patient would be unable to breath without a properly inserted tube because of the administration of Pavulon.

The appellee filed a motion for summary judgment, in which it was argued that no genuine issue of fact existed and, as a matter of law, appellee was entitled to a judgment in his favor. More specifically, appellee argued that appellant's expert medical witness, Dr. Joseph LoCicero, testified during deposition that the appellee did not breach the standard of medical care, and that the wounded officer's condition was "irreversible" by the time the endotracheal tube was replaced, so that even if the tube was incorrectly inserted, it made no difference. [FN1] Further, appellee argued that appellant had failed to submit any competent evidence of negligent care which proximately caused the death of Officer Streeter.

FN1. Dr. Bondurant stated in his deposition, however, that he could not say that Streeter

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was or was not beyond help when he replaced the endotracheal tube.

Appellant thereafter filed the sworn affidavit of Dr. LoCicero in which the affiant explained that at the time of his deposition, he had been asked to assume, and had assumed, that the endotracheal tube was properly placed, but "[i]f DR. BONDURANT inserted the endotracheal tube into the esophagus instead of into the trachea, that placement into the esophagus breached the acceptable standard of care required of him under these circumstances." Dr. LoCicero's affidavit further stated that if the tube were improperly placed and remained in the esophagus during the resuscitation process, "this improper placement would assure his death." Appellant also filed the affidavit of Dr. Boysen, who opined that "if" the tube was incorrectly placed in the esophagus by Dr. Bondurant, rather than the trachea, this would constitute a failure to meet the accepted standard of care; and further, that such failure to meet the accepted standard of care caused or substantially contributed to the patient's death "due to hypoxia due to endotracheal tube obstruction," and that the patient's death was preventable by proper intervention and by properly meeting the accepted standard of care.

Following a hearing, the trial court granted appellee's motion for summary judgment. The trial court stated in its order that Dr. LoCicero's deposition "unequivocally" established his expert opinion that Dr. Bondurant did not breach any standard of care. The trial court stated further that the subsequently filed affidavit was "belied" by the record and should not be considered under the authority of *Williams v. Duggan*, 172 So.2d 844 (Fla. 1st DCA 1965). As for the affidavit of Dr. Boysen, also submitted by appellant, the trial court found that it contained only an hypothesis not independently established by other facts of record. The trial court *731 found the Boysen affidavit insufficient by itself to support a claim of negligence in opposition to appellee's summary judgment motion.

On appeal, appellant argues that a question of fact remains whether the appellee's actions breached the standard of care due the deceased officer, and if there was a breach, whether it at least contributed to the officer's death. The appellee responds by asserting that appellant's theory of liability relies upon inferences which cannot be lawfully drawn from the facts. According to appellee, appellant's theory of liability requires one inference--that the tube was in the esophagus before death--to be placed on top of another inference-- that the tube was placed and left there by the appellee. Such a stacking of inferences is not permitted, appellee maintains, unless the initial inference "can be elevated to the dignity of an established fact because of the presence of no reasonable inference to the contrary," quoting *Commercial Credit Corp. v. Varn*, 108 So.2d 638, 640 (Fla. 1st DCA 1959). Appellee argues that the more reasonable first inference is that the endotracheal tube was properly placed but became dislodged and migrated into the esophagus after death. We are not persuaded that appellee's "inference upon inference" argument is dispositive of the issues in this case. In fact, appellant relies upon only one inference, that is, that because the tube was found in the patient's esophagus after death, it is reasonably inferable that it was placed by mistake in the esophagus by appellee.

Appellee's reliance upon *Voelker v. Combined Insurance Company of America*, 73 So.2d 403 (Fla.1954), *Gaidymowicz v. Winn-Dixie Stores, Inc.*, 371 So.2d 212 (Fla. 3d DCA 1979), *Girdley Construction Company v. Ohmstede*, 465 So.2d 594 (Fla. 1st DCA 1985), and *Allstate Insurance Company v. Bandiera*, 512 So.2d 1082 (Fla. 4th DCA 1987), *review denied*, 520 So.2d 583 (Fla.1988), is misplaced. None of these cases concern an appeal from a summary judgment. *Voelker* was a consolidated appeal from final judgments entered by the trial court upon defendant's motion for a directed verdict after entry of final judgment based on the jury's verdict. *Gaidymowicz* was an appeal of a directed verdict in favor of a defendant at the close of the plaintiff's case in a negligence action. *Girdley* was an appeal from an order awarding death benefits in a workers' compensation case. Finally, *Allstate Insurance Company* was an appeal from a jury verdict. The case before us differs from each of the above-cited cases in one important respect, that is, the plaintiff in each of those cases had been given an opportunity at trial to prove his case, but was unable to do so. A movant against whom summary judgment is sought is not required to prove his case at that stage of the proceedings. *See Chelton v. Tallahassee-Leon County Civic Center Authority*, 525 So.2d 972 (Fla. 1st DCA), *rev. den.*, 534 So.2d 402 (Fla.1988). It is well established that a summary judgment should be granted "cautiously," *Davis v. Lyall & Lyall Veterinarians, P.A.*, 506 So.2d 1072 (Fla. 5th DCA), *rev. den.*, 513 So.2d 1062 (Fla.1987), and that reasonable inferences should be resolved against a movant for summary judgment, *Moore v. Morris*, 475 So.2d 666 (Fla.1985), and *Wills v. Sears, Roebuck and Company*, 351 So.2d 29 (Fla.1977).

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In the case before us, two facts are established by direct and undisputed evidence; (1) that Dr. Bondurant placed the second endotracheal tube in the patient, and (2) when examined after death, the tube was found inserted in the patient's esophagus. There is direct evidence--appellee's own testimony--that the tube was properly placed in the trachea by appellee, and this is supported by observations made by others present. This direct evidence, however, is subject to a credibility determination by the trier of fact, since the doctor's own self-serving statement must be weighed in the light of the inferences which may be drawn from the other facts, including the direct evidence (fact No. (2) above), which tends to refute the evidence of proper placement. It is true, as appellee urges, that there is additional circumstantial evidence tending to support Dr. Bondurant's statement as to proper placement, such as the observation of lung movement *732 by another physician during open chest heart massage, [FN2] and other opinion evidence indicating no improper placement of the tube. It must be observed that the explanation offered by appellee as to how the tube became lodged in the patient's esophagus, assuming it was properly placed in the trachea in the first instance, relies entirely on circumstantial evidence. Appellee argues that it is reasonably inferable that the tube became dislodged from the trachea and reinserted itself into the esophagus during manipulation of the patient while administering CPR, or possibly after death when the deceased was being transported to another hospital for an autopsy. These explanations do not offer any conclusive answer to the question, however, since they establish mere "possibilities" of how the tube became misplaced. Opposed to these "possibilities" is the direct evidence that the tube was still tied in place with a string around the patient's neck at the time of the autopsy, and that the bulb at the end of the tube was still inflated. Moreover, it is apparent that the likelihood of the tube becoming dislodged from the trachea and inserting itself into the esophagus, under any given set of circumstances, is itself a question uniquely within the knowledge and experience of medical experts. Yet, we find an absence of conclusive expert testimony one way or the other on this issue in the record before us.

> FN2. Even this is not conclusive, however, for as several doctors observed, it is possible to see lung movement indicating ventilation even when the tube is placed in the esophagus.

It appears, therefore, that the circumstances established by appellant's evidence are susceptible of a reasonable inference supporting the claim of negligence, and the circumstances are also susceptible of reasonable inferences which refute the claim. In this situation, a jury issue is presented, as explained in *Voelker*, 73 So.2d at 406:

> [I]f the circumstances established by the evidence be susceptible of a reasonable inference or inferences which would authorize recovery and are also capable of an equally reasonable inference, or inferences, contra, a jury question is presented.

We are not unmindful of the further admonition in *Voelker*, that if none of the inferences on one side "accords with logic and reason or human experience," while on the other hand "an inference which does square with logic and reason or human experience" is deducible from the evidence, the question is not for the jury "but is one of law for the court." *Id.* at 406. Although we concede a close question is presented in the case before us, we find that the trial court abused its discretion in granting summary judgment.

The trial court below erred in concluding, on the authority of *Williams v. Duggan, supra*, and *Elison v. Goodman*, 395 So.2d 1201 (Fla. 3d DCA 1981), that Dr. LoCicero's affidavit could not be considered. These cases reaffirm the rule established in *Ellison v. Anderson*, 74 So.2d 680 (Fla.1954), that a party is not permitted to repudiate a previously asserted position simply to avert summary judgment. In *Williams*, the plaintiff in a tort action had testified in deposition that the extension ladder on which he was descending got caught by the wind, forcing him to fall. At trial, the plaintiff testified that he fell because the ladder was defective, or because a fellow employee had failed to hold the ladder steady as he descended. The plaintiff was unable to explain the conflicting testimony at trial. Citing the rule established in *Ellison v. Anderson, supra*, the *Williams* court affirmed the directed verdict entered in the defendant's favor. In *Elison v. Goodman, supra*, cross-claimants for damages for construction defects at a new home stated during deposition that they were on notice of the defects four years before suit was filed. Summary judgment was granted, since the cross-claim was barred by the governing statute of limitations based upon the admission of notice of the defects. Cross-claimants filed an affidavit contradicting the deposition testimony concerning the date of discovery of the defects so as to bring the action within the statute of limitations. Citing the rule of *Ellison v. Anderson, supra*, however, the *Elison v. Goodman* court affirmed the *733 summary

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judgment. In the instant case, Dr. LoCicero's deposition testimony and his affidavit are not in direct contradiction; thus, the rule of *Ellison v. Anderson* has no application.

Our review convinces us that in rendering summary judgment the trial court necessarily engaged in a weighing of the evidence in order to arrive at a conclusion as to how and when the endotracheal tube became placed in the patient's esophagus rather than in the trachea. This issue, as well as the additional factual issue as to the cause of death, are proper for resolution only at trial, at which time the court may appropriately weigh and consider all the evidence and reasonable inferences therefrom in deciding whether the evidence is sufficient to submit the case to the jury.

Accordingly, the summary judgment is REVERSED and the cause is REMANDED for further proceedings.

MINER, J., and THOMPSON, FORD L. (Retired), Associate Judge, concur.

563 So.2d 729, 15 Fla. L. Weekly D1515

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#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiffs,

CASE NO: 2003 CA 005045 AI

vs.

MORGAN STANLEY & CO., INC.
Defendant.
_____/

NOTICE OF FILING PLEADING UNDER SEAL

COLEMAN (PARENT) HOLDINGS INC. hereby gives notice of the filing of COLEMAN (PARENT) HOLDINGS INC.'S Notice of Filing and Intent to Rely Upon the Deposition Testimony and Expert Report of Michael J. Gilfillan in Opposition to Defendant's Motion for Summary Judgment, Filed under Seal on this date.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 20th day of Jan., 2005.

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Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Notice Of Filing Pleading Under Seal
Case No.: 2003 CA 005045 AI

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE IN OPPOSITION TO MORGAN STANLEY'S MOTION TO STRIKE CPH'S RESPONSE TO MORGAN STANLEY' S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Morgan Stanley has moved to strike CPH's 246-page response to Morgan Stanley's proposed findings of fact and conclusions of law on the ground that Morgan Stanley received the response a couple of hours after 5:00 p.m. on January 10, even though Morgan Stanley has not been prejudiced whatsoever by the slight delay in CPH's service of its response. Indeed, in seeking this extraordinarily Draconian relief, Morgan Stanley ignores the following facts:

First, because of difficulties associated with the facsimile transmission of the document, CPH provided Morgan Stanley with the response as a PDF file by e-mail at approximately 7:00 p.m. on January 10. *See* Ex. A.

Second, CPH went to extraordinary lengths to ensure that Morgan Stanley had all documents associated with CPH's response on January 10. Indeed, with respect to the eight-volume appendix supporting the response, CPH spent more than $600 on a special courier service in Chicago to ensure that all three of the law firms representing Morgan Stanley (in Florida and in D.C.) had copies of the appendix before the close of business on January 10 — and, in fact, all three law firms had the appendix before 5:00 p.m. Eastern Time. That is in contrast to the usual custom in this case of providing voluminous appendices by overnight mail. For example, when Morgan Stanley served its summary judgment motion on December 10,

Morgan Stanley sent its supporting appendix by Federal Express, with the result being that CPH did not receive the appendix until December 13 (a mere 10 days before CPH's summary judgment response was due on December 23).

Third, in complaining about the short delay in the service of the response, Morgan Stanley ignores that it repeatedly has served pleadings late. For example:

- On April 9, 2004, Morgan Stanley faxed a motion for a protective order concerning personnel evaluations at 7:06 p.m. *See* Ex. B.
- On June 14, 2004, Morgan Stanley served its Third Set of Requests for Admission at 7:25 p.m. *See* Ex. C
- On April 14, 2004, Morgan Stanley served its Opposition to CPH's Motion To Compel Answers To Deposition Questions at 5:38 p.m. *See* Ex. D.
- On April 14, 2004, Morgan Stanley served its Opposition to Coleman (Parent) Holding Inc.'s Motion To Compel Answers To Interrogatories at 5:44 p.m. *See* Ex. E.
- On April 14, 2004, Morgan Stanley served its Opposition to Coleman (Parent) Holding Inc.'s Motion To Compel Consent to Third Party Production of Responsive Emails at 6:15 p.m. *See* Ex. F.
- On April 14, 2004, Morgan Stanley served its Opposition to Coleman (Parent) Holding Inc.'s Motion To Compel Supplementation of Privilege Log and Other Relief at 6:05 p.m. *See* Ex. G.
- On June 16, 2004, Morgan Stanley served its Answers and Objections to Coleman (Parent) Holding Inc.'s Interrogatories at 6:03 p.m. *See* Ex. H.

More recently, on the last day to serve written discovery requests (October 26, 2004), Morgan Stanley served its Fourth Set of Requests for Admission at 9:28 p.m. *See* Ex. I. Theoretically, CPH could have refused to answer those requests as having been served after the close of discovery, but CPH nevertheless answered the requests. Thus, given its own late filings, Morgan Stanley is in no position to complain about receiving CPH's response a couple of hours after 5:00 p.m.

* * *

In sum, given CPH's extraordinary good-faith efforts to effectuate service of its response by the January 10 deadline set by this Court, and given that Morgan Stanley received the response only two hours after the close of business and was not prejudiced by that short delay, Morgan Stanley's motion to strike is both technical and baseless and should therefore be denied.

Dated: January 20, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 20th day of JAN., 2005.

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From: Connell, Deirdre E
Sent: Monday, January 10, 2005 7:00 PM
To: thomas_clare@dc.kirkland.com; Ianno, Joseph; 'rbeynon@khhte.com'
Subject: CPH v. MS

Counsel: We have been attempting to fax you CPH's response to Morgan Stanley's proposed findings of fact and conclusions of law. Given the uncertainty of whether those faxes will go through successfully, I also attach an electronic version.

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This email may contain privileged and confidential information that is protected by applicable state and federal laws. If you receive this communication in error, please immediately notify me and delete the original message.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.
MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO: CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

MOTION FOR PROTECTIVE ORDER REGARDING THE USE OF CONFIDENTIAL PERSONNEL EVALUATIONS

Defendant Morgan Stanley & Co. Incorporated and Plaintiff Morgan Stanley Senior Funding, Inc. (collectively "Morgan Stanley") respectfully move this Court for entry of a Protective Order concerning the use of certain highly sensitive employee evaluation materials produced by Morgan Stanley pursuant to the Court's March 15, 2004 Order. In support of its Motion, Morgan Stanley states as follows:

1. On March 15, 2004, the Court entered an Order requiring Morgan Stanley to produce certain highly sensitive performance evaluations for certain of its employees. Specifically, the March 15 Order requires Morgan Stanley to produce, for employees who worked on the 1997-98 Sunbeam-related engagements: "(a) All references (positive or negative) to work performed by the employee on Sunbeam-related engagements[;] (b) All references (positive or negative) to the employee's performance in fee generation[;] (c) All references

EXHIBIT
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B

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO: CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

MORGAN STANLEY & CO. INCORPORATED'S THIRD SET OF REQUESTS FOR ADMISSION

Pursuant to Florida Rule of Civil Procedure 1.370, Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") submits this third set of requests for admission to Plaintiff Coleman (Parent) Holdings, Inc. ("CPH"). The specific requests are preceded by Instructions and Definitions which shall govern the specific requests. Morgan Stanley requests that Plaintiff answer, under oath, the following requests for admission in accordance with the Florida Rules of Civil Procedure, or within such shorter period as may be agreed by counsel, and submit them in writing to counsel for Morgan Stanley at the offices of Kirkland & Ellis LLP, 655 Fifteenth Street, NW, Suite 1200, Washington, DC 20005.

EXHIBIT
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C

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO: CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.
_____/

MORGAN STANLEY'S OPPOSITION TO COLEMAN (PARENT) HOLDING INC.'S MOTION TO COMPEL ANSWERS TO INTERROGATORIES

Morgan Stanley & Co. Incorporated's and Morgan Stanley Senior Funding, Inc.'s ("Morgan Stanley") responses to CPH's interrogatories fully complied with Florida Rules CPH's motion to compel should be denied because: (1) Morgan Stanley already answered the requests in conformance with its discovery obligations; (2) CPH's motion is nothing more thar an impermissible attempt to force Morgan Stanley to update its discovery responses – a burder that the Florida rules do not require and CPH itself has consistently rejected; and (3) CPH's motion improperly seeks to have the Court reform CPH's vague discovery requests.

1. **Morgan Stanley's Responses Are Complete And Fully Satisfied Morgan Stanley's Obligations Under The Florida Rules.**

Consistent with the Florida Rules of Civil Procedure, Morgan Stanley responded t CPH's interrogatories in good faith and to the best of its ability. Before providing the response

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs. CASE NO: CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.
_____/

MORGAN STANLEY'S OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL CONSENT TO THIRD PARTY PRODUCTION OF RESPONSIVE E-MAILS

The Court should not compel Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc. ("Morgan Stanley") to consent to an improper and overbroad subpoena issued by Coleman (Parent) Holdings, Inc. ("CPH") to a third party, Bloomberg Inc. ("Bloomberg"). The subpoena requests:

> All documents concerning emails or electronic messages of [36] Morgan Stanley or MSSF employees.

(Mar. 4, 2004 Subpoena Duces Tecum, Req. 1 (Ex. A).) CPH's remarkable request for the production of *every single e-mail* message sent or received by thirty-six Morgan Stanley employees *over a seven-year period* and *regardless of subject matter* is overbroad, unduly burdensome, and contravenes the Florida Rules governing discovery. Morgan Stanley's refusal to consent to the production was completely justified.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO: CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.
_____/

MORGAN STANLEY'S RESPONSE AND OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL SUPPLEMENTATION OF PRIVILEGE LOG AND OTHER RELIEF

Coleman (Parent) Holdings Inc.'s ("CPH") motion to compel the supplementation o Morgan Stanley & Co. Incorporated's and Morgan Stanley Senior Funding, Inc.'s ("Morgan Stanley") privilege log is without merit. As CPH is well aware, the vast majority of the privileg log entries relate to two types of documents: (1) documents created by consultants hired by Morgan Stanley counsel to assist counsel and Morgan Stanley with the preparation for and the conduct of litigation; and (2) documents from the files of Morgan Stanley in-house counsel ir their capacity as legal counsel – some with handwritten notes of counsel – that bear no indicatior that they were circulated beyond Morgan Stanley. These documents are clearly shielded from production by the work product doctrine and/or the attorney-client privilege. CPH's motior should be denied.

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

CASE NO: CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

CASE NO: CA 03-5165 AI

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.
_____/

MORGAN STANLEY'S ANSWERS AND OBJECTIONS TO COLEMAN (PARENT) HOLDING INC.'S INTERROGATORIES

Defendant Morgan Stanley & Co. Incorporated ("MS & Co.") and Plaintiff Morgan Stanley Senior Funding, Inc. ("MSSF") (collectively "Morgan Stanley"), by its attorneys, and pursuant to Florida Rules of Civil Procedure 1.280 and 1.340, provides the following answers and objections to Coleman (Parent) Holdings Inc.'s ("CPH") Interrogatories dated March 19, 2004.

GENERAL OBJECTIONS

1. Morgan Stanley objects to the Interrogatories to the extent that they seek information protected from disclosure by the attorney-client privilege, the attorney-work-product doctrine, the common interest doctrine, or any other applicable constitutional, statutory or common law privilege, doctrine, immunity or rule.

EXHIBIT
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16div-010246

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INCORPORATED'S
FOURTH SET OF REQUESTS FOR ADMISSION

Pursuant to Florida Rule of Civil Procedure 1.370, Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") submits this fourth set of requests for admission to Plaintiff Coleman (Parent) Holdings, Inc. ("CPH"). The specific requests are preceded by Instructions and Definitions which shall govern the specific requests. Morgan Stanley requests that Plaintiff answer, under oath, the following requests for admission in accordance with the Florida Rules of Civil Procedure, or within such shorter period as may be agreed by counsel, and submit them in writing to counsel for Morgan Stanley at the offices of Kirkland & Ellis LLP, 655 Fifteenth Street, NW, Suite 1200, Washington, DC 20005.

INSTRUCTIONS

1. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

2. The use of the singular form of any word includes the plural and vice versa.

3. If you cannot admit or deny a request for admission after making a reasonable inquiry and the information known or readily attainable by CPH is insufficient to enable CPH to

EXHIBIT
I

CARLTON FIELDS, P.A.

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MAILING ADDRESS
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FAX COVER SHEET

		Phone Number	Fax Number
Date:	January 20, 2005		
To:	Jack Scarola	(561) 686-6300	(561) 684-5816/
	Jerold Solovy/Michael Brody	(312) 222-9350	(312) 840-7711
	Thomas Clare	(202) 879-5993	(202) 879-5200
	Rebecca Beynon/Mark Hansen	(202) 326-7900	(202) 326-7999
From:	Joyce Dillard, CLA	(561) 659-7070	(561) 659-7368

Client/Matter No.: 47877/14092 **Employee No.:**

Total Number of Pages Being Transmitted, Including Cover Sheet: 7

Message:

To follow please find a copy of Morgan Stanley's Notice of Filing Pleading Under Seal and Notice of Filing and Intent to Rely Upon the Deposition Transcript of Michael J. Wagner.

☐ ***Original to follow Via Regular Mail*** ☐ ***Original will Not be Sent*** ☐ ***Original will follow via Overnight Courier***

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****

IF THERE ARE ANY PROBLEMS OR COMPLICATIONS, PLEASE NOTIFY US IMMEDIATELY AT:
(561) 659-7070

TELECOPIER OPERATOR: _____

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed a copy of the original January 13, 2005 deposition transcript of Michael J. Wagner under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 20th day of January, 2005.

Thomas D. Yannucci, P.C.
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BY: Joseph Ianno, Jr.
Florida Bar No. 655351

Counsel for Morgan Stanley & Co. Incorporated

WPB#571261.24

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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

CONFIDENTIAL – FILED UNDER SEAL

Morgan Stanley & Co. Incorporated's Notice of Filing January 13, 2005 confidential deposition transcript of Michael J. Wagner.

THIS ENVELOPE CONTAINS MATERIAL SUBJECT TO A PROTECTIVE ORDER ENTERED IN THIS ACTION. IT IS NOT TO BE OPENED NOR THE CONTENTS THEREOF DISPLAYED, REVEALED, OR MADE PUBLIC, EXCEPT BY WRITTEN ORDER OF THE COURT

CONFIDENTIAL – FILED UNDER SEAL

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Telephone: (561) 659-7070
Facsimile: (561) 659-7368

BY: _____
JOSEPH IANNO, JR.
Florida Bar No: 655351

Counsel for Morgan Stanley & Co. Incorporated

WPB#571259.24

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO. INC.

Defendant.
_____/

MORGAN STANLEY'S NOTICE OF FILING AND INTENT TO RELY UPON THE DEPOSITION TRANSCRIPT OF MICHAEL J. WAGNER IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

Defendant, Morgan Stanley & Co. Incorporated (Morgan Stanley), by and through its undersigned counsel, hereby gives notice of filing and intent to rely upon the deposition transcript of Michael J. Warner, taken January 13, 2005, in support of its Motion for Summary Judgment.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 20th day of January, 2005.

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Counsel for
Morgan Stanley & Co. Incorporated

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BY: Joseph Ianno Jr.
Joseph Ianno, Jr.
Florida Bar No. 655351

WPB#588667.1

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Suite 300 East
West Palm Beach, Florida 33401

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER AND NOTICE OF HEARING

This cause having come before the Court, it is

ORDERED AND ADJUDGED that hearing on CPH's Motion to Deem Certain Documents Admissible and for Sanctions Due to Morgan Stanley's Disregard of Court Order is hereby set for

January 26, 2005, at 9:30 a.m.

at the West Palm Beach Courthouse, Room 11A, 205 N Dixie Hwy, WPB, FL.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 21 day of January, 2005.

_____
ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci
655 15th Street, NW, Suite 1200
Washington DC 20005

John Scarola, Esq.
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West Palm Beach, FL 33409

Jerold S. Solovy, Esq.
One IBM Plaza, Suite 4400
Chicago, Il 60611

Rebecca Beynon, Esq.
Sumner Square
1615 M Street, NW, Suite 400
Washington, DC 20036

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-4380 within two (2) working days of your receipt of this [describe notice]; if you are hearing or voice impaired, call 1-800-955-8771.

SPANISH

Si Ud. es una persona incapacitada que necesita de un servicio especial para participar en este proceso, Ud. tiene derecho a que le provean cierta ayuda sin costo alguno. Por favor pongase en contacto con el Coordinador de la Oficina Administrativa de la Corte ADA, situada en el 205 North Dixie Highway, Oficina 5.2500, West Palm Beach, Florida, 33401, teléfono (561) 355-4380, dentro de los dos (2) próximos días hábiles después de recibir esta [describa la notificación]; si tiene incapacidad de oir ó hablar llame al 1-800-955-8771.

CREOLE

Si ou sé yon moun ki Infim, ki bézwen ninpôt akomodasyon pou ka patisipé nan pwosè sa-a, ou gen dwa, san'l pa kouté'w anyin, pou yo ba'w kèk sèvis. Tanpri kontakté koôdinatè ADA ya nan Biro Administratif Tribinal nan cité Palm Beach la, ki nan 205 North Dixie Highway, Cham 5.2500, West Palm Beach, Florida 33401, niméro téléfonn-nan sé (561) 355-4380, rélé dé (2) jou dé lè ou résévwa [notis sa-a]; si ou bèbè ou byen soud rélé 1-800-955-8771.

FRENCH

Si vous êtes infirme, et en besoin de n'importe accommodation pour pouvoir participer á ces procédures, vous pouvez gratuitement recevoir, certains services. S'il-vous-plait contactez le coordinateur du Bureau Administratif du Tribunal de Palm Beach, située à 205 North Dixie Highway, Chambre 5.2500, West Palm Beach, Florida 33401, numéro de téléphone (561) 355-4380 durant deux (2) jours suivant la réception de [cette note]; si vous êtes muets ou sourds, appelez 1-800-955-8771.

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

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ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
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Rebecca Beynon, Esq.
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Washington, DC 20036

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FRENCH

Si vous êtes infirme, et en besoin de n'importe accommodation pour pouvoir participer á ces procédures, vous pouvez gratuitement recevoir, certains services. S'il-vous-plait contactez le coordinateur du Bureau Administratif du Tribunal de Palm Beach, située à 205 North Dixie Highway, Chambre 5.2500, West Palm Beach, Florida 33401, numéro de téléphone (561) 355-4380 durant deux (2) jours suivant la réception de [cette note]; si vous êtes muets ou sourds, appelez 1-800-955-8771.

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON MORGAN STANLEY'S MOTION IN LIMINE NO. 8 TO ESTABLISH PROCEDURE FOR USE OF DEPOSITIONS AT TRIAL

THIS CAUSE came before the Court January 21, 2005 on Morgan Stanley's Motion in Limine No. 8 to Establish Procedure for Use of Depositions at Trial, with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that, at trial, those counter-designations which constitute either cross-examination or fairness designations shall be read to the jury when the testimony's proponent originally offers the deposition testimony. Any other designations shall be offered during the proponent's case.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 21 day of January, 2005.

ELIZABETH T. MAASS
Circuit Court Judge

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON MORGAN STANLEY & CO. INCORPORATED'S MOTION TO EXTEND TIME TO DEPOSE DONALD UZZI

THIS CAUSE came before the Court January 21, 2005 on Morgan Stanley & Co. Incorporated's Motion to Extend Time to Depose Donald Uzzi, with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Morgan Stanley & Co. Incorporated's Motion to Extend Time to Depose Donald Uzzi is Granted, in part. Defendant shall have until February 4, 2005 to complete Mr. Uzzi's deposition, without prejudice to Plaintiff's right to object to the use of the deposition at trial on the basis of undue prejudice, surprise, or any other evidentiary basis.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 21 day of January, 2005.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

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Sherry, Bridget E.

From: Thomas Clare [tclare@kirkland.com]
Sent: Sunday, January 23, 2005 3:13 PM
To: #MS-Coleman - K&E
Subject: Fw: Uzzi order

20050121 Order Re Extension Of Time To Depose Uzzi

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

COLEMAN (PARENT) HOLDINGS INC., Plaintiff, vs. MORGAN STANLEY & CO. INC. Defendant.	CASE NO: CA 03-5045 AI

NOTICE OF CHANGE OF FIRM NAME

The name of the firm of Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., counsel to Morgan Stanley in the above-captioned matter, has changed. Effective January 1, 2005, the name of the firm is Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C. The firm's address, telephone number, and facsimile number will remain the same.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 25th day of January, 2005.

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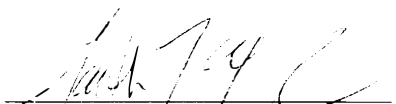
BY: 
Joseph Ianno, Jr.
Florida Bar No. 655351

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West Palm Beach, Florida 33401

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.'S MOTION FOR ADVERSE INFERENCE INSTRUCTION DUE TO MORGAN STANLEY'S DESTRUCTION OF E-MAILS AND MORGAN STANLEY'S NONCOMPLIANCE WITH THE COURT'S APRIL 16, 2004 AGREED ORDER

Coleman (Parent) Holdings Inc. ("CPH") respectfully requests that the Court instruct the jury that it can draw an adverse inference from the destruction of e-mails and other electronic documents by Morgan Stanley & Co., Inc. ("Morgan Stanley") and from Morgan Stanley's noncompliance with this Court's April 16, 2004 Agreed Order entered in response to CPH's Motion to Compel Concerning E-mails and Other Electronic Documents. Ex. A. Morgan Stanley was required by that Order to produce, by May 14, 2004, all of the responsive e-mails that survived Morgan Stanley's general destruction of e-mails in 1999. But Morgan Stanley recently has disclosed that it has failed to produce all of those e-mails, and further, has revealed that it still has backup tapes that have not even been searched — despite the fact that trial is only three weeks away. Accordingly, because of Morgan Stanley's non-compliance with this Court's Order, CPH requests that the Court instruct the jury that it can infer that the contents of the missing e-mails would be harmful to Morgan Stanley's defense in this case.

1. As this Court is aware, since the beginning of this litigation, CPH has been seeking e-mails and other materials that are relevant to the issues in this litigation. Morgan

Stanley's document custodian testified that by no later than February 1999, he had gathered files and documents in anticipation of the Sunbeam litigation. Ex. B, Plotnick Dep. at 46. At that time, Morgan Stanley also kept backup tapes of all e-mails from the previous 12 months (*see id.* at 64-66), so e-mails dating back to at least February 1998 should have been gathered. But instead, Morgan Stanley destroyed most or all of the 1998 e-mails concerning Sunbeam, producing only a small handful of e-mails in response to CPH's document requests.

2. Morgan Stanley's destruction of 1998 e-mails was improper for two reasons. First, throughout the relevant period, Morgan Stanley anticipated Sunbeam-related litigation — indeed, Morgan Stanley has invoked work-product immunity for documents dated as early as March 25, 1998. *See* Ex. C, Privilege Log at 58. Second, SEC regulations required Morgan Stanley to retain e-mails in a readily accessible fashion for at least two years. *See* 17 C.F.R. § 240.17a-4 (1997). Morgan Stanley's violation of those regulations led the SEC to impose a $1.65 million fine against Morgan Stanley. *See* Ex. D, SEC Orders, Findings, and Penalties at 2, 5.

3. A long process by which CPH sought to have Morgan Stanley find and restore its lost e-mails began in October 2003, when CPH filed a motion to compel, which led to the entry of the Agreed Order at issue in this motion. Ex. A. The April 16, 2004 Agreed Order required Morgan Stanley to (1) search the oldest full e-mail backups for the Morgan Stanley employees involved in the Sunbeam transaction, (2) review e-mails dated from February 15, 1998 through April 15, 1998 and e-mails containing specified search terms such as "Sunbeam" and "Coleman" regardless of their date, (3) produce by May 14, 2004 all non-privileged e-mails responsive to CPH's document requests, (4) give CPH a privilege log, and (5) also provide CPH a certificate confirming compliance with the foregoing requirements.

4. On May 14, 2004, Morgan Stanley produced about 1,300 pages of e-mails pursuant to the Agreed Order, but provided no privilege log or certificate of compliance. *See* Ex. F. After repeated inquiries by CPH (*see* Ex. G & Ex. H), on June 23, 2004, Morgan Stanley finally produced a privilege log and a certificate. *See* Ex. I.[1]

5. On November 17, 2004, more than six months after the May 14, 2004 deadline for producing e-mails in response to the Agreed Order, Morgan Stanley sent CPH a letter revealing that its June 23 certificate of compliance was incorrect. *See* Ex. O. The letter stated (*id.*):

> Morgan Stanley has discovered additional e-mail backup tapes since our e-mail production in May 2004. The data on some of [the] newly discovered tapes has been restored and, to ensure continued compliance with the agreed order, we have re-run the searches described in the order. Some responsive e-mails have been located as a result of that process. We will produce the responsive documents to you as soon as the production is finalized.

The letter also foreshadowed further delays: "Some of the backup tapes are still being restored. To ensure continued compliance with the agreed order, we intend to re-run the searches again when the restoration process is complete and will produce any responsive documents that result." *Id.*

6. On November 19, 2004, Morgan Stanley produced some of the new e-mails, but no privilege log. After a follow-up inquiry by CPH (*see* Ex. P), on December 17, 2004, Morgan

---

[1] The Court entered a second Agreed Order on April 16 covering e-mails in the possession of Bloomberg, Inc., a third party vendor, because several Morgan Stanley employees had used Bloomberg e-mail accounts while working on the Sunbeam transaction. *See* Ex. E. That Order required Morgan Stanley to produce Bloomberg e-mails within 25 days of Morgan Stanley's receipt of them from Bloomberg. *Id.* at 2. On July 9, 2004, Morgan Stanley produced about 20 pages of Bloomberg e-mails. *See* Ex. J. After an inquiry by CPH (*see* Ex. K), on July 19, 2004, Morgan Stanley produced a certificate of compliance, which covered some but not all of the paragraphs in the Agreed Order relating to Bloomberg. *See* Ex. L. On July 29, 2004, Morgan Stanley produced a certificate covering the remaining aspects of the Bloomberg Agreed Order (Ex. M), and on August 2, 2004, Morgan Stanley informed CPH that no documents had been withheld from the Bloomberg production on the basis of privilege. *See* Ex. N.

Stanley produced a privilege log and advised CPH that "[n]o additional responsive e-mails have been located since our November production." Ex. Q. But Morgan Stanley refused to answer CPH's questions about whether Morgan Stanley had restored all the backup tapes as promised in its November 17 letter and about why the tapes had only recently been located. Ex. Q.

7. On December 30, 2004, CPH sent Morgan Stanley a letter seeking confirmation that all e-mail backup tapes had been reviewed and that all responsive e-mails had been produced, and if not, asking when the review would be completed. Ex. R. On January 11, 2005, Morgan Stanley informed CPH that the "restoration of e-mail backup tapes is ongoing. Restoration of the next set of backup tapes is estimated to be completed at the end of January. We intend to re-run the searches described in the agreed order at that time." Ex. S.

8. On January 19, 2005, CPH wrote asking Morgan Stanley to explain the circumstances under which Morgan Stanley located the recently discovered backup tapes and to disclose when the tapes were located. Ex. T. CPH also asked Morgan Stanley to explain why the next set of backup tapes could not be restored sooner. *Id.*

9. On January 21, Morgan Stanley sent CPH a letter that failed to answer CPH's questions. Ex. U. Instead, Morgan Stanley described its efforts to restore the backup tapes as "ongoing;" informed CPH that "there is no way for Morgan Stanley to know or accurately predict the type or time period of data that might be recovered;" and stated that "Morgan Stanley cannot accurately estimate when all of the tapes will be restored or whether any recoverable data will be found on the remaining tapes." *Id.* Ominously, the letter closed by noting that, "when the agreed-upon searches are run again," they "will include approximately one terabyte of additional data." *Id.* One terabyte equals 1 million megabytes, or about 405,000,000,000,000 pages of data.

10. More than eight months after the deadline for producing e-mails, and only three weeks before trial, Morgan Stanley has yet to comply with this Court's April 16, 2004 Agreed Order. Nor has it disclosed when it plans to comply. Morgan Stanley's disregard of the letter and the spirit of the April 16 Order should not be tolerated.

Wherefore, CPH requests that the Court instruct the jury that Morgan Stanley's destruction of e-mails and other electronic documents and Morgan Stanley's noncompliance with the April 16, 2004 Agreed Order can give rise to an adverse inference that the contents of the missing e-mails would be harmful to Morgan Stanley's defense in this case. *See Amlan, Inc. v. Detroit Diesel Corp.*, 651 So. 2d 701, 703 (Fla. 4th DCA 1995) ("in cases in which the misconduct alleged is the destruction or unexplained disappearance of crucial evidence . . . an instruction may be given concerning the inference that the withheld or missing evidence would be unfavorable to the party failing to produce the evidence"); *see also Martino v. Wal-Mart Stores, Inc.*, 835 So. 2d 1251, 1257 (Fla. 4th DCA 2003) (concluding that adverse inference argument should be permitted "where potentially self-damaging evidence is in the possession of a party and that party either loses or destroys the evidence"); *see also Palmas y Bambu, S.A. v. E.I. Dupont de Nemours & Co.*, 881 So. 2d 565, 581-83 (Fla. 3d DCA 2004) (allowing counsel to argue that the jury should draw an adverse inference from the defendant's destruction of evidence); *Jordan* ex rel. *Shealey v. Masters*, 821 So. 2d 342, 346-48 (Fla. 4th DCA 2002) ("Lawyers are entitled to argue adverse inferences from the evidence as part of their closing arguments.").

Dated: January 26, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 26th day of Jan., 2005.

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

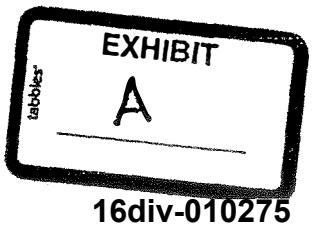
AGREED ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL CONCERNING E-MAILS AND OTHER ELECTRONIC DOCUMENTS

THIS CAUSE having come to be considered upon Coleman (Parent) Holdings, Inc.'s ("CPH") motion to compel concerning e-mails and other electronic documents, the parties having reached agreement, it is hereby

ORDERED and ADJUDGED:

1. Morgan Stanley & Co., Inc. and Morgan Stanley Senior Funding, Inc. (collectively, "Morgan Stanley") will search the oldest full backup that exists for e-mail of each of the Morgan Stanley employees or former employees identified in Response Nos. 1, 2, 3, and 5 of MS & Co.'s Responses to CPH's First Set of Interrogatories and Response Nos. 1, 4, 5, and 6 of MSSF's Responses to Defendants' First Set of Interrogatories.

2. Morgan Stanley shall provide to its attorneys for responsiveness and privilege review all e-mail that (a) is dated from February 15, 1998 through April 15, 1998, and/or (b), without regard to date, contains any of the following terms:



AA
Andersen
Anderson
Bornstein
Camper
Coleman
Colman
Comfort Letter
Dunlap
Early Buy
Fannin
Goudis
Grill
Harlow
Kersh
Laser
MacAndrews
MAFCO
Maher
Nesbitt
Pearlman
Perelman
Perlman
Press Release
Scott
SOC
Sunbeam
Synergies
Uzzi

The term search shall be neither case-sensitive nor whole word sensitive.

3. Non-privileged e-mails responsive to any CPH or MAFCO document request will be produced by May 14, 2004.

4. Any materials withheld on privilege grounds shall be listed on a privilege log in accordance with this Court's previous orders.

5. An authorized Morgan Stanley representative will certify compliance with Paragraphs 1 through 4 of this Order, and will identify the date of the backup utilized for each employee or former employee for whom email is being produced.

6. This Order is without prejudice to CPH's right to seek restoration and production of certain electronic documents and also is without prejudice to Morgan Stanley's right to seek restoration and production of e-mail.

7. Each side shall bear its own costs.

DONE AND ORDERED at West Palm Beach County, Florida, this ____ day of April, 2004.

SIGNED AND DATED
APR 16 2004
JUDGE ELIZABETH T. MAASS

ELIZABETH T. MAASS
Circuit Court Judge

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1070345 v2

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUTY, FLORIDA

---x

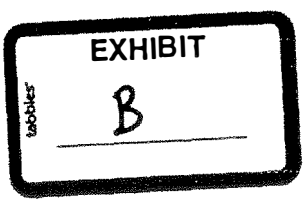
COLEMAN (PARENT) HOLDINGS, INC.)
Plaintiff,)
vs.)
MORGAN STANLEY & CO, INC.,)
Defendant.)

---x

September 9, 2003
9:30 a.m.

VIDEOTAPED DEPOSITION OF
JOHN H. PLOTNICK

Reported by: David Henry
Job Number: 152427



Plotnick

material?

MR. CLARE: Object, calls for speculation, since the three-year period has not yet elapsed from when the policy went in effect per the witness' testimony. So if you know going forward, you can address it.

A. I don't think we've gotten there yet.

Q. When the policy went into effect, I think you said it was January, 2001?

A. I believe so.

Q. Did the company have back up of e-mail from January, 1998?

A. I don't believe so.

Q. What was the most recent backup of e-mail that the company had when the new policy went into effect in January, 2001?

A. I'm not positive.

Q. Do you have any idea?

A. I believe prior to January 1, 2001, e-mail was saved for a year afterwards and then the tapes may have been rewritten.

Q. When, as a general matter, when litigation is instituted, how does Morgan

Plotnick

A. Correct.

Q. When were Morgan Stanley first notified of Sunbeam-related litigation?

A. I don't know precisely.

Q. Do you have any general idea?

A. 1998 or 1999.

Q. When did you personally become involved in Sunbeam-related litigation?

A. 1998 or 1999.

Q. Did any legal assistant at Morgan Stanley precede you in working on Sunbeam-related litigation?

A. No.

Q. At any point were Morgan Stanley employees directed to preserve any materials they may have relating to Sunbeam?

A. I recall identifying the people who were involved in the Sunbeam transaction, and I directed them to send me -- I collected everything, so they didn't retain it, they sent it to me, all their files.

Q. And when did you do that?

A. 1998 or 1999.

Q. Do you have any idea within that

Plotnick

two-year frame more specifically when that might have occurred?

A. I'm sure, I'm pretty sure that at least in February of 1999, I called all the bankers.

Q. Was a firm-wide preservation notice ever circulated directing Morgan Stanley employees to preserve materials relating to Sunbeam?

A. I'm not aware of it. We called the individual bankers and other professionals who were involved in Sunbeam transactions directly.

Q. Okay. And I believe you just testified that as of February of 99, that had been completed?

A. I called the investment bankers I'm pretty sure in February of 99, at least by February of 99. I may have called them earlier.

Q. Okay. How shortly after hearing of Sunbeam litigation did you make those phone calls?

A. I don't know if there was

Plotnick

litigation back then. I was directed by my colleagues to start collecting the files. But I'm not aware of when I was aware of litigation. I was aware of a Sunbeam matter, but I don't think we were a party.

Q. And then in response to your phone calls to the bankers, did you receive any materials relating to Sunbeam?

A. Yes, I did.

Q. How much?

MR. CLARE: Which time period?

Q. Your initial calls, which were completed at the latest I think February, 99.

A. How voluminous were the documents directly from the bankers?

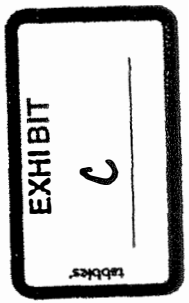
Q. Yes.

A. I don't recall, because in addition I collected documents from the central files area, so I don't recall.

Q. The origin of --

A. The origin, whether they came directly from the bankers or the central file area.

Q. Now, there have been several



Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co. Incorporated
Morgan Stanley Senior Funding v. MacAndrews & Forbes Holdings Inc., et al.

May 10, 2004 Revised Privilege Log

J&B	Date	Author(s)	Recipient(s)	Priv	Privilege Description	Redact Bates
1	1/4/2001	Doyle, James (MS)		WP	Redacted document, ref ecting attorney notes from in-house counsel regarding deposition exhibit.	25349
2	1/4/2001	Doyle, James (MS)		WP	Redacted document, reflecting attorney notes from in-house counsel regarding deposition exhibit.	25829
3	1/4/2001	Doyle, James (MS)		WP	Redacted document, reflecting attorney notes from in-house counsel regarding deposition exhibit.	26100
4	1/4/2001	Doyle, James (MS)		WP	Redacted document, reflecting attorney notes from in-house counsel regarding deposition exhibit.	26102
5	7/24/2001	Doyle, James (MS)		WP	Redacted document, reflecting attorney notes from in-house counsel regarding deposition exhibit.	26207
6	7/24/2001	Doyle, James (MS)		WP	Redacted document, reflecting attorney notes from in-house counsel regarding deposition exhibit.	26209
7	7/24/2001	Doyle, James (MS)		WP	Redacted document, reflecting attorney notes from in-house counsel regarding deposition exhibit.	26210
8	7/24/2001	Doyle, James (MS)		WP	Redacted document, reflecting attorney notes from in-house counsel regarding deposition exhibit.	26211
9	7/24/2001	Doyle, James (MS)		WP	Redacted document, reflecting attorney notes from in-house counsel regarding deposition exhibit.	26212

J&B	Date	Author(s)	Recipient(s)	Priv	Privilege Description	Redact Bates
240	11/10/2000	Lee, Soggy (Simpson, Thacher & Bartlett)	Molitor, Tom (First Union); Bouhuys, Julie (First Union); Ulrich, Chris (First Union); Thomas, Joel (First Union); Rankin, Simon (MS); Petrick, Mitch (MS); McDermott, Melanie (MS); Doster, Ted (MS); Felix, Rick (MS); Ryan, Dan (MS); Sieke, Eric (Bank America); Wheelock, Peter (Bank America); Biaggi, Tom (Bank America); Policano, Mike (Policano & Manzo); Ordway, Ed (Policano & Manzo); Kleinschmidt, Ned (Policano & Manzo); Sunbeam Lender Group	WP, common interest principle	Redacted document, reflecting transmittal memo from outside counsel to client providing legal advice regarding amendment to credit agreement.	76794-76795
241	3/5/2001	Lee, Soogy (Simpson, Thacher & Bartlett)	Sunbeam Lender Group; Fuhrman, Steven (Simpson Thacher & Bartlett)	AC, WP, common interest principle	Memo from outside counsel to client providing legal advice regarding credit agreement, waivers and amendments.	
242	3/25/1998	Davis Polk & Wardwell	Morgan Stanley & Co. Incorporated	AC, WP	Letter from outside counsel to client providing legal advice regarding securities issues and rights under the Purchase Agreement.	
243.01	1/4/1993	Legal and Regulatory Affairs Department	All MS Professionals	AC	Redacted memo from in-house counsel to client providing legal ad ice regarding analyst reports and equity offerings.	80635-80638
243.02	2/6/1992	Pellecchio, Ralph (MS); Rosenthal, Richard (MS)	N.Y. MS Professionals	AC	Redacted memo from in-house counsel to client providing legal advice regarding equity offerings.	80646
243.03	1/25/1993	Pellecchio, Ralph (MS); Rosenthal, Richard (MS); Wallach, Michelle (MS)	U.S. MS Professionals	AC	Redacted memo from in-house counsel to client pro iding legal ad ice regarding equity offerings.	80648-80649

16div-010284

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
RELEASE NO. 46937 / DECEMBER 3, 2002

ADMINISTRATIVE PROCEEDING
FILE NO. 3-10957

In The Matter Of	**ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 15(b)(4) AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS AND IMPOSING CEASE-AND-DESIST ORDERS, PENALTIES, AND OTHER RELIEF**
DEUTSCHE BANK SECURITIES, INC., GOLDMAN, SACHS & CO., MORGAN STANLEY & CO. INCORPORATED, SALOMON SMITH BARNEY INC., and U.S. BANCORP PIPER JAFFRAY INC.,	
Respondents.	

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings pursuant to Section 15(b)(4) and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), be and hereby are instituted against Deutsche Bank Securities, Inc., Goldman, Sachs & Co., Morgan Stanley & Co. Incorporated, Salomon Smith Barney Inc., and U.S. Bancorp Piper Jaffray Inc. (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings, the Respondents have each submitted Offers of Settlement ("Offers") to the Commission, which the Commission has determined to accept. Solely for the purpose of these proceedings, and any other proceedings brought by or on behalf of the Commission or to which the Commission is a party, the Respondents, without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and over the subject matter of these proceedings, consent to the entry of this Order Instituting Proceedings Pursuant to Section 15(b)(4) and Section 21C of the Securities Exchange Act of 1934, Making Findings and Imposing Cease-and-Desist Orders, Penalties, And Other Relief ("Order").

EXHIBIT
D

16div-010285

Accordingly, it is ordered that proceedings pursuant to Exchange Act Section 15(b)(4) and Section 21C be, and hereby are, instituted.

III.

On the basis of this Order and the Respondents' Offers, the Commission finds that:

A. RESPONDENTS

Deutsche Bank Securities, Inc., is a Delaware corporation with its principal place of business in New York, New York. Deutsche Bank is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act and is a member of NASD and the New York Stock Exchange. Deutsche Bank engages in a nationwide securities business.

Goldman, Sachs & Co. is a New York limited partnership with its principal place of business in New York, New York. Goldman Sachs is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act, and is a member of NASD and the New York Stock Exchange. Goldman Sachs engages in a nationwide securities business.

Morgan Stanley & Co. Incorporated is a Delaware corporation with its principal place of business in New York, New York. Morgan Stanley is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act, and is a member of NASD and the New York Stock Exchange. Morgan Stanley engages in a nationwide securities business.

Salomon Smith Barney Inc. is a New York corporation with its principal place of business in New York, New York. Salomon Smith Barney is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act, and is a member of NASD and the New York Stock Exchange. Salomon Smith Barney engages in a nationwide securities business.

U.S. Bancorp Piper Jaffray Inc. is a Delaware corporation with its principal place of business in Minneapolis, Minnesota. U.S. Bancorp Piper Jaffray is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act, and is a member of NASD and the New York Stock Exchange. U.S. Bancorp Piper Jaffray engages in a nationwide securities business.

B. SUMMARY

This action concerns Respondents' violations of the record-keeping requirements of Section 17(a) of the Exchange Act and Rule 17a-4 thereunder during the period from 1999 to at least 2001 (the "relevant period"). During all or part of the relevant period, each Respondent failed to preserve for three years, and/or to preserve in an accessible place for two years, electronic mail communications (including inter-office memoranda and communications) received and sent by its agents and employees that related to its business as a member of an exchange, broker or dealer. Each Respondent lacked adequate systems or procedures for the preservation of electronic mail communications.

16div-010286

C. FACTS

The facts specific to these proceedings are set forth below:

1. The employees of each Respondent used electronic mail communications in part to conduct the Respondent's business as a broker, dealer and member of an exchange.

2. Respondents failed to preserve copies of electronic mail communications for three years, and/or maintain electronic mail communications for the first two years in an accessible place. Respondents did not have adequate systems or procedures in place during all or part of the relevant period to retain and/or make accessible electronic mail communications. Each Respondent's failure to preserve electronic mail communications and/or to maintain them in an accessible place was discovered during investigations being conducted jointly and separately by the Commission, the New York Stock Exchange, and NASD. The deficiencies in Respondents' systems and procedures for the preservation of electronic mail communications preexisted these investigations.

3. Some Respondents backed up electronic mail communications on tape or other media that Respondents represent was part of a process designed as a disaster recovery or business continuity measure, or for another business purpose. While some Respondents relied on these backups to preserve electronic mail communications during the relevant period, Respondents had inadequate systems or procedures to ensure the retention of such back-ups for three years and/or to maintain such data in a readily accessible manner for two years. These Respondents discarded, or recycled and overwrote their back-up tapes and other media, often a year or less after back-up occurred. In those instances in which Respondents did retain electronic mail communications, those electronic mail communications were often stored in an unorganized fashion on backup tapes, other media, or on the hard drives of computers used by individual employees of Respondents. Before the filing of these proceedings, one or more Respondents took steps to develop new database systems for the retention of electronic mail communications.

4. While some Respondents relied upon employees to preserve copies of their electronic mail communications on the hard drives of their individual personal computers or elsewhere, and many e-mails were preserved, there were inadequate systems or procedures to ensure that employees did so for the requisite record-keeping period. In some instances, hard drives of computers were erased when individuals left the employment of the Respondent.

D. LEGAL DISCUSSION

Section 17(a)(1) of the Exchange Act provides that each member of a national securities exchange, broker, or dealer "shall make and keep for prescribed periods such records, furnish copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of

16div-010287

investors, or otherwise in furtherance of the purposes of this title."

The Commission has emphasized the importance of the records required by the rules as "the basic source documents" of a broker-dealer. *Statement Regarding the Maintenance of Current Books and Records by Brokers and Dealers*, 4 SEC Docket 195 (April 6, 1974). The record keeping rules are "a keystone of the surveillance of broker and dealers by [Commission] staff and by the securities industry's self-regulatory bodies." *Edward J. Mawod & Co.*, 46 S.E.C. 865, 873 n.39 (1977) (citation omitted), *aff'd sub nom. Mawod & Co. v. SEC*, 591 F.2d 588 (10th Cir. 1979).

Pursuant to its authority under Section 17(a)(1) of the Exchange Act, the Commission promulgated Rule 17a-4. Rule 17a-4(b)(4) in turn requires each Respondent to "preserve for a period of not less than 3 years, the first two years in an accessible place.... [o]riginals of all communications received and copies of all communications sent by such member, broker or dealer (including inter-office memoranda and communications) relating to his business as such." Rule 17a-4 is not by its terms limited to physical documents. The Commission has stated that internal electronic mail communications relating to a broker-dealer's "business as such" fall within the purview of Rule 17a-4 and that, for the purposes of Rule 17a-4, "the content of the electronic communication is determinative" as to whether that communication is required to be retained and accessible. *Reporting Requirements for Brokers or Dealers under the Securities Exchange Act of 1934*, Rel. No. 34-38245 (Feb. 5, 1997).

Based on the foregoing and Respondents' Offers of Settlement, the Commission finds that with respect to electronic mail communications during the relevant period, each Respondent willfully violated Section 17(a) of the Exchange Act and Rule 17a-4 promulgated thereunder by failing to preserve electronic mail communications for three years, and/or by failing to preserve electronic mail communications for the first two years in an accessible place.[1]

IV.

Each Respondent has undertaken to review its procedures regarding the preservation of electronic mail communications for compliance with the federal securities laws and regulations, and the rules of NASD and New York Stock Exchange. Within 90 days of the issuance of this Order, unless otherwise extended by the staff of the Commission for good cause shown, each Respondent undertakes and agrees to inform the Commission in writing that it has completed its review and that it has established systems and procedures reasonably designed to achieve compliance with those laws, regulations, and rules concerning the preservation of electronic mail communications.

V.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions specified in Respondents' Offers.

ACCORDINGLY, IT IS HEREBY ORDERED:

A. Respondents, and each of them, pursuant to Section 21C of the Exchange Act, cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-4 promulgated thereunder.

B. Respondents, and each of them, are censured pursuant to Section 15 (b)(4) of the Exchange Act.

C. Each Respondent shall, within ten days of the entry of this Order, pay the amount of $1,650,000, for a total of $8,250,000 by all named Respondents. Each Respondent shall make payment as follows: (i) pursuant to Section 15(b)(4) and Section 21B of the Exchange Act, Respondent shall pay a civil monetary penalty of $550,000 to the United States Treasury; (ii) pursuant to Respondent's agreement with NASD in related proceedings, Respondent shall pay a fine in the amount of $550,000 to NASD; and (iii) pursuant to Respondent's agreement with the New York Stock Exchange in related proceedings, Respondent shall pay a fine in the amount of $550,000 to the New York Stock Exchange. Such payment to the U.S. Treasury shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies the payor as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 450 5th Street N.W., Washington, D.C. 20549-0801.

D. Each Respondent shall comply with the undertaking contained in Section IV., above.

By the Commission.

Jonathan G. Katz
Secretary

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1 "Willfully" as used in this Order means intentionally committing the act which constitutes the violation. *See Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000); *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). There is no requirement that the actor also be aware that he is violating one of the Rules or Acts.

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),

vs.

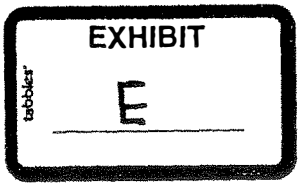
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

AGREED ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL CONSENT TO THIRD-PARTY PRODUCTION OF RESPONSIVE E-MAILS

THIS CAUSE having come to be considered upon Coleman (Parent) Holdings, Inc.'s ("CPH") motion to compel consent to third-party production of responsive e-mails, the parties having reached agreement, it is hereby

ORDERED and ADJUDGED:

1. Morgan Stanley & Co., Inc. and Morgan Stanley Senior Funding, Inc. (collectively, "Morgan Stanley") will obtain from Bloomberg, Inc., all e-mail, including any e-mail that can be restored from backup, of each of the Morgan Stanley employees or former employees identified in Response Nos. 1, 2, 3, and 5 of MS & Co.'s Responses to CPH's First Set of Interrogatories and Response Nos. 1, 4, 5, and 6 of MSSF's Responses to Defendants' First Set of Interrogatories. Herein, that set of e-mails shall be called "Bloomberg e-mail." Morgan Stanley will advise counsel for CPH of the volume of Bloomberg e-mail provided by Bloomberg.



2. Morgan Stanley attorneys shall review for responsiveness and privilege all Bloomberg e-mail that (a) is dated from February 15, 1998 through April 15, 1998, and/or (b) without regard to date, contains any of the following terms:

AA
Andersen
Anderson
Bornstein
Camper
Coleman
Colman
Comfort Letter
Dunlap
Early Buy
Fannin
Goudis
Grill
Harlow
Kersh
Laser
MacAndrews
MAFCO
Maher
Nesbitt
Pearlman
Perelman
Perlman
Press Release
Scott
SOC
Sunbeam
Synergies
Uzzi

The term search shall be neither case-sensitive nor whole word sensitive.

3. ~~Non-privileged~~ Bloomberg e-mails responsive to any CPH or MAFCO document request will be produced ~~by May 14, 2004~~. REQUESTED IMMEDIATELY AND NON-PRIVILEGED E-MAILS WILL BE WITHIN 25 DAYS OF MORGAN STANLEY'S RECEIPT OF THOSE E-MAILS.

4. Any materials withheld on privilege grounds shall be listed on a privilege log in accordance with this Court's previous orders.

16div-010291

5. An authorized Morgan Stanley representative will certify compliance with Paragraphs 1 through 4 of this Order.

6. Each side shall bear its own costs.

DONE AND ORDERED at West Palm Beach County, Florida, this 16 day of April, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished to:

Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci, Esq.
655 15th Street, NW, Suite 1200
Washington DC 20005

John Scarola, Esq.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy, Esq.
One IBM Plaza, Suite 4400
Chicago, IL 60611

1071024 v1

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Kathryn R. DeBord
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kdebord@kirkland.com

May 14, 2004

By Federal Express

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: ***Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.***
MSSF v. MacAndrews & Forbes Holdings Inc. et al.

Dear Mike:

Enclosed is Morgan Stanley's production of e-mails pursuant to the parties' April 16, 2004 agreed-upon order, bearing the bates range 0094349-0095651. In addition to the production, the CD contains two text files: a cross-reference file and a comma-delimited data file (which contains attachment information).

Sincerely,

Kathryn R. DeBord

cc: Joseph Ianno, Jr., Esq. (by facsimile) (without enclosure)
John Scarola, Esq. (by facsimile) (without enclosure)
Mark Hansen, Esq. (by facsimile) (without enclosure)

EXHIBIT
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JENNER&BLOCK

June 21, 2004

Jenner & Block LLP
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Washington, DC

Michael T. Brody
Tel 312 923-2711
Fax 312 840-7711
mbrody@jenner.com

By Telecopy

Thomas A. Clare, Esq.
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Tom:

I write with regard to your failure to produce responsive Bloomberg emails in accordance with the Agreed Order that was entered by the Court on April 16, 2004.

We agreed that either Morgan Stanley or Bloomberg could produce the Bloomberg emails to us, but we have still not received any responsive documents. Please advise us by the close of business on June 23, 2004 when we will receive the production of Bloomberg email, any privilege log derived from that production, and Morgan Stanley's certification of compliance in accordance with Paragraph 5 of the aforementioned Agreed Order.

Very truly yours,

Michael T. Brody

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.
Thomas H. Golden, Esq. (by telecopy)

1118045

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JENNER&BLOCK

June 21, 2004

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One IBM Plaza
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Washington, DC

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Fax 312 840-7711
mbrody@jenner.com

By Facsimile

Thomas A. Clare, Esq.
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Tom:

I write with regard to MSSF/Morgan Stanley's May 14, 2004 production of emails pursuant to Court order.

Any privilege log identifying documents withheld from that production on privilege or work product grounds was due on June 14, 2004. Are we to assume that MSSF/Morgan Stanley did not withhold any documents from that production based on the assertion of privilege? Please provide a privilege log or advise us that no documents were withheld from the May 14, 2004 production.

In addition, Morgan Stanley failed to comply with Paragraph 5 of the Court's April 16, 2004 Order, which requires a Morgan Stanley representative to "certify compliance with [the Order]" and to "identify the date of the backup utilized for each employee or former employee for whom email is being produced."

Please provide a privilege log (or advise us that no documents were withheld) and comply with Paragraph 5 of the Order by close of business on June 23, 2004, or we will be at an impasse.

Very truly yours,

Michael T. Brody

Michael T. Brody

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.

1117960

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tclare@kirkland.com

June 23, 2004

By Facsimile

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: ***Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.***
MSSF v. MacAndrews & Forbes Holdings Inc. et al.

Dear Mike:

I write in response to your June 21, 2004 letters regarding Morgan Stanley's May 14, 2004 e-mail production and the forthcoming production of Bloomberg e-mails. With regard to the May 14, 2004 production, a privilege log is enclosed, along with the certification of compliance described by the April 16, 2004 Agreed Order.

Regarding the third-party e-mails, Morgan Stanley received the e-mails from Bloomberg on June 14, 2004. Pursuant to the Court's Order, all non-privileged responsive e-mails will be produced on Friday, July 9, 2004.

Sincerely,

Thomas A. Clare

Thomas A. Clare

cc: Joseph Ianno, Jr., Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark Hansen, Esq. (by facsimile)

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kdebord@kirkland.com

July 9, 2004

Via Facsimile
By Federal Express

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: ***Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.***
MSSF v. MacAndrews & Forbes Holdings Inc. et al.

Dear Mike:

Enclosed is Morgan Stanley's production of Bloomberg e-mails pursuant to the parties' April 16, 2004 agreed-upon order, bearing the bates range 95729-95740. A certification of compliance is forthcoming.

Sincerely,

Kathryn R. DeBord

RGS

Enclosure (1)

cc: Joseph Ianno, Jr., Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark Hansen, Esq. (by facsimile)

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JENNER&BLOCK

July 15, 2004

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By Telecopy

Michael T. Brody
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Fax 312 840-7711
mbrody@jenner.com

Kathryn R. DeBord, Esq.
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Kathryn:

I write with regard to your letter dated July 9, 2004, which accompanied your production of Bloomberg emails on that date.

As we discussed on the telephone, your July 9, 2004 letter identifies production numbers 95729-95740, but your July 9 production was numbered 95709-28. When I inquired about the apparent discrepancy, you informed me that the production numbers identified in your letter mistakenly relate to a different production that Morgan Stanley has not yet made. Please produce whatever documents bear production numbers 95729-95740 by July 19, 2004.

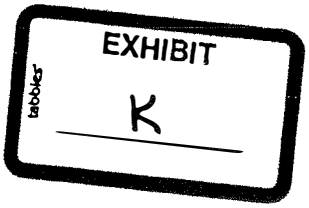
In addition, as required by the Court's order, please provide us with a certification of the Bloomberg production by July 19, 2004.

Very truly yours,

Michael T. Brody

Michael T. Brody

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.



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July 19, 2004

By Facsimile

Michael Brody, Esq.
Jenner & Block, LLC
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Chicago, IL 60611-7603

Re: ***Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.***
MSSF v. MacAndrews & Forbes Holdings Inc. et al.

Dear Mike:

I write in response to your July 15, 2004 letter, which does not accurately reflect our telephone conversation. As I informed you during our telephone conversation, the bates range reflected in my July 9, 2004 cover letter enclosing the Bloomberg e-mail production was an error. That range should have read 95709-95728. MS & Co. and MSSF have no additional documents to produce.

Also enclosed is a certification of compliance for paragraphs two through four of the Court's April 16, 2004 order. We will provide to you a certification of compliance for paragraph one (which will be prepared by Bloomberg or its counsel) as soon as we receive it.

Sincerely,

Kathryn R. DeBord

cc: Joseph Ianno, Jr., Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark Hansen, Esq. (by facsimile)

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July 29, 2004

By Facsimile

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: ***Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.***
MSSF v. MacAndrews & Forbes Holdings Inc. et al.

Dear Mike:

Enclosed please find Bloomberg's certification of compliance with Paragraph 1 of the April 16 Agreed Order on Coleman (Parent) Holding Inc.'s Motion to Compel Consent to Third-Party Production of Responsive E-mails.

Sincerely,

Kathryn R. DeBord

cc: Joseph Ianno, Jr., Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark Hansen, Esq. (by facsimile)

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August 2, 2004

By Facsimile

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: ***Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.***
MSSF v. MacAndrews & Forbes Holdings Inc. et al.

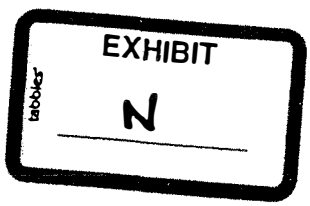
Dear Mike:

I write to inform you that no documents were withheld from Morgan Stanley's July 9, 2004 production of Bloomberg e-mails on the basis of privilege.

Sincerely,

Kathryn R. DeBord

cc: Joseph Ianno, Jr., Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark Hansen, Esq. (by facsimile)



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November 17, 2004

BY FACSIMILE

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*

Dear Mike:

I write regarding supplementation of Morgan Stanley's document production.

Morgan Stanley has discovered additional e-mail backup tapes since our e-mail production in May 2004. The data on some of newly discovered tapes has been restored and, to ensure continued compliance with the agreed order, we have re-run the searches described in the order. Some responsive e-mails have been located as a result of this process. We will produce the responsive documents to you as soon as the production is finalized.

Some of the backup tapes are still being restored. To ensure continued compliance with the agreed order, we intend to re-run the searches again when the restoration process is complete and will produce any responsive documents that result.

Sincerely,

Thomas A. Clare /HP

Thomas A. Clare

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark C. Hansen, Esq. (by facsimile)

EXHIBIT
October
O

JENNER&BLOCK

December 14, 2004

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mbrody@jenner.com

By Telecopy

Thomas A. Clare, Esq.
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Tom:

I write concerning your letter of November 17, 2004 relating to Morgan Stanley's discovery of additional emails.

In that letter, you state that Morgan Stanley located additional email backup tapes, and that you would be producing documents soon. Within two days of that letter, you produced some emails to us. In your November 17, 2004 letter, however, you also indicate that "some of the backup tapes are still being restored." Have those backup tapes been restored? Have you found additional, responsive emails? If so, when will Morgan Stanley produce those emails? How is it that the tapes were only recently located?

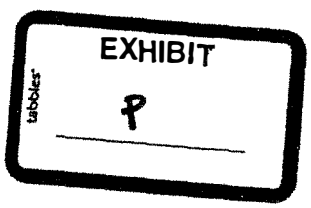
Finally, as required by the Court, we assume that you will produce a privilege log for any responsive emails that you withheld from your recent email production.

Very truly yours,

Michael T. Brody

Michael T. Brody

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.



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Thomas A. Clare
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tclare@kirkland.com

December 17, 2004

BY FACSIMILE

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*

Dear Mike:

I write in response to your December 14 letter regarding the production of e-mail messages from backup tapes. No additional responsive e-mails have been located since our November production. A privilege log from our November production is enclosed.

Sincerely,

Thomas A. Clare

Thomas A. Clare

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark C. Hansen, Esq. (by facsimile)

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2

JENNER&BLOCK

December 30, 2004

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mbrody@jenner.com

By Telecopy

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KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Tom:

I write in response to your letter dated December 17, 2004 concerning Morgan Stanley's recent production of emails.

In that letter, you state that Morgan Stanley has not located any additional, responsive emails. You do not inform us whether the review of the recently-located backup tapes still is ongoing. Please confirm that all email backup tapes from the relevant time period have been reviewed and all responsive emails have been produced. If the review still is proceeding, please let us know when the review will be completed.

Very truly yours,

Michael T. Brody

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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tclare@kirkland.com

January 11, 2005

BY FACSIMILE

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*

Dear Mike:

I write in response to your letter regarding e-mail backup tapes.

Morgan Stanley's restoration of e-mail backup tapes is ongoing. Restoration of the next set of backup tapes is estimated to be completed at the end of January. We intend to re-run the searches described in the agreed order at that time.

Sincerely,

Thomas A. Clare

Thomas A. Clare

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark C. Hansen, Esq. (by facsimile)

EXHIBIT
S

JENNER&BLOCK

January 19, 2005

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By Telecopy

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Michael T. Brody
Tel 312 923-2711
Fax 312 840-7711
mbrody@jenner.com

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Tom:

I write in response to your January 11, 2005 letter concerning e-mails back-up tapes. Unfortunately, your letter raises more questions than it answers. As I requested in my December 14, 2004 letter, please explain the circumstances under which Morgan Stanley located these backup tapes and advise us of the date on which the tapes were located.

Further, please explain your statement that that "the next set of backup tapes" is scheduled to be restored "at the end of January." How many tapes will be restored by the end of January? When exactly in January will Morgan Stanley complete the process of restoring and searching these tapes for responsive documents? Are there other backup tapes that are not yet in the process of being restored? If so, please advise us of (a) the number of tapes that are not yet in the process of being restored; (b) the time period of the data contained on those tapes; and (c) Morgan Stanley's timetable for restoring and searching those tapes. In addition, please explain why those tapes are not yet in the process of being restored. Please also explain why Morgan Stanley cannot complete the restoration and searching of all remaining backup tapes before "the end of January." As you know, our trial is scheduled to begin on February 22, 2005.

We look forward your complete response to these questions no later than January 21, 2005 so that we can bring this matter to the Court's attention, if necessary.

Very truly yours,

Michael T. Brody

MTB:cjg
cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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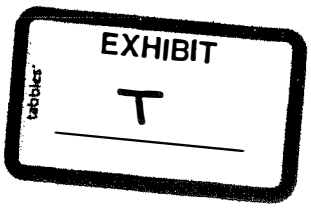

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

655 Fifteenth Street, N.W.
Washington, D.C. 20005

Thomas A. Clare
To Call Writer Directly:
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January 21, 2005

BY FACSIMILE

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*

Dear Mike:

I write in response to your January 19, 2005 letter regarding Morgan Stanley's production of e-mails restored from backup tapes.

Morgan Stanley completed its initial production of restored e-mail messages on May 14, 2004. The May 2004 production was conducted in accordance with the agreed-upon order governing, and the searches that resulted in that production encompassed data from all of the backup tapes known to exist at the time. Subsequent to the May 2004 production, additional tapes were found in various locations at Morgan Stanley. The discovered tapes were not clearly labeled as to their contents, were not found in locations where e-mail backup tapes customarily were stored, and many of the tapes were in a different format than other e-mail backup tapes. In November 2004, once it was determined at least some of the discovered tapes contained recoverable e-mail data, Morgan Stanley re-ran the searches described in the agreed-upon order. Those searches resulted in Morgan Stanley's November 2004 production.

Morgan Stanley's efforts to restore the backup tapes discovered after the May 2004 production are ongoing. It is a time-consuming and painstaking process and, given the absence of clear labels or other index information for the backup tapes, there is no way for Morgan Stanley to know or accurately predict the type or time period of data that might be recovered from tapes that have yet to be restored. While Morgan Stanley cannot accurately estimate when all of the tapes will be restored or whether any recoverable data will be found on the remaining tapes, we understand from Morgan Stanley that, when the agreed-upon searches are run again at the end of January, those searches will include approximately one terabyte of additional data restored since the prior production.

EXHIBIT
U

16div-010308

KIRKLAND & ELLIS LLP

Sincerely,

Thomas Clare/MP

Thomas A. Clare

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark C. Hansen, Esq. (by facsimile)

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S MOTION FOR ADVERSE INFERENCE INSTRUCTION DUE TO MORGAN STANLEY'S DESTRUCTION OF E-MAILS AND MORGAN STANLEY'S NONCOMPLIANCE WITH THE COURT'S APRIL 16, 2004 AGREED ORDER

Coleman (Parent) Holdings Inc. ("CPH") respectfully requests that the Court instruct the jury that it can draw an adverse inference from the destruction of e-mails and other electronic documents by Morgan Stanley & Co., Inc. ("Morgan Stanley") and from Morgan Stanley's noncompliance with this Court's April 16, 2004 Agreed Order entered in response to CPH's Motion to Compel Concerning E-mails and Other Electronic Documents. Ex. A. Morgan Stanley was required by that Order to produce, by May 14, 2004, all of the responsive e-mails that survived Morgan Stanley's general destruction of e-mails in 1999. But Morgan Stanley recently has disclosed that it has failed to produce all of those e-mails, and further, has revealed that it still has backup tapes that have not even been searched — despite the fact that trial is only three weeks away. Accordingly, because of Morgan Stanley's non-compliance with this Court's Order, CPH requests that the Court instruct the jury that it can infer that the contents of the missing e-mails would be harmful to Morgan Stanley's defense in this case.

1. As this Court is aware, since the beginning of this litigation, CPH has been seeking e-mails and other materials that are relevant to the issues in this litigation. Morgan

Stanley's document custodian testified that by no later than February 1999, he had gathered files and documents in anticipation of the Sunbeam litigation. Ex. B, Plotnick Dep. at 46. At that time, Morgan Stanley also kept backup tapes of all e-mails from the previous 12 months (*see id.* at 64-66), so e-mails dating back to at least February 1998 should have been gathered. But instead, Morgan Stanley destroyed most or all of the 1998 e-mails concerning Sunbeam, producing only a small handful of e-mails in response to CPH's document requests.

2. Morgan Stanley's destruction of 1998 e-mails was improper for two reasons. First, throughout the relevant period, Morgan Stanley anticipated Sunbeam-related litigation — indeed, Morgan Stanley has invoked work-product immunity for documents dated as early as March 25, 1998. *See* Ex. C, Privilege Log at 58. Second, SEC regulations required Morgan Stanley to retain e-mails in a readily accessible fashion for at least two years. *See* 17 C.F.R. § 240.17a-4 (1997). Morgan Stanley's violation of those regulations led the SEC to impose a $1.65 million fine against Morgan Stanley. *See* Ex. D, SEC Orders, Findings, and Penalties at 2, 5.

3. A long process by which CPH sought to have Morgan Stanley find and restore its lost e-mails began in October 2003, when CPH filed a motion to compel, which led to the entry of the Agreed Order at issue in this motion. Ex. A. The April 16, 2004 Agreed Order required Morgan Stanley to (1) search the oldest full e-mail backups for the Morgan Stanley employees involved in the Sunbeam transaction, (2) review e-mails dated from February 15, 1998 through April 15, 1998 and e-mails containing specified search terms such as "Sunbeam" and "Coleman" regardless of their date, (3) produce by May 14, 2004 all non-privileged e-mails responsive to CPH's document requests, (4) give CPH a privilege log, and (5) also provide CPH a certificate confirming compliance with the foregoing requirements.

4. On May 14, 2004, Morgan Stanley produced about 1,300 pages of e-mails pursuant to the Agreed Order, but provided no privilege log or certificate of compliance. *See* Ex. F. After repeated inquiries by CPH (*see* Ex. G & Ex. H), on June 23, 2004, Morgan Stanley finally produced a privilege log and a certificate. *See* Ex. I.[1]

5. On November 17, 2004, more than six months after the May 14, 2004 deadline for producing e-mails in response to the Agreed Order, Morgan Stanley sent CPH a letter revealing that its June 23 certificate of compliance was incorrect. *See* Ex. O. The letter stated (*id.*):

> Morgan Stanley has discovered additional e-mail backup tapes since our e-mail production in May 2004. The data on some of [the] newly discovered tapes has been restored and, to ensure continued compliance with the agreed order, we have re-run the searches described in the order. Some responsive e-mails have been located as a result of that process. We will produce the responsive documents to you as soon as the production is finalized.

The letter also foreshadowed further delays: "Some of the backup tapes are still being restored. To ensure continued compliance with the agreed order, we intend to re-run the searches again when the restoration process is complete and will produce any responsive documents that result." *Id.*

6. On November 19, 2004, Morgan Stanley produced some of the new e-mails, but no privilege log. After a follow-up inquiry by CPH (*see* Ex. P), on December 17, 2004, Morgan

[1] The Court entered a second Agreed Order on April 16 covering e-mails in the possession of Bloomberg, Inc., a third party vendor, because several Morgan Stanley employees had used Bloomberg e-mail accounts while working on the Sunbeam transaction. *See* Ex. E. That Order required Morgan Stanley to produce Bloomberg e-mails within 25 days of Morgan Stanley's receipt of them from Bloomberg. *Id.* at 2. On July 9, 2004, Morgan Stanley produced about 20 pages of Bloomberg e-mails. *See* Ex. J. After an inquiry by CPH (*see* Ex. K), on July 19, 2004, Morgan Stanley produced a certificate of compliance, which covered some but not all of the paragraphs in the Agreed Order relating to Bloomberg. *See* Ex. L. On July 29, 2004, Morgan Stanley produced a certificate covering the remaining aspects of the Bloomberg Agreed Order (Ex. M), and on August 2, 2004, Morgan Stanley informed CPH that no documents had been withheld from the Bloomberg production on the basis of privilege. *See* Ex. N.

Stanley produced a privilege log and advised CPH that "[n]o additional responsive e-mails have been located since our November production." Ex. Q. But Morgan Stanley refused to answer CPH's questions about whether Morgan Stanley had restored all the backup tapes as promised in its November 17 letter and about why the tapes had only recently been located. Ex. Q.

7. On December 30, 2004, CPH sent Morgan Stanley a letter seeking confirmation that all e-mail backup tapes had been reviewed and that all responsive e-mails had been produced, and if not, asking when the review would be completed. Ex. R. On January 11, 2005, Morgan Stanley informed CPH that the "restoration of e-mail backup tapes is ongoing. Restoration of the next set of backup tapes is estimated to be completed at the end of January. We intend to re-run the searches described in the agreed order at that time." Ex. S.

8. On January 19, 2005, CPH wrote asking Morgan Stanley to explain the circumstances under which Morgan Stanley located the recently discovered backup tapes and to disclose when the tapes were located. Ex. T. CPH also asked Morgan Stanley to explain why the next set of backup tapes could not be restored sooner. *Id.*

9. On January 21, Morgan Stanley sent CPH a letter that failed to answer CPH's questions. Ex. U. Instead, Morgan Stanley described its efforts to restore the backup tapes as "ongoing;" informed CPH that "there is no way for Morgan Stanley to know or accurately predict the type or time period of data that might be recovered;" and stated that "Morgan Stanley cannot accurately estimate when all of the tapes will be restored or whether any recoverable data will be found on the remaining tapes." *Id.* Ominously, the letter closed by noting that, "when the agreed-upon searches are run again," they "will include approximately one terabyte of additional data." *Id.* One terabyte equals 1 million megabytes, or about 405,000,000,000,000 pages of data.

10. More than eight months after the deadline for producing e-mails, and only three weeks before trial, Morgan Stanley has yet to comply with this Court's April 16, 2004 Agreed Order. Nor has it disclosed when it plans to comply. Morgan Stanley's disregard of the letter and the spirit of the April 16 Order should not be tolerated.

Wherefore, CPH requests that the Court instruct the jury that Morgan Stanley's destruction of e-mails and other electronic documents and Morgan Stanley's noncompliance with the April 16, 2004 Agreed Order can give rise to an adverse inference that the contents of the missing e-mails would be harmful to Morgan Stanley's defense in this case. *See Amlan, Inc. v. Detroit Diesel Corp.*, 651 So. 2d 701, 703 (Fla. 4th DCA 1995) ("in cases in which the misconduct alleged is the destruction or unexplained disappearance of crucial evidence . . . an instruction may be given concerning the inference that the withheld or missing evidence would be unfavorable to the party failing to produce the evidence"); *see also Martino v. Wal-Mart Stores, Inc.*, 835 So. 2d 1251, 1257 (Fla. 4th DCA 2003) (concluding that adverse inference argument should be permitted "where potentially self-damaging evidence is in the possession of a party and that party either loses or destroys the evidence"); *see also Palmas y Bambu, S.A. v. E.I. Dupont de Nemours & Co.*, 881 So. 2d 565, 581-83 (Fla. 3d DCA 2004) (allowing counsel to argue that the jury should draw an adverse inference from the defendant's destruction of evidence); *Jordan* ex rel. *Shealey v. Masters*, 821 So. 2d 342, 346-48 (Fla. 4th DCA 2002) ("Lawyers are entitled to argue adverse inferences from the evidence as part of their closing arguments.").

Dated: January 26, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 26th day of Jan., 2005.

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

AGREED ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL CONCERNING E-MAILS AND OTHER ELECTRONIC DOCUMENTS

THIS CAUSE having come to be considered upon Coleman (Parent) Holdings, Inc.'s ("CPH") motion to compel concerning e-mails and other electronic documents, the parties having reached agreement, it is hereby

ORDERED and ADJUDGED:

1. Morgan Stanley & Co., Inc. and Morgan Stanley Senior Funding, Inc. (collectively, "Morgan Stanley") will search the oldest full backup that exists for e-mail of each of the Morgan Stanley employees or former employees identified in Response Nos. 1, 2, 3, and 5 of MS & Co.'s Responses to CPH's First Set of Interrogatories and Response Nos. 1, 4, 5, and 6 of MSSF's Responses to Defendants' First Set of Interrogatories.

2. Morgan Stanley shall provide to its attorneys for responsiveness and privilege review all e-mail that (a) is dated from February 15, 1998 through April 15, 1998, and/or (b), without regard to date, contains any of the following terms:

AA
Andersen
Anderson
Bornstein
Camper
Coleman
Colman
Comfort Letter
Dunlap
Early Buy
Fannin
Goudis
Grill
Harlow
Kersh
Laser
MacAndrews
MAFCO
Maher
Nesbitt
Pearlman
Perelman
Perlman
Press Release
Scott
SOC
Sunbeam
Synergies
Uzzi

The term search shall be neither case-sensitive nor whole word sensitive.

3. Non-privileged e-mails responsive to any CPH or MAFCO document request will be produced by May 14, 2004.

4. Any materials withheld on privilege grounds shall be listed on a privilege log in accordance with this Court's previous orders.

5. An authorized Morgan Stanley representative will certify compliance with Paragraphs 1 through 4 of this Order, and will identify the date of the backup utilized for each employee or former employee for whom email is being produced.

6. This Order is without prejudice to CPH's right to seek restoration and production of certain electronic documents and also is without prejudice to Morgan Stanley's right to seek restoration and production of e-mail.

7. Each side shall bear its own costs.

DONE AND ORDERED at West Palm Beach County, Florida, this ____ day of April, 2004.

SIGNED AND DATED
APR 16 2004
JUDGE ELIZABETH T. MAASS

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished to:

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1070345 v2

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.)
Plaintiff,)
vs.)
MORGAN STANLEY & CO. INC.,)
Defendant.)

September 9, 2003
9:30 a.m.

VIDEOTAPED DEPOSITION OF
JOHN H. PLOTNICK

Reported by: David Henry
Job Number: 152427

EXHIBIT
B

Plotnick

material?

MR. CLARE: Object, calls for speculation, since the three-year period has not yet elapsed from when the policy went in effect per the witness' testimony. So if you know going forward, you can address it.

A. I don't think we've gotten there yet.

Q. When the policy went into effect, I think you said it was January, 2001?

A. I believe so.

Q. Did the company have back up of e-mail from January, 1998?

A. I don't believe so.

Q. What was the most recent backup of e-mail that the company had when the new policy went into effect in January, 2001?

A. I'm not positive.

Q. Do you have any idea?

A. I believe prior to January 1, 2001, e-mail was saved for a year afterwards and then the tapes may have been rewritten.

Q. When, as a general matter, when litigation is instituted, how does Morgan

Plotnick

A. Correct.

Q. When were Morgan Stanley first notified of Sunbeam-related litigation?

A. I don't know precisely.

Q. Do you have any general idea?

A. 1998 or 1999.

Q. When did you personally become involved in Sunbeam-related litigation?

A. 1998 or 1999.

Q. Did any legal assistant at Morgan Stanley precede you in working on Sunbeam-related litigation?

A. No.

Q. At any point were Morgan Stanley employees directed to preserve any materials they may have relating to Sunbeam?

A. I recall identifying the people who were involved in the Sunbeam transaction, and I directed them to send me -- I collected everything, so they didn't retain it, they sent it to me, all their files.

Q. And when did you do that?

A. 1998 or 1999.

Q. Do you have any idea within that

Plotnick

two-year frame more specifically when that might have occurred?

A. I'm sure, I'm pretty sure that at least in February of 1999, I called all the bankers.

Q. Was a firm-wide preservation notice ever circulated directing Morgan Stanley employees to preserve materials relating to Sunbeam?

A. I'm not aware of it. We called the individual bankers and other professionals who were involved in Sunbeam transactions directly.

Q. Okay. And I believe you just testified that as of February of 99, that had been completed?

A. I called the investment bankers I'm pretty sure in February of 99, at least by February of 99. I may have called them earlier.

Q. Okay. How shortly after hearing of Sunbeam litigation did you make those phone calls?

A. I don't know if there was

Plotnick

litigation back then. I was directed by my colleagues to start collecting the files. But I'm not aware of when I was aware of litigation. I was aware of a Sunbeam matter, but I don't think we were a party.

Q. And then in response to your phone calls to the bankers, did you receive any materials relating to Sunbeam?

A. Yes, I did.

Q. How much?

MR. CLARE: Which time period?

Q. Your initial calls, which were completed at the latest I think February, 99.

A. How voluminous were the documents directly from the bankers?

Q. Yes.

A. I don't recall, because in addition I collected documents from the central files area, so I don't recall.

Q. The origin of --

A. The origin, whether they came directly from the bankers or the central file area.

Q. Now, there have been several

017/043

Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co. Incorporated
Morgan Stanley Senior Funding v. MacAndrews & Forbes Holdings Inc., et al.

May 10, 2004 Revised Privilege Log

J&B	Date	Author(s)	Recipient(s)	Priv	Privilege Description	Redact Bates
1	1/4/2001	Doyle, James (MS)		WP	Redacted document, reflecting attorney notes from in-house counsel regarding deposition exhibit.	25349
2	1/4/2001	Doyle, James (MS)		WP	Redacted document, reflecting attorney notes from in-house counsel regarding deposition exhibit.	25829
3	1/4/2001	Doyle, James (MS)		WP	Redacted document, reflecting attorney notes from in-house counsel regarding deposition exhibit.	26100
4	1/4/2001	Doyle, James (MS)		WP	Redacted document, reflecting attorney notes from in-house counsel regarding deposition exhibit.	26102
5	7/24/2001	Doyle, James (MS)		WP	Redacted document, reflecting attorney notes from in-house counsel regarding deposition exhibit.	26207
6	7/24/2001	Doyle, James (MS)		WP	Redacted document, reflecting attorney notes from in-house counsel regarding deposition exhibit.	26209
7	7/24/2001	Doyle, James (MS)		WP	Redacted document, reflecting attorney notes from in-house counsel regarding deposition exhibit.	26210
8	7/24/2001	Doyle, James (MS)		WP	Redacted document, reflecting attorney notes from in-house counsel regarding deposition exhibit.	26211
9	7/24/2001	Doyle, James (MS)		WP	Redacted document, reflecting attorney notes from in-house counsel regarding deposition exhibit.	26212

5/10/2004

01/26/2005 16:46 FAX

018/043

J&B	Date	Author(s)	Recipient(s)	Priv	Privilege Description	Redact Bates
240	11/10/2000	Lee, Soggy (Simpson, Thacher & Bartlett)	Molitor, Tom (First Union); Bouhuys, Julie (First Union); Ulrich, Chris (First Union); Thomas, Joel (First Union); Rankin, Simon (MS); Petrick, Mitch (MS); McDermott, Melanie (MS); Doster, Ted (MS); Felix, Rick (MS); Ryan, Dan (MS); Sieke, Eric (Bank America); Wheelock, Peter (Bank America); Biaggi, Tom (Bank America); Policano, Mike (Policano & Manzo); Ordway, Ed (Policano & Manzo); Kleinschmidt, Ned (Policano & Manzo); Sunbeam Lender Group	WP, common interest principle	Redacted document, reflecting transmittal memo from outside counsel to client providing legal advice regarding amendment to credit agreement.	76794-76795
241	3/5/2001	Lee, Soogy (Simpson, Thacher & Bartlett)	Sunbeam Lender Group; Fuhrman, Steven (Simpson Thacher & Bartlett)	AC, WP, common interest principle	Memo from outside counsel to client providing legal advice regarding credit agreement, waivers and amendments.	
242	3/25/1998	Davis Polk & Wardwell	Morgan Stanley & Co. Incorporated	AC, WP	Letter from outside counsel to client providing legal advice regarding securities issues and rights under the Purchase Agreement.	
243.01	1/4/1993	Legal and Regulatory Affairs Department	All MS Professionals	AC	Redacted memo from in-house counsel to client providing legal advice regarding analyst reports and equity offerings.	80635-80638
243.02	2/6/1992	Pellecchio, Ralph (MS); Rosenthal, Richard (MS)	N.Y. MS Professionals	AC	Redacted memo from in-house counsel to client providing legal advice regarding equity offerings.	80646
243.03	1/25/1993	Pellecchio, Ralph (MS); Rosenthal, Richard (MS); Wallach, Michelle (MS)	U.S. MS Professionals	AC	Redacted memo from in-house counsel to client providing legal advice regarding equity offerings.	80648-80649

01/26/2005 16:46 FAX

16div-010327

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
RELEASE NO. 46937 / DECEMBER 3, 2002

ADMINISTRATIVE PROCEEDING
FILE NO. 3-10957

In The Matter Of **DEUTSCHE BANK SECURITIES, INC., GOLDMAN, SACHS & CO., MORGAN STANLEY & CO. INCORPORATED, SALOMON SMITH BARNEY INC., and U.S. BANCORP PIPER JAFFRAY INC.,** **Respondents.**	**ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 15(b)(4) AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS AND IMPOSING CEASE-AND-DESIST ORDERS, PENALTIES, AND OTHER RELIEF**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings pursuant to Section 15(b)(4) and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), be and hereby are instituted against Deutsche Bank Securities, Inc., Goldman, Sachs & Co., Morgan Stanley & Co. Incorporated, Salomon Smith Barney Inc., and U.S. Bancorp Piper Jaffray Inc. (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings, the Respondents have each submitted Offers of Settlement ("Offers") to the Commission, which the Commission has determined to accept. Solely for the purpose of these proceedings, and any other proceedings brought by or on behalf of the Commission or to which the Commission is a party, the Respondents, without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and over the subject matter of these proceedings, consent to the entry of this Order Instituting Proceedings Pursuant to Section 15(b)(4) and Section 21C of the Securities Exchange Act of 1934, Making Findings and Imposing Cease-and-Desist Orders, Penalties, And Other Relief ("Order").

EXHIBIT
D
Webber

Accordingly, it is ordered that proceedings pursuant to Exchange Act Section 15(b)(4) and Section 21C be, and hereby are, instituted.

III.

On the basis of this Order and the Respondents' Offers, the Commission finds that:

A. RESPONDENTS

Deutsche Bank Securities, Inc., is a Delaware corporation with its principal place of business in New York, New York. Deutsche Bank is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act and is a member of NASD and the New York Stock Exchange. Deutsche Bank engages in a nationwide securities business.

Goldman, Sachs & Co. is a New York limited partnership with its principal place of business in New York, New York. Goldman Sachs is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act, and is a member of NASD and the New York Stock Exchange. Goldman Sachs engages in a nationwide securities business.

Morgan Stanley & Co. Incorporated is a Delaware corporation with its principal place of business in New York, New York. Morgan Stanley is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act, and is a member of NASD and the New York Stock Exchange. Morgan Stanley engages in a nationwide securities business.

Salomon Smith Barney Inc. is a New York corporation with its principal place of business in New York, New York. Salomon Smith Barney is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act, and is a member of NASD and the New York Stock Exchange. Salomon Smith Barney engages in a nationwide securities business.

U.S. Bancorp Piper Jaffray Inc. is a Delaware corporation with its principal place of business in Minneapolis, Minnesota. U.S. Bancorp Piper Jaffray is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act, and is a member of NASD and the New York Stock Exchange. U.S. Bancorp Piper Jaffray engages in a nationwide securities business.

B. SUMMARY

This action concerns Respondents' violations of the record-keeping requirements of Section 17(a) of the Exchange Act and Rule 17a-4 thereunder during the period from 1999 to at least 2001 (the "relevant period"). During all or part of the relevant period, each Respondent failed to preserve for three years, and/or to preserve in an accessible place for two years, electronic mail communications (including inter-office memoranda and communications) received and sent by its agents and employees that related to its business as a member of an exchange, broker or dealer. Each Respondent lacked adequate systems or procedures for the preservation of electronic mail communications.

C. FACTS

The facts specific to these proceedings are set forth below:

1. The employees of each Respondent used electronic mail communications in part to conduct the Respondent's business as a broker, dealer and member of an exchange.

2. Respondents failed to preserve copies of electronic mail communications for three years, and/or maintain electronic mail communications for the first two years in an accessible place. Respondents did not have adequate systems or procedures in place during all or part of the relevant period to retain and/or make accessible electronic mail communications. Each Respondent's failure to preserve electronic mail communications and/or to maintain them in an accessible place was discovered during investigations being conducted jointly and separately by the Commission, the New York Stock Exchange, and NASD. The deficiencies in Respondents' systems and procedures for the preservation of electronic mail communications preexisted these investigations.

3. Some Respondents backed up electronic mail communications on tape or other media that Respondents represent was part of a process designed as a disaster recovery or business continuity measure, or for another business purpose. While some Respondents relied on these backups to preserve electronic mail communications during the relevant period, Respondents had inadequate systems or procedures to ensure the retention of such back-ups for three years and/or to maintain such data in a readily accessible manner for two years. These Respondents discarded, or recycled and overwrote their back-up tapes and other media, often a year or less after back-up occurred. In those instances in which Respondents did retain electronic mail communications, those electronic mail communications were often stored in an unorganized fashion on backup tapes, other media, or on the hard drives of computers used by individual employees of Respondents. Before the filing of these proceedings, one or more Respondents took steps to develop new database systems for the retention of electronic mail communications.

4. While some Respondents relied upon employees to preserve copies of their electronic mail communications on the hard drives of their individual personal computers or elsewhere, and many e-mails were preserved, there were inadequate systems or procedures to ensure that employees did so for the requisite record-keeping period. In some instances, hard drives of computers were erased when individuals left the employment of the Respondent.

D. LEGAL DISCUSSION

Section 17(a)(1) of the Exchange Act provides that each member of a national securities exchange, broker, or dealer "shall make and keep for prescribed periods such records, furnish copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of

investors, or otherwise in furtherance of the purposes of this title."

The Commission has emphasized the importance of the records required by the rules as "the basic source documents" of a broker-dealer. *Statement Regarding the Maintenance of Current Books and Records by Brokers and Dealers*, 4 SEC Docket 195 (April 6, 1974). The record keeping rules are "a keystone of the surveillance of broker and dealers by [Commission] staff and by the securities industry's self-regulatory bodies." *Edward J. Mawod & Co.*, 46 S.E.C. 865, 873 n.39 (1977) (citation omitted), *aff'd sub nom. Mawod & Co. v. SEC*, 591 F.2d 588 (10th Cir. 1979).

Pursuant to its authority under Section 17(a)(1) of the Exchange Act, the Commission promulgated Rule 17a-4. Rule 17a-4(b)(4) in turn requires each Respondent to "preserve for a period of not less than 3 years, the first two years in an accessible place.... [o]riginals of all communications received and copies of all communications sent by such member, broker or dealer (including inter-office memoranda and communications) relating to his business as such." Rule 17a-4 is not by its terms limited to physical documents. The Commission has stated that internal electronic mail communications relating to a broker-dealer's "business as such" fall within the purview of Rule 17a-4 and that, for the purposes of Rule 17a-4, "the content of the electronic communication is determinative" as to whether that communication is required to be retained and accessible. *Reporting Requirements for Brokers or Dealers under the Securities Exchange Act of 1934*, Rel. No. 34-38245 (Feb. 5, 1997).

Based on the foregoing and Respondents' Offers of Settlement, the Commission finds that with respect to electronic mail communications during the relevant period, each Respondent willfully violated Section 17(a) of the Exchange Act and Rule 17a-4 promulgated thereunder by failing to preserve electronic mail communications for three years, and/or by failing to preserve electronic mail communications for the first two years in an accessible place.[1]

IV.

Each Respondent has undertaken to review its procedures regarding the preservation of electronic mail communications for compliance with the federal securities laws and regulations, and the rules of NASD and New York Stock Exchange. Within 90 days of the issuance of this Order, unless otherwise extended by the staff of the Commission for good cause shown, each Respondent undertakes and agrees to inform the Commission in writing that it has completed its review and that it has established systems and procedures reasonably designed to achieve compliance with those laws, regulations, and rules concerning the preservation of electronic mail communications.

V.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions specified in Respondents' Offers.

ACCORDINGLY, IT IS HEREBY ORDERED:

A. Respondents, and each of them, pursuant to Section 21C of the Exchange Act, cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-4 promulgated thereunder.

B. Respondents, and each of them, are censured pursuant to Section 15 (b)(4) of the Exchange Act.

C. Each Respondent shall, within ten days of the entry of this Order, pay the amount of $1,650,000, for a total of $8,250,000 by all named Respondents. Each Respondent shall make payment as follows: (i) pursuant to Section 15(b)(4) and Section 21B of the Exchange Act, Respondent shall pay a civil monetary penalty of $550,000 to the United States Treasury; (ii) pursuant to Respondent's agreement with NASD in related proceedings, Respondent shall pay a fine in the amount of $550,000 to NASD; and (iii) pursuant to Respondent's agreement with the New York Stock Exchange in related proceedings, Respondent shall pay a fine in the amount of $550,000 to the New York Stock Exchange. Such payment to the U.S. Treasury shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies the payor as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 450 5th Street N.W., Washington, D.C. 20549-0801.

D. Each Respondent shall comply with the undertaking contained in Section IV., above.

By the Commission.

Jonathan G. Katz
Secretary

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1 "Willfully" as used in this Order means intentionally committing the act which constitutes the violation. *See Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000); *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). There is no requirement that the actor also be aware that he is violating one of the Rules or Acts.

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).

/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).

/

AGREED ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL CONSENT TO THIRD-PARTY PRODUCTION OF RESPONSIVE E-MAILS

THIS CAUSE having come to be considered upon Coleman (Parent) Holdings, Inc.'s ("CPH") motion to compel consent to third-party production of responsive e-mails, the parties having reached agreement, it is hereby

ORDERED and ADJUDGED:

1. Morgan Stanley & Co., Inc. and Morgan Stanley Senior Funding, Inc. (collectively, "Morgan Stanley") will obtain from Bloomberg, Inc., all e-mail, including any e-mail that can be restored from backup, of each of the Morgan Stanley employees or former employees identified in Response Nos. 1, 2, 3, and 5 of MS & Co.'s Responses to CPH's First Set of Interrogatories and Response Nos. 1, 4, 5, and 6 of MSSF's Responses to Defendants' First Set of Interrogatories. Herein, that set of e-mails shall be called "Bloomberg e-mail." Morgan Stanley will advise counsel for CPH of the volume of Bloomberg e-mail provided by Bloomberg.

EXHIBIT
E

2. Morgan Stanley attorneys shall review for responsiveness and privilege all Bloomberg e-mail that (a) is dated from February 15, 1998 through April 15, 1998, and/or (b) without regard to date, contains any of the following terms:

AA
Andersen
Anderson
Bornstein
Camper
Coleman
Colman
Comfort Letter
Dunlap
Early Buy
Fannin
Goudis
Grill
Harlow
Kersh
Laser
MacAndrews
MAFCO
Maher
Nesbitt
Pearlman
Perelman
Perlman
Press Release
Scott
SOC
Sunbeam
Synergies
Uzzi

The term search shall be neither case-sensitive nor whole word sensitive.

3. ~~Non-privileged~~ Bloomberg e-mails responsive to any CPH or MAFCO document request will be produced ~~by May 14, 2004~~. REQUESTED IMMEDIATELY AND NON-PRIVILEGED E-MAILS WILL BE WITHIN 25 DAYS OF MORGAN STANLEY'S RECEIPT OF THESE E-MAILS.

4. Any materials withheld on privilege grounds shall be listed on a privilege log in accordance with this Court's previous orders.

5. An authorized Morgan Stanley representative will certify compliance with Paragraphs 1 through 4 of this Order.

6. Each side shall bear its own costs.

DONE AND ORDERED at West Palm Beach County, Florida, this 16 day of April, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished to:

Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci, Esq.
655 15th Street, NW, Suite 1200
Washington DC 20005

John Scarola, Esq.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy, Esq.
One IBM Plaza, Suite 4400
Chicago, IL 60611

1071024 v1

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Kathryn R. DeBord
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May 14, 2004

By Federal Express

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: ***Colonian (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc. MSSF v. MacAndrews & Forbes Holdings Inc. et al.***

Dear Mike:

Enclosed is Morgan Stanley's production of e-mails pursuant to the parties' April 16, 2004 agreed-upon order, bearing the bates range 0094349-0095651. In addition to the production, the CD contains two text files: a cross-reference file and a comma-delimited data file (which contains attachment information).

Sincerely,

Kathryn R. DeBord

cc: Joseph Ianno, Jr., Esq. (by facsimile) (without enclosure)
John Scarola, Esq. (by facsimile) (without enclosure)
Mark Hansen, Esq. (by facsimile) (without enclosure)

EXHIBIT
F

JENNER&BLOCK

June 21, 2004

Jenner & Block LLP
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Washington, DC

Michael T. Brody
Tel 312 923-2711
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mbrody@jenner.com

By Telecopy

Thomas A. Clare, Esq.
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Tom:

I write with regard to your failure to produce responsive Bloomberg emails in accordance with the Agreed Order that was entered by the Court on April 16, 2004.

We agreed that either Morgan Stanley or Bloomberg could produce the Bloomberg emails to us, but we have still not received any responsive documents. Please advise us by the close of business on June 23, 2004 when we will receive the production of Bloomberg email, any privilege log derived from that production, and Morgan Stanley's certification of compliance in accordance with Paragraph 5 of the aforementioned Agreed Order.

Very truly yours,

Michael T. Brody

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.
Thomas H. Golden, Esq. (by telecopy)

1118045

EXHIBIT
G

JENNER&BLOCK

June 21, 2004

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Thomas A. Clare, Esq.
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Tom:

I write with regard to MSSF/Morgan Stanley's May 14, 2004 production of emails pursuant to Court order.

Any privilege log identifying documents withheld from that production on privilege or work product grounds was due on June 14, 2004. Are we to assume that MSSF/Morgan Stanley did not withhold any documents from that production based on the assertion of privilege? Please provide a privilege log or advise us that no documents were withheld from the May 14, 2004 production.

In addition, Morgan Stanley failed to comply with Paragraph 5 of the Court's April 16, 2004 Order, which requires a Morgan Stanley representative to "certify compliance with [the Order]" and to "identify the date of the backup utilized for each employee or former employee for whom email is being produced."

Please provide a privilege log (or advise us that no documents were withheld) and comply with Paragraph 5 of the Order by close of business on June 23, 2004, or we will be at an impasse.

Very truly yours,

Michael T. Brody

Michael T. Brody

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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EXHIBIT
H

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June 23, 2004

By Facsimile

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: ***Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.***
MSSF v. MacAndrews & Forbes Holdings Inc. et al.

Dear Mike:

I write in response to your June 21, 2004 letters regarding Morgan Stanley's May 14, 2004 e-mail production and the forthcoming production of Bloomberg e-mails. With regard to the May 14, 2004 production, a privilege log is enclosed, along with the certification of compliance described by the April 16, 2004 Agreed Order.

Regarding the third-party e-mails, Morgan Stanley received the e-mails from Bloomberg on June 14, 2004. Pursuant to the Court's Order, all non-privileged responsive e-mails will be produced on Friday, July 9, 2004.

Sincerely,

Thomas A. Clare

Thomas A. Clare

cc: Joseph Ianno, Jr., Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark Hansen, Esq. (by facsimile)

EXHIBIT
Deposition
I

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kdebord@kirkland.com

July 9, 2004

Via Facsimile
By Federal Express

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*
MSSF v. MacAndrews & Forbes Holdings Inc. et al.

Dear Mike:

Enclosed is Morgan Stanley's production of Bloomberg e-mails pursuant to the parties' April 16, 2004 agreed-upon order, bearing the bates range 95729-95740. A certification of compliance is forthcoming.

Sincerely,

Kathryn R. DeBord

RGS

Enclosure (1)

cc: Joseph Ianno, Jr., Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark Hansen, Esq. (by facsimile)

EXHIBIT
5

JENNER&BLOCK

July 15, 2004

Jenner & Block LLP
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Michael T. Brody
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mbrody@jenner.com

By Telecopy

Kathryn R. DeBord, Esq.
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Kathryn:

I write with regard to your letter dated July 9, 2004, which accompanied your production of Bloomberg emails on that date.

As we discussed on the telephone, your July 9, 2004 letter identifies production numbers 95729-95740, but your July 9 production was numbered 95709-28. When I inquired about the apparent discrepancy, you informed me that the production numbers identified in your letter mistakenly relate to a different production that Morgan Stanley has not yet made. Please produce whatever documents bear production numbers 95729-95740 by July 19, 2004.

In addition, as required by the Court's order, please provide us with a certification of the Bloomberg production by July 19, 2004.

Very truly yours,

Michael T. Brody

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.

EXHIBIT
K

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July 19, 2004

By Facsimile

Michael Bandy, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*
MSSF v. MacAndrews & Forbes Holdings Inc. et al.

Dear Mike:

I write in response to your July 15, 2004 letter, which does not accurately reflect our telephone conversation. As I informed you during our telephone conversation, the bates range reflected in my July 9, 2004 cover letter enclosing the Bloomberg e-mail production was an error. That range should have read 95709-95728. MS & Co. and MSSF have no additional documents to produce.

Also enclosed is a certification of compliance for paragraphs two through four of the Court's April 16, 2004 order. We will provide to you a certification of compliance for paragraph one (which will be prepared by Bloomberg or its counsel) as soon as we receive it.

Sincerely,

Kathryn R. DeBord

cc: Joseph Lanno, Jr., Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark Hansen, Esq. (by facsimile)

EXHIBIT
L

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July 29, 2004

By Facsimile

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: ***Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.***
MSSF v. MacAndrews & Forbes Holdings Inc. et al.

Dear Mike:

Enclosed please find Bloomberg's certification of compliance with Paragraph 1 of the April 16 Agreed Order on Coleman (Parent) Holding Inc.'s Motion to Compel Consent to Third-Party Production of Responsive E-mails.

Sincerely,

Kathryn R. DeBord

cc: Joseph Ianno, Jr., Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark Hansen, Esq. (by facsimile)

EXHIBIT
M

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August 2, 2004

By Facsimile

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: ***Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.***
MSSF v. MacAndrews & Forbes Holdings Inc. et al.

Dear Mike:

I write to inform you that no documents were withheld from Morgan Stanley's July 9, 2004 production of Bloomberg e-mails on the basis of privilege.

Sincerely,

Kathryn R. DeBord

cc: Joseph Iannó, Jr., Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark Hansen, Esq. (by facsimile)

EXHIBIT
N

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Thomas A. Clare
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tclare@kirkland.com

November 17, 2004

BY FACSIMILE

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*

Dear Mike:

I write regarding supplementation of Morgan Stanley's document production.

Morgan Stanley has discovered additional e-mail backup tapes since our e-mail production in May 2004. The data on some of newly discovered tapes has been restored and, to ensure continued compliance with the agreed order, we have re-run the searches described in the order. Some responsive e-mails have been located as a result of this process. We will produce the responsive documents to you as soon as the production is finalized.

Some of the backup tapes are still being restored. To ensure continued compliance with the agreed order, we intend to re-run the searches again when the restoration process is complete and will produce any responsive documents that result.

Sincerely,

Thomas A. Clare /HP

Thomas A. Clare

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark C. Hansen, Esq. (by facsimile)

EXHIBIT
O

JENNER&BLOCK

December 14, 2004

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Michael T. Brody
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mbrody@jenner.com

By Telecopy

Thomas A. Clare, Esq.
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Tom:

I write concerning your letter of November 17, 2004 relating to Morgan Stanley's discovery of additional emails.

In that letter, you state that Morgan Stanley located additional email backup tapes, and that you would be producing documents soon. Within two days of that letter, you produced some emails to us. In your November 17, 2004 letter, however, you also indicate that "some of the backup tapes are still being restored." Have those backup tapes been restored? Have you found additional, responsive emails? If so, when will Morgan Stanley produce those emails? How is it that the tapes were only recently located?

Finally, as required by the Court, we assume that you will produce a privilege log for any responsive emails that you withheld from your recent email production.

Very truly yours,

Michael T. Brody

Michael T. Brody

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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202 879-5200

December 17, 2004

BY FACSIMILE

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*

Dear Mike:

I write in response to your December 14 letter regarding the production of e-mail messages from backup tapes. No additional responsive e-mails have been located since our November production. A privilege log from our November production is enclosed.

Sincerely,

Thomas A. Clare

Thomas A. Clare

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark C. Hansen, Esq. (by facsimile)

EXHIBIT
9

JENNER&BLOCK

December 30, 2004

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mbrody@jenner.com

By Telecopy

Thomas A. Clare, Esq.
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Tom:

I write in response to your letter dated December 17, 2004 concerning Morgan Stanley's recent production of emails.

In that letter, you state that Morgan Stanley has not located any additional, responsive emails. You do not inform us whether the review of the recently-located backup tapes still is ongoing. Please confirm that all email backup tapes from the relevant time period have been reviewed and all responsive emails have been produced. If the review still is proceeding, please let us know when the review will be completed.

Very truly yours,

Michael T. Brody

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

EXHIBIT
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R

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Facsimile:
202 879-5200

January 11, 2005

BY FACSIMILE

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*

Dear Mike:

I write in response to your letter regarding e-mail backup tapes.

Morgan Stanley's restoration of e-mail backup tapes is ongoing. Restoration of the next set of backup tapes is estimated to be completed at the end of January. We intend to re-run the searches described in the agreed order at that time.

Sincerely,

Thomas A. Clare

Thomas A. Clare

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark C. Hansen, Esq. (by facsimile)

EXHIBIT
S

JENNER&BLOCK

January 19, 2005

Jenner & Block LLP
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Chicago
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Washington, DC

By Telecopy

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Washington, D.C. 20005

Michael T. Brody
Tel 312 923-2711
Fax 312 840-7711
mbrody@jenner.com

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Tom:

I write in response to your January 11, 2005 letter concerning e-mails back-up tapes. Unfortunately, your letter raises more questions than it answers. As I requested in my December 14, 2004 letter, please explain the circumstances under which Morgan Stanley located these backup tapes and advise us of the date on which the tapes were located.

Further, please explain your statement that that "the next set of backup tapes" is scheduled to be restored "at the end of January." How many tapes will be restored by the end of January? When exactly in January will Morgan Stanley complete the process of restoring and searching these tapes for responsive documents? Are there other backup tapes that are not yet in the process of being restored? If so, please advise us of (a) the number of tapes that are not yet in the process of being restored; (b) the time period of the data contained on those tapes; and (c) Morgan Stanley's timetable for restoring and searching those tapes. In addition, please explain why those tapes are not yet in the process of being restored. Please also explain why Morgan Stanley cannot complete the restoration and searching of all remaining backup tapes before "the end of January." As you know, our trial is scheduled to begin on February 22, 2005.

We look forward your complete response to these questions no later than January 21, 2005 so that we can bring this matter to the Court's attention, if necessary.

Very truly yours,

Michael T. Brody

MTB:cjg
cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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EXHIBIT
T

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January 21, 2005

BY FACSIMILE

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
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Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.*

Dear Mike:

I write in response to your January 19, 2005 letter regarding Morgan Stanley's production of e-mails restored from backup tapes.

Morgan Stanley completed its initial production of restored e-mail messages on May 14, 2004. The May 2004 production was conducted in accordance with the agreed-upon order governing, and the searches that resulted in that production encompassed data from all of the backup tapes known to exist at the time. Subsequent to the May 2004 production, additional tapes were found in various locations at Morgan Stanley. The discovered tapes were not clearly labeled as to their contents, were not found in locations where e-mail backup tapes customarily were stored, and many of the tapes were in a different format than other e-mail backup tapes. In November 2004, once it was determined at least some of the discovered tapes contained recoverable e-mail data, Morgan Stanley re-ran the searches described in the agreed-upon order. Those searches resulted in Morgan Stanley's November 2004 production.

Morgan Stanley's efforts to restore the backup tapes discovered after the May 2004 production are ongoing. It is a time-consuming and painstaking process and, given the absence of clear labels or other index information for the backup tapes, there is no way for Morgan Stanley to know or accurately predict the type or time period of data that might be recovered from tapes that have yet to be restored. While Morgan Stanley cannot accurately estimate when all of the tapes will be restored or whether any retrievable data will be found on the remaining tapes, we understand from Morgan Stanley that, when the agreed-upon searches are run again at the end of January, those searches will include approximately one terabyte of additional data restored since the prior production.

EXHIBIT
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KIRKLAND & ELLIS LLP

Sincerely,

Thomas Clare/MF

Thomas A. Clare

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark C. Hansen, Esq. (by facsimile)

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

PLAINTIFF'S MOTION IN LIMINE (NO. 19) TO EXCLUDE PORTIONS OF EXPERT WITNESS MARK GRINBLATT'S TESTIMONY

Introduction

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") moves this Court for an Order barring defendant Morgan Stanley & Co. Inc. ("Morgan Stanley") from introducing testimony at trial from its damages expert Mark Grinblatt on the following topics:

(1) Grinblatt should be barred from testifying concerning the "out of pocket" damages measure. That measure is irrelevant here because CPH has elected to seek damages under the "benefit of the bargain" measure. As shown below, Florida law applies to the damages issues for all four counts of plaintiff's complaint. *See* Part I.A below.

Under Florida law, a plaintiff in a misrepresentation case may elect either the "benefit of the bargain" measure of damages or the "out of pocket" measure of damages, depending upon which measure better compensates the plaintiff for the loss it has suffered. In Florida, the "prevailing view is the 'benefit of the bargain' rule which would award as damages the difference between the actual value" of the securities that plaintiff was defrauded into receiving

and "their value had the facts been as represented." *Strickland v. Muir*, 198 So. 2d 49, 51 (Fla. 4th DCA 1967). Here, CPH has elected the "benefit of the bargain" measure, not the "out of pocket" measure. Grinblatt's report, however, is predicated exclusively on the "out of pocket" measure. (Ex. A, Grinblatt Report §§ IV.1 & V.1, ¶¶ 60-77 & 105-38.) By applying the "out of pocket" measure, Grinblatt has not addressed the damage theory that CPH has elected. As a result, Grinblatt's testimony does not have any relevance to the damages measure at issue here and should be excluded. *See* Part I.B below.

(2) In calculating damages for aiding and abetting (Count 2) and conspiracy (Count 3), Grinblatt should be barred from offering testimony based upon his attempts to segregate the portion of CPH's losses purportedly caused by Sunbeam's "accounting fraud" (Ex. A, Grinblatt Report ¶ 30) from the portion of CPH's losses caused by Morgan Stanley. Under established law, a joint tortfeasor that participates in a conspiracy to defraud, or aids and abets another's fraud, is responsible for the entire loss — not simply the portion of the loss attributable to the defendant's direct involvement. Grinblatt's effort to exclude the Sunbeam portion of plaintiff's damages from Counts 2 and 3 is incorrect as a matter of law. *See* Part II below.

(3) Grinblatt should be barred from testifying concerning the following topics as to which his opinions are impermissibly speculative:

- the purported existence of a Rule 144A market for the restricted Sunbeam stock that CPH received (*see* Part III.A below); and
- the purported existence of possible hedging or similar transactions regarding the restricted Sunbeam stock that CPH received (*see* Part III.B below).

(4) Grinblatt should be barred from testifying concerning his prior retention in an unrelated matter by one of CPH's law firms. *See* Part IV below.[1/]

ARGUMENT

I. Grinblatt's Opinions Concerning The Value Of CPH's Coleman Stock Should Be Excluded Because They Are Inconsistent With The Theory Of Damages That Plaintiff Has Elected.

A. Florida Law Governs The Determination Of Damages.

The choice-of-law issues in this case already have been briefed in accordance with the deadlines set by this Court. As part of that briefing, Morgan Stanley never argued that the proper measure of damages under New York law is materially different from the proper measure of damages under Florida law. As CPH has shown previously, Morgan Stanley bore the burden during the choice-of-law briefing (1) to identify, on an issue-by-issue basis, any aspects of this case as to which Morgan Stanley contended New York and Florida law differ, and (2) to demonstrate why New York law applies to those issues. *See, e.g., Collins v. Collins*, 36 So. 2d 417, 417 (Fla. 1948) ("when the contrary [law] has not been alleged, we have assumed the law of the other state to be the same as our own"); *Gustafson v. Jensen*, 515 So. 2d 1298, 1300 (Fla. 3d DCA 1987) ("where a party seeking to rely upon foreign law fails to demonstrate that the foreign law is different from the law of Florida, the law is the same as Florida"); *Aetna Cas. & Sur. Co. v. Ciarrochi*, 573 So. 2d 990, 990 (Fla. 3d DCA 1991) (same); *Watson v. First Nat'l Bank of Chicago*, 367 So. 2d 732, 733 (Fla. 4th DCA 1979) ("Upon the failure to plead any applicable foreign law, it is presumed that any such law is the same as Florida law"); *Owens-Corning*

[1] The arguments in this motion do not address all of the defects in Grinblatt's report, and CPH reserves the right to raise additional objections to his report and testimony. For example, CPH contends that even under Grinblatt's out-of-pocket-loss theory, his calculations are incorrect. In other words, even if this Court were to apply an out-of-pocket loss measure, which it should not, CPH is prepared to rebut Grinblatt's views and show that CPH has suffered enormous damages.

Fiberglas Corp. v. Engler, 704 So. 2d 594, 594 (Fla. 4th DCA 1997) ("Where the law of a foreign forum is claimed to be dispositional, yet no foreign law is pleaded to the trial court, the matter is to be determined by the law of this forum").

In response to this Court's schedule for addressing choice-of-law issues, Morgan Stanley identified two issues — and only two issues — concerning which Morgan Stanley contended that New York law was different than Florida law. Those two issues are reflected in this Court's choice-of-law order, which holds that New York law applies to those two aspects of CPH's claims (8/12/04 Order at 12):

> As to Counts I and IV of CPH's Complaint and MSSF's claims against MAFCO and CPH, the Court determines that New York substantive law applies (i) to engraft a requirement that the recipient of a negligent misrepresentation be in a special relationship to its publisher for the misrepresentation to be actionable, and (ii) to engraft a requirement that a party perform reasonable due diligence as to available information in order to prove that its reliance on a misrepresentation was reasonable.

Those two issues are the only two issues identified in Morgan Stanley's choice-of-law motion. Morgan Stanley never argued that the measure of damages in this case is different under New York law. Accordingly, Morgan Stanley has waived any contention that Florida law does not apply to the measure of damages for all four counts of plaintiff's complaint.

B. Under Florida Law, The Plaintiff May Elect Whether To Pursue The "Benefit Of The Bargain" Or The "Out Of Pocket" Measure Of Damages.

Florida law permits a plaintiff who has been injured by fraudulent misrepresentations to pursue damages under either the "benefit of the bargain" measure or the "out of pocket" measure:

> Florida has adopted two standards for the measurement of damages in an action for fraudulent representation. Either may be used to do justice as the circumstances demand. The first standard is the "benefit of the bargain" rule which awards as damages the difference between the actual value of the property and its value had the alleged facts regarding it been true. The second standard is

> the "out of pocket" rule which awards as damages the difference between the purchase price and the real or actual value of the property.

Totale, Inc. v. Smith, 877 So. 2d 813, 815 (Fla. 4th DCA 2004).

Here, CPH elects recovery under the benefit-of-the-bargain damages measure. Plaintiff will prove at trial that as a result of Morgan Stanley's wrongful conduct, CPH did not receive the benefit of the bargain that the parties struck. In particular, the bargained-for transaction was supposed to provide CPH with 14.1 million shares of Sunbeam stock, with a market value of approximately $680 million. As a consequence of the fraud, CPH received Sunbeam stock that was worthless. The difference between the benefit of the bargain that CPH was entitled to receive — $680 million — and the value that CPH realized from the exchange — zero — is the proper measure of CPH's damages under the benefit-of-the-bargain rule.

Grinblatt has calculated damages under a different theory, the out-of-pocket measure. (Ex. A, Grinblatt Report ¶¶ 31, 172.) That measure looks to the difference between the value of what plaintiff received and the value given for it. Grinblatt contends that any other theory besides the out-of-pocket measure is "inappropriate." *Id.* ¶ 172. Using the out-of-pocket measure, Grinblatt has compared the value of CPH's Coleman shares (which he severely discounted) to the value of the consideration that CPH received (which he valued as far more than what CPH was able to realize), and concluded that CPH was overpaid for giving up its investment in Coleman. *See* Grinblatt Report §§ IV.1 & V.1, ¶¶ 60-77 & 105-38. Under his out-of-pocket loss theory, Grinblatt concludes that CPH received $375 million in consideration more than its Coleman shares were worth. Thus, according to Grinblatt, CPH should be delighted that it was defrauded into selling its Coleman shares because CPH supposedly came out ahead.

Grinblatt's calculation of damages is not relevant under Florida law because CPH is electing the "benefit of the bargain" measure of damages, not the out-of-pocket loss measure.

Florida follows the *Restatement (Second) of Torts* regarding the measure of damages for fraudulent misrepresentation. *Nordyne, Inc. v. Florida Mobile Home Supply, Inc.*, 625 So. 2d 1283, 1286-87 (Fla. 1st DCA 1993) (permitting the use of "either the 'out-of-pocket' or the 'benefit-of-the-bargain' rule, depending upon which is more likely fully to compensate the injured party," and stressing that "[t]his view is consistent with the Restatement approach") (citing *Restatement (Second) of Torts* § 549; emphasis added). That section of the Restatement provides that the "recipient of a fraudulent misrepresentation in a business transaction" is "entitled to recover" under either theory (*Restatement (Second) of Torts* § 549):

> **Measure Of Damages For Fraudulent Misrepresentation**
>
> (1) The recipient of a fraudulent misrepresentation is entitled to recover as damages in an action of deceit against the maker the pecuniary loss to him of which the misrepresentation is a legal cause, including
>
> (a) the difference between the value of what he has received in the transaction and its purchase price or other value given for it; and
>
> (b) pecuniary loss suffered otherwise as a consequence of the recipient's reliance upon the misrepresentation.
>
> (2) The recipient of a fraudulent misrepresentation in a business transaction is also entitled to recover additional damages sufficient to give him the benefit of his contract with the maker, if these damages are proved with reasonable certainty.

The *Restatement* makes clear that a plaintiff may "elect" which of the two measures to pursue. According to the comments, the "normal measure of recovery" in fraud actions is the "benefit of the bargain" rule: "The frequency of these situations has led the great majority of the American courts to adopt a broad general rule giving the plaintiff, in an action of deceit, the benefit of his bargain with the defendant in all cases, and making that the normal measure of recovery in actions of deceit." *Restatement (Second) of Torts* § 549 Comment g. However, the *Restatement* recognizes that "in occasional cases the out-of-pocket measure of damages will actually be more profitable and satisfactory from the point of view of the plaintiff than the benefit-of-the-bargain rule." *Id.*

Accordingly, the *Restatement* adopts the rule that the plaintiff may "elect" which of the two measures to pursue, depending upon which measure maximizes the plaintiff's recovery (*id.* Comment h):

> This Section therefore follows a compromise position adopted by some jurisdictions, giving the plaintiff the option of either the out-of-pocket or the benefit-of-the-bargain rule in any case in which the latter measure can be established by proof in accordance with the usual rules of certainty in damages. The comments and illustrations that follow deal with the more common situations in which the plaintiff may wish to elect to receive the benefit of his bargain.

As support for that rule of law, the *Restatement* cites *DuPuis v. 79th Street Hotel, Inc.*, 231 So. 2d 532 (Fla. 3d DCA 1970) (cited in *Restatement (Second) of Torts* § 549, Reporter's Note ¶ 1). In *DuPuis*, the court accepted the "flexibility" approach regarding the measure of damages for misrepresentation. Under that approach, a plaintiff who "is content" with an out-of-pocket measure may have that measure, but otherwise may have the "benefit of the bargain" measure (*DuPuis*, 321 So. 2d at 536):

> [I]f the defrauded party is content with the recovery of only the amount that he actually lost, his damages will be measured under that rule; . . . where the damages under the "benefit of the bargain" rule are proved with sufficient certainty, that rule will be employed.

Accord Stickland v. Muir, 198 So. 2d 49, 51 (Fla. 4th DCA 1967) ("The prevailing view is the 'benefit of the bargain' rule which would award as damages the difference between the actual value of the stocks and notes purchased as of the time of purchase and their value had the facts been as represented. . . . [But] if the defrauded party is content with the recovery of only the amount he has actually lost, his damages will be measured by the out-of-pocket rule"); *Totale, Inc. v. Smith*, 877 So. 2d 813, 815 (Fla. 4th DCA 2004) ("The 'flexibility theory' permits the court to use either the 'out-of-pocket' or the 'benefit-of-the-bargain' rule, depending upon which is more likely [to fully] compensate the injured party. The trial court may instruct the jury on the

'out of pocket' rule *or* the 'benefit of the bargain' rule as justice demands") (emphasis and bracketed material in original; internal citations and quotation marks omitted).

Grinblatt rests his calculations entirely on the out-of-pocket measure. However, Grinblatt's theory does not comport with Florida law, which applies to the measure of damages for all four counts of CPH's complaint. Under Florida law, plaintiff can recover damages under the benefit of the bargain measure, and CPH has elected to do so. Therefore, Grinblatt's calculation of the value of Coleman in Sections IV.1 and V.1 of his report (¶¶ 60-77 & ¶¶ 105-38) does not have any bearing on the measure of damages that CPH has elected to pursue. Because Grinblatt's analysis does not address the damages theory that CPH will present, Grinblatt's analysis of the value of Coleman is irrelevant and should be excluded.

II. Grinblatt's Opinions Concerning The Value of Sunbeam Stock That CPH Received Should Be Excluded Because They Are Based Upon An Allocation Of CPH's Damages That Is Inconsistent With Florida Law.

In calculating damages for aiding and abetting (Count 2) and conspiracy (Count 3), Grinblatt should be barred from testifying that the portion of CPH's losses purportedly caused by Sunbeam's "accounting fraud" (Ex. A, Grinblatt Report ¶ 30) must be segregated from the portion of CPH's losses caused by Sunbeam's joint tortfeasor, Morgan Stanley. As part of Grinblatt's analysis of the consideration that plaintiff received from Sunbeam, Grinblatt has constructed alternative hypothetical prices of Sunbeam stock. In calculating those hypothetical values, Grinblatt expressly states that he is attempting to segregate the damages purportedly caused by Sunbeam's "accounting fraud" from the damages caused by Morgan Stanley. Indeed, Grinblatt states point blank that he was required as part of his engagement to "assume that Defendant is not responsible for damages due to third parties" (Grinblatt Report ¶ 30):

> I have been asked to calculate the portion of Plaintiff's out-of-pocket damages attributable to Morgan Stanley and to assume that Defendant is not responsible for

> damages due to third parties. Specifically, any declines in Sunbeam stock price due to allegations of accounting fraud, which were not known to Defendant, do not count towards damages.

See also, e.g., Grinblatt Report ¶ 90 ("I have been asked to calculate damages attributable to Morgan Stanley and not to third parties"); *id.* ¶ 87 (stating that Grinblatt estimated the value of Sunbeam stock "after all of the artificial inflation attributed to Morgan Stanley's conduct was removed"; emphasis added); *id.* ¶ 88 ("I first identify the date closest to March 30 on which Sunbeam's stock price was not artificially inflated due to Morgan Stanley's conduct"; emphasis added); *id.* ¶ 147 (subtracting the effects of "negative information for which Morgan Stanley is wholly or largely not responsible"); *see generally* Grinblatt Report §§ IV.3 & V.3, ¶¶ 87-101 & ¶¶ 145-61.

Grinblatt's analysis is wrong as a matter of law because Grinblatt expressly states that he has attempted to exclude from his analysis the damages that he purports to attribute to Sunbeam's "accounting fraud." (Grinblatt Report ¶ 30.) A joint tortfeasor who participates in a conspiracy or who aids and abets another's misconduct is responsible for the entire loss that the plaintiff suffers from that misconduct. As a result, Grinblatt's calculation of the value of Sunbeam stock that CPH received is based upon an improper allocation and should be excluded. (Grinblatt Report §§ IV.3 &V.3, ¶¶ 87-101 & ¶¶ 145-61.)

Florida law is clear that joint and several liability exists for all damages suffered by the plaintiff from concerted activity, regardless of which defendant caused what portion of the damage:

> Under Florida law, when defendants act in concert ... each defendant is individually and collectively responsible for the entire consequence of their acts. Joint and several liability is imposed in such cases, even where an individual caused only a part of the economic damages or where the individual defendant's act, if it had occurred alone, might not have caused the result.

University of Miami v. All-Pro Athletic Surfaces, Inc., 619 So. 2d 1034, 1035 (Fla. 3d DCA 1993) (internal citations omitted); *accord Grobman v. Posey*, 863 So. 2d 1230, 1236 (Fla. 4th DCA 2003) ("Derivative liability is similar to vicarious liability in that (1) there is no cause of action unless the directly liable tortfeaser commits a tort and (2) the derivatively liable party is liable for *all* of the harm that such a tortfeasor has caused") (emphasis in original).

The same principle is reflected in the *Restatement (Second) of Torts* § 876. That section provides that a person who aids and abets or otherwise acts in concert with another tortfeasor is liable for the "harm resulting to a third person" from the other tortfeasor's acts (*id.*):

> **Persons Acting in Concert**
>
> For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he
>
> (a) does a tortious act in concert with the other or pursuant to a common design with him, or
>
> (b) knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself . . .

Indeed, that principle is blackletter law: "Where two or more persons act in concert, it is well settled both in criminal and in civil cases that each will be liable for the entire result." *Prosser and Keeton on Torts* § 52 at 324 (5th ed. 1984); *accord* 86 C.J.S. Torts § 37 (1997) ("As a general rule, one who counsels, advises, abets or assists the commission of an actionable wrong by another is responsible to the injured person for the entire loss or damage"); 74 Am. Jur. 2d Torts § 60 ("One who commands, directs, advises, encourages, procures, instigates, promotes, controls, aids, or abets a wrongful act by another is regarded as being as responsible as the one who commits the act, so as to impose liability upon the former to the same extent as if he had performed the act himself. The liability in such a case is joint and several").

In short, in for a dime, in for a dollar. The law is clear that persons who act in concert through conspiracy or aiding and abetting are liable for the entire loss suffered by the plaintiff,

without regard to which person caused which portion of it. Therefore, as to aiding and abetting (Count 2) and conspiracy (Count 3), Grinblatt's damage calculation should be excluded because it is contrary to Florida law.

III. Grinblatt's Opinions Regarding Rule 144A And Hedging Transactions Should Be Excluded.

A. Grinblatt's Opinions Regarding Sales of Stock Under Rule 144A Are Speculative and Should Be Excluded.

The Sunbeam stock that CPH received in exchange for Coleman was unregistered and therefore could not be sold to the public on the open market. However, in his report, Grinblatt asserts that "restrictions on unregistered stock only delay sale to the public" because "[a]n active Rule 144A market exists for such shares among qualified investors." (Ex. A, Grinblatt Report ¶ 87, n.58.) But in his deposition, Grinblatt acknowledged that he is "not a legal expert on the specifics of when and when it [Rule 144A] cannot be applied." (Ex. B, Grinblatt Dep. 268.) Grinblatt explained that he had "mentioned [Rule 144A] in his textbook" and had "read newspaper articles about this" and "[i]t struck me that for virtually any kind of securities situation, a holder like Mr. Perelman or MacAndrews & Forbes or its affiliates should have been able to use this." (Ex. B, Grinblatt Dep. 269.)

Grinblatt does not have any underlying basis to support his proffered opinion that an "active" Rule 144A market existed for the Sunbeam shares CPH received in the transaction. Not only is Grinblatt admittedly unqualified to opine on whether CPH could legally have sold any of its Sunbeam shares under Rule 144A, he admitted that he "didn't investigate this specifically with respect to Coleman." (Ex. B, Grinblatt Dep. 263.) Indeed, Grinblatt did not do any investigation whatsoever as to whether an "active Rule 144A market" existed for unregistered

Sunbeam shares after the fraud at Sunbeam was revealed, and he has not demonstrated any instance in which comparable stock was disposed of through a Rule 144A sale.[2/]

An expert may not testify based on speculation. Florida courts routinely exclude expert testimony that merely speculates about an essential factual predicate. *E.g., Finkelstein v. Department of Transportation*, 656 So. 2d 921, 925 (Fla. 1995). In *Finkelstein*, the Supreme Court held inadmissible a party's proffer of unsupported expert testimony that environmental contamination would reduce the value of property. *Finkelstein*, 656 So. 2d at 925. The Court held that an expert's "opinion as to a decrease in value cannot be a mere surmise that because property is contaminated, it logically follows that the value of the property is decreased." *Id.* Instead, "[t]here must be factual basis through evidence of sales of comparable . . . property upon which to base a determination." *Id.*

Similarly, in *Kelly v. Kinsey*, 362 So. 2d 402 (Fla. 1st DCA 1978), the Court of Appeals held that the trial court erred in permitting a finance professor to testify regarding the plaintiff's diminished earning capacity because of injury based on the professor's "judgment" that the plaintiff would be unable to work with the intensity needed to achieve an average rate of earnings. *Id.* at 404. The court concluded that the expert had neither the expertise needed nor a basis in fact for concluding that the plaintiff's injury would impair his earnings capacity in the particular field of work for which he was qualified. *Id.*

Like the opinions in *Finkelstein* and *Kelly*, Grinblatt's opinion speculates about whether there was a Rule 144A market for CPH's Sunbeam stock. Grinblatt, by his own admission, did

[2] In contrast, Mr. Horton, CPH's investment banking expert, testified based upon his experience that the Rule 144A market did not provide any assurance that CPH could have sold its Sunbeam stock and that assets are often unable to be sold for lack of a buyer.

not do any meaningful analysis of the Rule 144A issue. It merely "struck him" that there "should have been" a market. Grinblatt's "opinion" is no opinion at all and should be barred.

B. Grinblatt's Opinions Regarding Possible Hedging Transactions Are Speculative And Contrary To Law.

Grinblatt also opined that "[f]inancial institutions, such as investment banks and insurance companies, routinely enter into financial agreements (e.g. total return swaps, insurance policies, or options) to relieve customers of some of the risk of holding restricted stock." (Ex. A, Grinblatt Report ¶ 186.) In his deposition, when asked whether he had "developed or outlined a [hedging or similar] strategy that [CPH] could have used that would have been legal and appropriate in this case," Grinblatt stated that he had not. (Ex. B, Grinblatt Dep. 265.) He further stated that, in developing his views, he did not consider the testimony of the individuals who actually had looked into whether the stock could be hedged in 1998 to determine why a hedge was not done, or whether there would be tax or SEC consequences from a hedge, or how much stock investment banks included in their consideration of hedging strategies. *Id.* at 265-67. Instead, Grinblatt testified that he had "general knowledge that you can hedge almost anything" (*id. at* 265), not that he had any specific basis in fact for suggesting that a hedging transaction would have been appropriate in this case. Similarly, at his deposition, Grinblatt stated that he was offering his "general impression" that "you can hedge anything." *Id.* at 268. Grinblatt did not investigate whether any actual hedging transaction was available, but simply shot from the hip based on his "general knowledge" and "general impression." That is too vague and speculative to assist the jury in understanding the evidence or facts at issue in this case and

should be excluded on those grounds. Fla. Stat. Ann. § 90.702; *see also Finkelstein*, 656 So. 2d at 925; *Kelly*, 362 So. 2d at 404. His opinion is certainly not admissible expert testimony.[3]

Grinblatt's general impression not only is speculative, but also is contrary to law. A plaintiff does not have a duty to enter into complex "hedging" transactions to protect itself from the effects of a defendant's fraud. Hedging transactions have costs, either in terms of out-of-pocket outlays (such as buying a "put" option) or incurring added risk (such as eliminating a plaintiff's upside potential). A defrauded plaintiff has no duty to assume those costs. *See, e.g., American General Corp. v. Continental Airlines Corp.*, 622 A.2d 1, 11 (Del. Ch. 1992) ("While there is a general duty to mitigate damages if it is feasible to do so, a plaintiff need not take unreasonably speculative steps to meet that duty. . . . American General was therefore not under a duty to engage in the put and call option scenarios set forth by defendants"), *aff'd*, 620 A.2d 856 (Del. 1992); *cf. Bass v. Janney Montgomery Scott, Inc.*, 210 F.3d 577, 589 (6th Cir. 2000) (holding that plaintiff did not have a duty to "mitigate his damages" by exercising stock warrants obtained in the transaction: "Warrants for the purchase of unregistered stock cannot be exercised on a moment's notice," and as an insider, plaintiff "was prevented by the securities laws from selling Technigen stock" without full disclosure; "Finally, even if he was not absolutely barred from selling the stock, the mitigation rule does not require parties to unload junk stock on

[3] Grinblatt's opinion concerning CPH's supposed duty to hedge also is objectionable for an independent reason: Grinblatt refused to testify in his deposition about his experience in managing a hedge fund — experience upon which he purports to base his views. In his deposition, Grinblatt asserted that CPH was unable to examine him about his hedge fund experience because he had entered into a sweeping confidentiality order in connection with his severance from that fund. *See* Ex. B, Grinblatt Dep. 47-51 (refusing to answer questions regarding hedge fund experience because of a "very, very strict confidentiality agreement" and trade secret concerns). Accordingly, his opinion concerning possible hedging transactions must be excluded on that ground, too. *See, e.g., Stewart & Stevenson Serv. v. Westchester Fire Ins. Co.*, 804 So. 2d 584, 587 (Fla. 5th DCA 2002) (excluding expert testimony because expert refused to discuss certain supporting facts or reveal underlying documents on account of attorney-client privilege).

unwitting investors"); *Kers & Co. v. ATC Communications Group*, 9 F. Supp. 2d 1267, 1273 (D. Kan. 1998) (rejecting argument that "KERS failed to mitigate its damages by short-selling or engaging in 'put' and 'call' options trading"; mitigation duty is limited to reasonable efforts, and "[s]uch reasonable efforts at mitigation do not require a party to subject themselves to the risk of incurring additional losses").

Thus, there is no basis for Grinblatt's supposed "expert" opinion, and that opinion is contrary to established law.

IV. Grinblatt May Not Testify That One Of CPH's Law Firms Retained Him As An Expert In An Unrelated Case.

CPH has moved in limine to bar Morgan Stanley from introducing evidence that one of CPH's law firms retained Grinblatt in a prior, unrelated case. *See* Plaintiff's Motion In Limine No. 18. As shown in that motion, which CPH incorporates by reference, it is improper for Morgan Stanley to bolster Grinblatt's credibility by claiming that CPH's law firm, not CPH, retained Grinblatt in a case involving an entirely different subject matter. Moreover, admission of that testimony will cause unfair prejudice and confuse the jury.

Conclusion

For the foregoing reasons, plaintiff CPH respectfully requests the Court to enter an Order barring Morgan Stanley from introducing testimony at trial from its damages expert Mark Grinblatt concerning the topics addressed above.

Dated: January 26, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 26th day of Jan., 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

PLAINTIFF'S MOTION IN LIMINE (NO. 20) TO EXCLUDE PORTIONS OF EXPERT WITNESS GEORGE P. FRITZ'S TESTIMONY

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") moves this Court for an Order barring defendant Morgan Stanley & Co. Inc. ("Morgan Stanley") from introducing any testimony at trial by its accounting expert, George P. Fritz, on the following topics:

(1) that CPH purportedly had an obligation to perform continuing due diligence after the signing of the definitive agreements;

(2) that CPH supposedly could not rely on Morgan Stanley's due diligence in connection with the Sunbeam debenture offering; and

(3) that after the issuance of the press release on March 19, 1998, CPH should have sought interim financial information from Sunbeam.

Fritz is not qualified to offer expert testimony on those topics. Fritz is a certified public accountant who has spent virtually his entire career with the accounting firm of Coopers & Lybrand L.L.P. (Ex. A, Fritz 12/7/04 Rep. at 2.) However, as shown below, Fritz cannot cite to any accounting rule or literature to support those three opinions. Moreover, Fritz cannot identify even one transaction in which he has participated where the seller took stock in a public company buyer. Ex. C, Fritz Dep. 216-17. In addition, Fritz never has worked as an investment

banker, but he purports to opine on all sorts of due diligence obligations on CPH's part. Because Fritz's opinions concern matters far outside the scope of his accounting expertise, the Court should exclude Fritz's non-accounting opinions.[1/]

ARGUMENT

I. Fritz Is Not Qualified To Testify Concerning CPH's Due Diligence.

In his report, Fritz states that he intends to offer the following opinions regarding CPH's due diligence:

> (1) that CPH purportedly had an obligation to perform continuing due diligence after the signing of the definitive agreements, and that CPH had "reason to want to perform an appropriate level of due diligence on Sunbeam — both before *and* after the Merger Agreement was executed" (Ex. B, Fritz Rebuttal Rep. at 5, emphasis in original); and
>
> (2) that CPH supposedly could not "rely on Morgan Stanley's debenture offering due diligence" in connection with the Sunbeam transaction (*id.* at 6-7, Heading III.B).

Fritz is not qualified to offer expert testimony concerning the due diligence that should be performed when a seller receives stock in a public company. *See* Ex. A, Fritz Rep. at VII.A at 25-26; Ex. B, Rebuttal Rep. at 4-11. Fritz has not cited to, and cannot provide citations to, any accounting or auditing literature to support his opinion as to what CPH should have done in investigating Sunbeam. (Ex. C, Fritz Dep. at 168-69, 216, 232-33.) Nor can Fritz identify a single matter in which he participated, or even was aware of, involving due diligence that continued beyond the signing of a definitive merger agreement. *Id.*, Fritz Dep. at 232-33. Nor can Fritz identify any transactions in which he has participated in which the seller received stock in a public company buyer. *Id.*, Fritz Dep. 216-17. Thus, there is nothing in Fritz's training or

[1] The arguments in this motion do not address all of the defects in Fritz's report, and CPH reserves the right to raise additional objections to his report and testimony.

experience that would permit him to opine on the nature of CPH's due diligence obligations in a transaction where CPH received stock in Sunbeam.

Fritz also has never worked as an investment banker responsible for due diligence investigations. *Id.*, Fritz Dep. at 43-44. Thus, Fritz does not have any direct experience in evaluating, supervising, or implementing the due diligence obligations of the parties in a securities transaction, much less one in which the seller receives stock in a public company. Morgan Stanley has an expert witness on investment banking — Arthur H. Rosenbloom. But Morgan Stanley does not offer Rosenbloom as an expert on these issues. Morgan Stanley apparently could not find an investment banker who would offer the opinions that Morgan Stanley seeks to introduce through Fritz.

Under the law, an expert witness must be qualified to present the opinions he offers, and those opinion cannot simply be argument in the guise of expert testimony. Expert witnesses may testify only on matters within their expertise. *See Goodyear Tire & Rubber Co., Inc. v. Ross*, 660 So. 2d 1109, 1111 (Fla. 4th DCA 1995) ("[I]t is not enough that the witness be qualified to propound opinions on a general subject; rather he must be qualified as an expert on the discrete subject on which he is asked to opine"); *see also Sea Fresh Frozen Products, Inc. v. Abdin*, 411 So. 2d 218, 219 (Fla. 5th DCA 1982) (person offered as an expert must have expertise on the subject).

Here, Fritz's accounting background does not qualify him as an expert on CPH's purported due diligence obligations. As a result, Morgan Stanley should be barred from eliciting any testimony from him on the due diligence CPH that should have performed regarding Sunbeam.

II. Fritz Is Not Qualified To Testify Concerning What He Thinks CPH Should Have Done After The March 19, 1998 Press Release.

In his report, Fritz also offers his opinion that after the issuance of the press release on March 19, 1998, "CPH had reason to wish to obtain Sunbeam interim financial information." (Ex. A, Fritz Report at 25.) In his deposition, Fritz elaborated on that statement. He explained that based upon his review of the factual record in the case, he believes that the press release and other information should have put CPH on notice of potential problems at Sunbeam, which should have caused CPH to do additional investigation. (Ex. C, Fritz Dep. at 103-05.)

Fritz is not qualified to provide expert testimony on what CPH should have done in reaction to the press release. Again, Fritz has not cited to, and cannot provide citations to, any accounting or auditing literature to support his opinion on what CPH should have done in the first quarter of 1998. (Ex. C, Fritz Dep. at 168-69, 216, 232-33.) When pushed for the basis of his opinion, Fritz testified that his opinions were based on his reading of the record in this case — depositions, documents, and contracts. *Id.* at 172-76. When asked whether there was anything in his accounting background that enabled him to opine on what CPH should have done, or what due diligence CPH should have performed, Fritz replied "I'm not sure why I'm any less competent than anybody to read a deposition." *Id.* at 177-78. When asked where one would look to find support for his underlying opinions concerning CPH's supposed motivation to conduct the level of due diligence he advocates, Fritz testified: "It's difficult for me to know where . . . common sense might be institutionalized." *Id.* at 218.

Fritz cannot point to a single transaction in which he provided professional services where the seller conducted the investigation he urges. (Ex. C, Fritz Dep. at 216-17.) Fritz never before has given expert testimony in those areas, nor has he published or given speeches on the topic. (Ex. A, Fritz Rep. at 4; Ex. C, Fritz Dep. at 216-17.) Fritz also has conceded that he never

has worked as an investment banker. *Id.* at 44. Fritz simply does not have the experience or training that would permit him to testify as an expert on these matters.

At bottom, Fritz's answers reveal that his opinions are not based on any specialized knowledge based on his training or experience as an accountant. Fritz's testimony simply "spins" the evidence in the record. His testimony is argument in the guise of expert proof and should be excluded. *See generally Haendel v. Paterno*, 388 So.2d 235, 237-38 (Fla. 5th DCA 1980) (a general background in business affairs is an insufficient basis to qualify a person as an expert on complex business matters outside his expertise).

Conclusion

For all those reasons, plaintiff CPH respectfully requests the Court to enter an Order barring Morgan Stanley from introducing testimony at trial from its expert George P. Fritz concerning the topics addressed above.

Dated: January 26, 2005

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 26th day of Jan, 2005.

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COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

PLAINTIFF'S MOTION IN LIMINE (NO. 21) TO EXCLUDE PORTIONS OF EXPERT WITNESS ARTHUR H. ROSENBLOOM'S TESTIMONY

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") moves this Court for an Order barring defendant Morgan Stanley & Co. Inc. ("Morgan Stanley") from introducing any testimony at trial by its investment banking expert, Arthur H. Rosenbloom, concerning (a) whether litigation was filed against Morgan Stanley by other parties in connection with the Sunbeam transaction, and (b) the inferences to be drawn from the fact that litigation purportedly was not filed.[1/]

In his report, Rosenbloom expresses his understanding that the holders of the Sunbeam convertible debentures never sued Morgan Stanley. (Ex. A, Rosenbloom Report at 17.) CPH already has moved in limine to bar any testimony that the debenture holders purportedly did not sue Morgan Stanley. *See* Plaintiff's Motion in Limine No. 10. As shown in that motion, which CPH incorporates here by reference, testimony that the debenture holders supposedly did not sue Morgan Stanley is not probative of whether Morgan Stanley wronged CPH. There are many reasons why a party does or does not bring litigation. Speculation into whether the debenture holders were even aware of Morgan Stanley's misconduct, whether they resolved their disputes

[1] The arguments in this motion do not address all of the defects in Rosenbloom's report, and CPH reserves the right to raise additional objections to his report and testimony.

with Morgan Stanley in other ways, or whether they chose not to sue because of considerations unrelated to the merits of their claims such as an aversion to the rigors of litigation or other business relationships with Morgan Stanley would divert the jury from deciding the issues in this case.

Moreover, it is simply inaccurate for Morgan Stanley to assert that the debenture holders never sued over its misconduct in connection with the Sunbeam debenture offering. As part of Sunbeam's bankruptcy case, Sunbeam's Official Committee of Unsecured Creditors, which represented and was controlled by holders of the debentures, filed a lawsuit against Morgan Stanley, Morgan Stanley Senior Funding, Inc. ("MSSF"), and the other lenders. In that lawsuit, the Committee alleged that Morgan Stanley had defrauded the debenture holders through, among other things, participating in the issuance of the March 19, 1998 press release and the debenture offering materials, both of which were false and misleading. *See In re Sunbeam Corp.*, 284 B.R. 355, 361-62 (Bankr. S.D.N.Y. 2002). The Committee further alleged that the purchasers of the debentures relied on Morgan Stanley's misrepresentations and omissions and were injured as a result. *Id.* at 362. In particular, the Committee alleged that Morgan Stanley undertook its fraudulent scheme so that the money raised by the debenture offering would provide a "cushion" to "bolster the creditworthiness" of MSSF's senior loan. *Id.* at 361.

The Bankruptcy Court ultimately dismissed the Committee's claims against Morgan Stanley on bankruptcy grounds — that the Court had not given the Committee permission to sue Morgan Stanley and that the Committee's constituency of unsecured creditors were so far under water that they had "no economic stake in the reorganization." 284 B.R. at 375. The Bankruptcy Court also dismissed the Committee's claims against MSSF and the other lenders. MSSF had argued that the claims against it should be dismissed because all of the Committee's

allegations of wrongful conduct involved conduct by Morgan Stanley, not conduct by MSSF. The Bankruptcy Court agreed that Morgan Stanley and MSSF should be treated as separate entities, that Morgan Stanley's conduct could not be attributed to MSSF, and that the Committee's claims against MSSF should be dismissed. *Id.* at 364, 369.

Accordingly, any argument that the "debenture holders" never sued Morgan Stanley is legally irrelevant and factually incorrect.

Conclusion

For all those reasons, plaintiff CPH respectfully requests the Court to enter an Order barring Morgan Stanley from introducing testimony at trial from its expert Arthur H. Rosenbloom concerning the topics addressed above.

Dated: January 26, 2005

Respectfully submitted,

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COLEMAN (PARENT) HOLDINGS INC.

V.

MORGAN STANLEY & CO., INC.

Circuit Court of the Fifteenth Judicial Circuit, Palm Beach County, Florida

Expert Report

Arthur H. Rosenbloom
CFC Capital LLC
December, 2004

EXHIBIT
A
16div-010383

I. INTRODUCTION

CFC Capital LLC ("CFC") by Arthur H. Rosenbloom, has been retained by counsel for Morgan Stanley & Company Incorporated ("Morgan Stanley") as a consulting expert and a possible trial expert on Morgan Stanley's behalf in the case of Coleman (Parent) Holdings Inc. v Morgan Stanley & Co., Inc. currently pending in the Circuit Court of the Fifteenth Judicial Circuit, Palm Beach County, Florida. The case arises from Morgan Stanley's role in an acquisition transaction that closed March 30, 1998 in which Coleman (Parent) Holdings Inc. sold its 82% interest in the Coleman Company Inc. to Sunbeam Corporation.

During the engagement I met with Morgan Stanley's counsel, reviewed documents, and read certain deposition testimony capable of adding to an understanding of Morgan Stanley's role in the overall transaction. No restrictions were placed on the scope of my investigation. In arriving at my conclusions, I assumed and relied upon the accuracy of all information received and reviewed by me. I am independent of the parties to this action and have no financial interest in its outcome. The fees paid herein are in no way influenced by the conclusions rendered in this matter. I reserve the right to update the opinions set forth in this report as additional information becomes available and I have had the opportunity to review and consider it.

My biography appears as Appendix A. Litigation in which I have testified within the past five years at deposition or trial appears as Appendix B. Documents examined by me produced during discovery appear as Appendix C.

II. ISSUES DISCUSSED IN THIS REPORT

I have has been requested to provide a rebuttal report to the report of William A. Horton dated December 7, 2004 on behalf of Coleman (Parent) Holdings, Inc. In so doing, we undertake two activities: (i) to describe the necessity, custom and practice of sellers ("target companies") conducting their own due diligence on the buyer in merger and acquisition ("m&a") transactions in which a substantial portion of the purchase price consideration is paid in the buyer's shares; (ii) to comment on the conclusions reached by Mr. Horton in each of the sections of his report. The pages that follow set forth my opinions on these matters.

III. IT IS PRUDENT FOR M&A TARGETS TO PERFORM DUE DILIGENCE ON THE BUYER WHEN A SIGNIFICANT PORTION OF THE PRICE IS PAID WITH THE BUYER'S COMMON STOCK.

When the purchase price in a transaction consists, in significant part, of a buyer's stock it is prudent and customary for the target to perform due diligence[1] on the buyer, [2] particularly when that stock is not readily marketable because the buyer is a closely held company, or, where target shareholders are subject to "lock up" restrictions during which their ability to sell the buyer's publicly traded stock is limited by provisions in agreements between the parties or by operation of law. In such situations, the target's due diligence of the buyer is especially important because, by accepting the buyer's shares, the target effectively has become an investor in the buyer, subjecting itself to the risks and rewards associated with such ownership. To determine those risks and rewards, it makes sense for the target company to perform due diligence on the buyer. Such due diligence should not be abdicated to external professionals, one's own, and especially not the professionals engaged by the other side. Rather, the target's owners and management should retain control of the project. They should not allow the buyer or its investment bankers ("IBs") to dictate the extent or the time lines for the due diligence the target will perform or the terms and conditions of the deal.[3]

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1 The term "due diligence" is the investigation by an investor or its advisors of the accurate and complete character of the target company's legal matters, its historic, current and projected financial statements, business and operations. Rosenbloom, Due Diligence For Global Deal Making, Bloomberg Press, 2002, pp.3-12. See also Weston, Siu and Johnson, Takeovers, Restructuring & Corporate Governance, Prentice-Hall, Inc., 2001, (Third Edition), p. 638.

2 Rosenbloom, footnote 1, supra, p. 3.

3 Triantis, Creating Successful Acquisition and Joint Venture Projects, Quorum Books, 1999, pp. 140-141.

While, as a general matter, it behooves prudent target companies to perform a thorough due diligence investigation of the buyer any time the purchase price consists largely of the buyer's shares, it was, for several reasons, particularly important for Coleman (Parent) to have done so in the Coleman-Sunbeam deal: (i) Sunbeam, the buyer was in a turnaround mode. As pleaded by plaintiff, Sunbeam's 1995-1996 financial performance had been lackluster, with 1995 earnings per share less than half of those reported in 1994 and further declines reported in 1996.[4] In consequence of Sunbeam's financial disarray, its CEO and two directors resigned and, in July 1996, Albert Dunlap was brought on board to turn the company around.[5] In December of 1997, only 17 months later, Coleman (Parent) and Sunbeam met to discuss a possible acquisitions of Coleman by Sunbeam;[6] (ii) the consideration paid to the Coleman shareholders in the ensuing transaction was largely in Sunbeam's common stock that carried investment risks dramatically greater than would have been the case in all cash transaction; (iii) not only did the Coleman (Parent) shareholders accept Sunbeam shares, those shares were not freely marketable on the day they were received,[7] thereby subjecting Coleman (Parent) to the risk of market fluctuations in Sunbeam's share price during the lock up period; (iv) senior management of Coleman (Parent) and MacAndrews & Forbes Holdings, Inc.

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4 Complaint, paragraph 15.

5 Complaint, paragraphs 15 and 17.

6 Complaint, paragraph 37.

7 See Section 7.1 of the Agreement and Plan of Merger dated as of February 27, 1998 among Sunbeam Corporation Laser Acquisition Corp., CL Holdings, Inc., and Coleman (Parent) Holdings, Inc. Section 7.1 provides that only 50% of the Sunbeam shares received by Coleman (Parent) could be sold in a period of six months from the closing date, with the full quotient of such shares saleable only after nine months from such date.

("MAFCO") harbored their own reservations about the attainability by Sunbeam of its internal projections.[8]

In light of these circumstances, it is surprising that Coleman (Parent's) savvy, well-financed, operational and financial executives and their advisors involved in the Coleman sale appear not to have undertaken any material due diligence on Sunbeam, but rather chose to rely primarily on the sales pitch made to them by Sunbeam in the meeting of February 23, 1998.

Coleman (Parent) and its MAFCO affiliate had all the people and financial resources required to perform a thorough operational and financial due diligence on Sunbeam as MAFCO did in the generally contemporaneous Panavision transaction.[9] Because the parties exchanged confidentiality agreements, that task was made easier.

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8 Jerry Levin, who attended the third meeting on February 23, 1998 did so because he was probably in the best position to evaluate Sunbeam's business plans for Coleman (Parent), Levin TR p. 182:6-8. Mr. Levin's noted that Sunbeam's earnings per share for 1998 would likely be $1.99, Wall Street's estimate, which was less than Sunbeam was projecting in the Long Range Plan, Levin TR p. 234: 9-23, and that the earnings projected in Sunbeam's long term business plan were a stretch and not achievable. Levin TR pp. 256:1–4.

9 See deposition transcript of Glenn F. Dickes, pp. 109:22-25, 110:13-15. I am aware that MAFCO believes that rigorous due diligence was appropriate in an m&a transaction like Panavision in which it sought control and that modest due diligence was acceptable in a transaction like Sunbeam in which a minority interest, for investment purposes was obtained. Dickes TR. pp. 110:13 - 111:4, 112:14 - 114:1. In that regard, three points should be observed: (i) the Sunbeam transaction, a $2.0 billion deal was dramatically larger than most acquisitions of control; (ii) the Panavision deal, in which MAFCO's due diligence efforts resulted in a purchase price reduction, was materially smaller than the Sunbeam transaction, and that; (iii) where, as here, Coleman (Parent) received close to $800 million in Sunbeam's restricted shares and only the limited rights and powers of a minority stockholder, unable to materially impact Sunbeam's strategy or operations, prudence would have argued for a due diligence inquiry of Sunbeam by Coleman (Parent) at least as rigorous as the one employed by MAFCO in the Panavision transaction.

A confidentiality agreement dated February 23, 1998 permitted Coleman (Parent) to perform due diligence on Sunbeam.[10] Such agreements are customary in m&a transactions, and arise from the need of the parties, their IBs, commercial bankers, accountants, consultants, lawyers and others to obtain and use information regarded by a party as proprietary and confidential in nature. Before one party receives materials on the other, it will customarily be asked to sign a confidentiality agreement.[11] Among other elements, confidentiality agreements: (i) identify the protected information or provide means by which to do so; (ii) prohibit disclosure of confidential material to persons other than those having a need to know the information and who are signatories to the confidentiality agreement; (iii) limit the use of such information by those receiving it solely for the purposes of assisting them in negotiating the transaction; (iv) define what is deemed non-confidential in nature such as that which is already in the public domain, material known to the recipient at the time it is received, information lawfully obtained from a third party entitled to provide it, and data developed by the recipient's personnel who had no access to the confidential data; and (v) provide cutoff times representing the point at which recipients of the confidential data are freed from the restrictions of the confidentiality agreement.[12] Given the protection afforded by such agreements, parties

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10 I understand that there appear to be no executed copies of this agreement but that the parties do not deny its operative effect.

11 Shea, Acquiring and Divesting Businesses, The McGraw-Hill Companies, 1999, pp. 450-451.

12 Scharf, Shea and Beck, Acquisitions, Sales, Buyouts & Takeovers, Prentice-Hall, 1991, pp. 157-158. While many of these provisions are so standard as to be not negotiated at all, the parties will often negotiate the cutoff date depending on the anticipated life and value of the information furnished. Confidentiality agreements usually describe what happens to confidential material if the deal falls through, often by a requirement that the materials be returned by their recipients or destroyed. Reed & LaJoux, The Art of M&A, McGraw-Hill, 1999, (Third Edition), p. 352.

who are the subject of due diligence can take a measure of comfort that confidential information disclosed by them will not be misappropriated by the other side or put in the public domain by such party. That comfort facilitates the due diligence efforts of the party seeking data from the party protected by the confidentiality agreement.

With the unfettered ability to perform due diligence, Coleman (Parent) was in a position to learn dramatically more about Sunbeam than could be obtained by reading its public filings or listening to presentations by its management. Conventional due diligence typically involves detailed inspections of the other party's physical facilities and operations. It also comprehends evaluations of the other party's intellectual property and analyses of its historical, current and projected financial picture. Where, as here, the question of a company's interim financial performance is a relevant concern (Sunbeam's performance in January and February of 1998), due diligence should comprehend it and a close review of such interim statements is customary and important. Good due diligence should also inquire into pending or threatened matters that could result in legal liability for the company under scrutiny.

The signing by the parties of the Agreement and Plan of Merger did not foreclose Coleman (Parent's) ability to pursue due diligence efforts on Sunbeam. Section 6.7 of that agreement afforded it, (and its financial advisors, legal counsel, accountants, consultants, and other representatives), in the period between contract and closing, full access to Sunbeam's books, records, properties, plants, personnel, and all other information it might reasonably request.

I am aware that Coleman (Parent) held the view that it was desirable to put Sunbeam in control of Coleman (Parent) as rapidly as possible in order to avoid disruptions in Coleman's (Parent) business.[13] The view was apparently not counterbalanced by a consideration of the risks to Coleman (Parent) described above from moving quickly and dispensing with a well-executed due diligence investigation.

IV. COMMENTS ON THE CONCLUSIONS REACHED BY MR. HORTON

The body of Mr. Horton's opinions appears in Sections A through F, pages 5-25 of his report. I respond seriatim.

A. Morgan Stanley's responsibilities as Sunbeam's investment banker.

Mr. Horton observes (pp. 5-6) that it is usual and customary for IBs to perform due diligence on their clients (and their clients' principals) before preparing offering materials on the company, a reasonable generalization, and one which Morgan Stanley executives assert they did.[14]

In addition to the final Sunbeam zero coupon convertible debt offering memorandum discussed later in this report, the offering materials for which Mr. Horton appears to take Morgan Stanley to task are principally a document titled "Discussion Materials" and one called the "Long Range Strategic Plan", the former purporting to describe why Sunbeam might be regarded an attractive

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[13] The Coleman Company Inc. Board of Directors Minutes, February 25, 1998, p. 2.

[14] See depositions transcripts of Alexandre Fuchs pp. 38: 7-16, 95: 5-97:14 and John Tyree p. 558: 5-17.

investment opportunity; the latter, describing, with some particularity, how Sunbeam proposed to realize its corporate goals. These quite typical sorts of materials constitute efforts designed to induce the other party to be interested in engaging in a transaction with the party promulgating them by portraying the proponent's company in the most favorable light possible. While such documents may be examined by the parties for whose use they are intended, they are generally understood by such parties to be advocacy documents and no substitute for their own due diligence in which they seek to verify the bona fides of the statements set forth in the documents.

The Coleman (Parent) and MAFCO executives were sophisticated deal makers, easily capable of evaluating Sunbeam. MAFCO was a veteran acquiror of consumer products companies. Further, Coleman (Parent) operated in lines of business comparable with those of Sunbeam and, as Mr. Horton points out, could be characterized as a Sunbeam competitor. If Coleman (Parent) had questions Sunbeam (as it should have had given the risks inherent in accepting stock), the best people to answer them were not Morgan Stanley executives but the senior executives and operating managers of Sunbeam itself, since the documents purported to describe Sunbeam's current and projected business and financial performance. It appears that no effort was made to do so despite, at a minimum, Coleman (Parent's) reservations concerning Sunbeam's projections.[15]

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[15] Levin, footnote 8, supra.

As to the materials themselves, it is true that, in their capacity as m&a advisors, IBs like Morgan Stanley should not provide information to the other side known by them to be erroneous and should attempt to exercise reasonable care respecting the transmission of data on their clients to such parties. That said, IBs are neither fraud investigators nor auditors of their clients financial data and are entitled, without independent verification, to rely on the data received by them including their client's projections which they assume to constitute management's best currently available estimates and judgments.[16] In all such instances, the IB's client not the IB, is responsible for the correctness of the data. I deal with IB's obligations to *correct* information previously furnished to counterparties like Coleman (Parent) below.

Mr. Horton (p. 6) asserts that IBs:

> "also understand that the public, including sophisticated investors and corporations, will be relying on the honesty and accuracy of their communications and disclosures."

I disagree with the broadness of Mr. Horton's contention which suggests that IBs are agents for just about everybody. Subject to the limitations of non-dissemination of information known to them to be false, and observing reasonable care respecting such dissemination, IBs are typically understood to be agents of their corporate clients and those clients' board of directors, not of the public let alone of the counterparty to the transaction.

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[16] See page 2 of the Credit Suisse, First Boston fairness opinion of February 27, 1998 provided incident to its work in the Sunbeam-Coleman transaction and, to the same effect, page 3 of Morgan Stanley's fairness opinion (Continued...)

B. Coleman (Parent's) right to rely on Morgan Stanley

Mr. Horton describes what he calls "Concerns About the Sunbeam Story" (pp. 11-14) and attempts to pin the tail on Morgan Stanley for failing to disclose negative data concerning Sunbeam to Coleman (Parent). For the following reasons, I disagree with his conclusion. It appears that Mr. Horton believes that Morgan Stanley should have advised Coleman (Parent) concerning data that was publicly available by reason of a Sunbeam SEC filing or was contained in analysts reports to which a sophisticated investor like MAFCO could have had ready access. Thus, the following materials on Sunbeam were readily available to Coleman (Parent): (i) Sunbeam's publicly filed January 28, 1998 press release respecting its fourth quarter 1997 financial performance; (ii) the stock market's reaction to that release; (iii) the analysts reports, both those continuing to regard Sunbeam as a "buy" (CIBC Oppenheimer, PaineWebber's January 29, 1998 report, and Merrill Lynch, Prudential, Bear Stearns and Goldman Sachs) and those containing cautionary advice (PaineWebber's February 6, 1998 report); (iv) Dunlap's interview with The Cavuto Business Report. Clearly, Ronald Perelman, Jerry Levin or any of several of the high powered MAFCO executives could have picked up the phone and called Dunlap to inquire respecting these data. Did they? I am unaware of any evidence stating that they did. Notably, such a phone call would *not* logically or customarily have been made to Morgan Stanley because, as

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of the same date. See also the model form of fairness opinion in Scharf, Shea and Beck, footnote 12, supra, p. 98.

stated above, it was *Sunbeam* and its executives that were the best source for the answers to any questions that might have been raised respecting Sunbeam's fourth quarter results.

Mr. Horton goes on to argue (pp. 14-15) that Morgan Stanley had an obligation to present bad news concerning Sunbeam's fourth quarter 1997 and first quarter 1998 financial performance to Coleman (Parent) in order to supplement the generally optimistic views presented in the Long Term Strategic Plan and the Discussion Materials and elsewhere. For the following reasons, I disagree: (i) some of the negative news concerning Sunbeam that Mr. Horton believes should have been disclosed to Coleman (Parent) by Morgan Stanley was already in the public domain, easily accessible to Coleman (Parent) and the rest could have been discovered if it had performed ordinary due diligence; (ii) Any sophisticated investor like Coleman (Parent) understands that the Sunbeam materials in questions were not doctoral dissertations, judicial opinions or SEC filed documents that take exquisite care to present all sides of the issues discussed but, as described earlier herein, are rather advocacy documents and that projections in long range plans are to be viewed skeptically;[17] (iii) Morgan Stanley was Sunbeam's agent not Coleman (Parent's) and aside from the general standards of care described earlier in this report, had no obligation to Coleman (Parent); (iv) Coleman (Parent) had ample opportunity at the February 23, 1998 meeting to ask all the questions it wanted of Russel Kersh, Sunbeam's CFO, who made the

[17] Levin, TR. p. 234:17-23.

presentation. Indeed, as pointed out in Section III of this report, it could have pursued due diligence even after the signing of the Agreement and Plan of Merger. In light of the foregoing, for the reasons set for above, I cannot agree with Mr. Horton that disclosure of and/or discussion of these types of issues (presumably by Sunbeam) would be usual and customary in the negotiation of an acquisition for equity. These issues are ones that are appropriately raised by the party performing due diligence as a result of reading publicly available data or in consequence of its own due diligence.

As a further example of Coleman (Parent's) torpor, the financial consequences of Sunbeam's early buy and bill and hold practices were, as Mr. Horton acknowledges on page 23 of his report, disclosed by Sunbeam in its 10-K filing on March 6, 1998, prior to the Coleman (Parent) – Sunbeam closing. This fact notwithstanding, Coleman (Parent) elected to do nothing. An explanation concerning Sunbeam's fourth quarter 1997 or interim first quarter 1998 performance could have been a Kersh response to a Coleman (Parent) question that Coleman (Parent) apparently never bothered to ask.

C. Morgan Stanley's disclosure obligations to Coleman (Parent)

I understand Mr. Horton to be arguing (pp. 17-18) that because the Sunbeam – Coleman (Parent) transaction was a "fast track" merger and because the companies were competitors, it was justifiable to place more than usual reliance on materials supplied and statements offered by persons involved in the transaction. For the following reasons, I disagree: (i) As described earlier in this

report, Sunbeam's was purported to be a turnaround story. Coleman (Parent's) election, for whatever reason, to proceed at a rapid pace came at a cost - its inability to perform thorough due diligence which experience and survey data describe as a leading cause of merger failure; (ii) It is counterintuitive to imagine that Coleman (Parent's) election to move fast created a greater obligation of disclosure on Morgan Stanley than would have been the case had Coleman (Parent) moved more cautiously, as Morgan Stanley was Sunbeam's agent not the agent of Coleman's (Parent).[18] Unlike Sunbeam, but typical for IBs, Morgan Stanley was not a party to the Sunbeam – Coleman (Parent) Agreement and Plan of Merger as of February 27, 1998, made no representations and warranties or otherwise bound itself by the terms of that agreement. Where then (save as I have described above) were its obligations to Coleman (Parent)?

Mr. Horton next appears to argue (pp. 18-19) that Coleman (Parent) should be regarded as some kind of indirect beneficiary of disclosures made incident to the zero coupon convertible debenture offering underwritten by Morgan Stanley. He offers four arguments in support of his position. I disagree with all of the conclusions set forth in those arguments: (i) Mr. Horton argues that as underwriter of the bonds, Morgan Stanley had a disclosure obligation to Coleman (Parent) respecting any material adverse change ("MAC") in Sunbeam's affairs. I disagree because Morgan Stanley's obligations as an underwriter ran not to Coleman (Parent) but to the bondholders. Further, as indicated above, the MAC

[18] See Morgan Stanley's engagement letter with Sunbeam dated September 5, 1997, p 3.

language in Section 8.1 (c) of Agreement and Plan of Merger bound *Sunbeam* not Morgan Stanley, who was not a party to that agreement; (ii) He further asserts that because Coleman (Parent) was to receive Sunbeam's equity, Morgan Stanley had a duty to supply it with a copy of the Final Offering Memorandum. This argument fails again because Morgan Stanley's duty as an underwriter was to its bondholders not Coleman (Parent) as its duty as an m&a advisor was to Sunbeam not to Coleman (Parent). Finally, I am unaware of any investment banking custom or use suggesting that Morgan Stanley should have voluntarily made the Final Offering Circular available to Coleman (Parent), even if it had no legal obligation to do so. In any event, Coleman (Parent) could have obtained the Final Offering Memorandum on its own by calling Morgan Stanley and requesting a copy; (iii) Mr. Horton urges that Morgan Stanley had an obligation to advise Coleman (Parent) of any MAC. This argument fails because, as set forth above, (assuming the existence of a MAC), it was *Sunbeam's* not Morgan Stanley's obligation to make disclosure; (iv) Finally, Mr. Horton contends that Morgan Stanley had an obligation to correct what he characterizes "as materially incorrect, false and misleading" data respecting materials previously presented to Coleman (Parent). I disagree. As discussed earlier, the materials were "pitch" documents and should have been and probably were regarded as such by Coleman (Parent). They are no substitute for due diligence. If the passage of time had revealed problems in Sunbeam to Coleman (Parent), it was a phone call away from the party best able to deal with them – Al Dunlap and other Sunbeam managers.

Finally, as previously stated, Morgan Stanley's obligations as m&a advisor ran to Sunbeam not Coleman (Parent).

D. Morgan Stanley's obligations to Coleman (Parent) arising from the Arthur Andersen Comfort letter

In this section (pp. 19-21), I understand it to be Mr. Horton's view that some of the information set forth in Arthur Andersen comfort letter to Morgan Stanley of March 19, 1998 incident to Morgan Stanley's underwriting of Sunbeam's zero coupon convertibles gave rise to an obligation on Morgan Stanley's part to disclose such data to Coleman (Parent). I disagree: (i) At the February 23, 1998 meeting, Coleman (Parent) became aware that, at a minimum, Sunbeam's January 1998 sales were slow;[19] (ii) Coleman (Parent) had the right to receive Sunbeam's interim financial data from Arthur Andersen respecting Sunbeam's first quarter 1998 financial performance it claims was withheld from it by Morgan Stanley by requesting it from Sunbeam or Morgan Stanley, a fact likely to have been well-known by it given its familiarity with the comfort letter process and the impending zero coupon convertible offering.[20] It is perverse, in light of Sunbeam's January and possibly February 1998 sales decline, known to Coleman (Parent), that it elected not to avail itself of that opportunity; (iii) Morgan Stanley's obligation in the bond offering was to the bondholders not to Coleman

19 See Levin TR pp. 229: 10-19.

20 See the expert report of George P. Fritz, dated December 7, 2004, pp. 27-29.

(Parent); (iv) the reporting obligation of facts constituting a MAC was *Sunbeam's*, not Morgan Stanley's.

E. Morgan Stanley's power and obligation to cancel the zero coupon convertible bond offering

Mr. Horton asserts (p. 21) that in light of Sunbeam's soft January and February sales disclosed in Arthur Andersen's comfort letter, it had the power and the obligation to cancel the bond offering, the consequence of which would have resulted in a postponement or termination of Sunbeam's acquisition of Coleman (Parent). It is certainly true that Morgan Stanley had the power to abort the offering. Instead, acting on the information available to it in consequence of its stepped up due diligence with Sunbeam described in greater detail in Section F hereof, Morgan Stanley (with the addition of the information in the press release summarized in the Final Offering Memorandum),[21] elected to go forward with the offering and a loan to Sunbeam. The decision to do so ultimately cost Morgan Stanley hundreds of millions of dollars, dwarfing the fees received by it as Sunbeam's m&a advisor and the zero coupon bond underwriter.

In accordance with my understanding of IB trade custom, any obligation owed by Morgan Stanley as bond underwriter, was to the Sunbeam zero coupon convertible bondholders (who, as I understand it never sued Morgan Stanley) and not to Coleman (Parent) who had both the means and the motivation to learn

21 See Final Offering Memorandum p. 8.

everything that Morgan Stanley knew about Sunbeam but appears to have chosen not to.

F. The character of Sunbeam's press release of March 19, 1998

In the final operative section of his report (pp. 22-25), Mr. Horton characterizes Sunbeam's press release as materially misleading and amounting to securities fraud. I leave it to counsel for the parties to do battle on what constitutes securities fraud and by whom. More relevant, I suspect for purposes of Mr. Horton's analysis and my own, is: (i) what Morgan Stanley learned from Arthur Andersen's March 19, 1998 comfort letter concerning Sunbeam's January-February financial performance, and (ii) the extent to which that knowledge gave rise to any obligation on its part to Coleman (Parent). I address these separately.

Starting with the time Morgan Stanley learned of Sunbeam's early 1998 declining financial performance, it began to investigate the issue[22] through telephone conference call conversations with Sunbeam's management. In those conversations, Sunbeam expressed confidence that its first quarter sales would exceed those of the corresponding quarter in 1997 and that, at the top end of the range, such performance would be consistent with Wall Street estimates.[23] Sunbeam's Don Uzzi described volume levels from specific accounts and answered questions

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[22] See deposition transcripts of Ruth Porat, February 6, 2001, pp. 17:7-15, 29: 19-22; 37:5-14, 49:8-15; 49:25-50:5, and John Tyree pp. 322:10-323:18, 342:8-22, 402:8-403:2, 412:6-22, 546:14-547:12-19, 549:14-550:3.

[23] See SB 0018286 and deposition transcript of David Fannin, pp. 288:20-289:6.

about them from Morgan Stanley.[24] Sunbeam executives also fielded other questions drawn from lists that had been prepared by Morgan Stanley.[25] At the conclusion of the process, armed with the belief that its due diligence and bring down due diligence efforts had been prudent and appropriate[26] and with the inclusion of Skadden's press release on Sunbeam's behalf it had requested of Sunbeam[27] summarized in its Final Offering Memorandum, Morgan Stanley went forward with the zero coupon convertible offering – to its detriment.

Mr. Horton asserts that, in a number of respects, Sunbeam's press release failed to capture the gravity of the red flags set forth in Arthur Andersen's March 19 comfort letter. Notably, however he fails to state that (i) Coleman (Parent) relied on the content of that press release in going forward with the Sunbeam deal; (ii) he overlooks the fact that Coleman (Parent) could have obtained the data in Andersen's comfort letter for itself and thereby known what Morgan Stanley knew; (iii) he ignores the fact that had it wanted to, Coleman (Parent) could have had access to the same people at Sunbeam as those to whom Morgan Stanley spoke; (iv) he avoids confronting the fact that the press release of which he complains was Sunbeam's, not Morgan Stanley's and; (v) he fails to recognize that the disclosures by Morgan Stanley in the zero coupon convertible offering

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24 Fannin TR. pp. 292:6-19, 328:1-329:13.

25 See FUNB 016564-016567 and DPW000010, Fannin TR pp. 329:16 – 331:14.

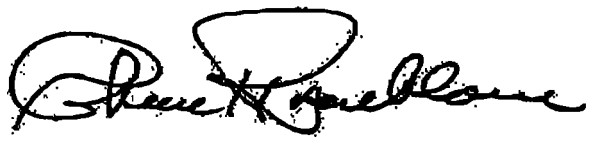
26 Tyree TR. pp. 551:24- 552:12, 554:14-17.

27 Porat TR February 6, 2001, p. 38:14-22.

were for the protection of the Sunbeam bondholders not for the benefit of Coleman (Parent).

Respectfully submitted this 17th day of December, 2004.

CFC CAPITAL LLC



By: _____
Arthur H. Rosenbloom

Appendix A

ARTHUR H. ROSENBLOOM

Mr. Rosenbloom is Managing Director of CFC Capital LLC, a firm specializing in securities valuation, litigation support and merger and acquisition advisory services. He was formerly Chairman of the Board of Patricof & Co. Capital Corp., a New York City based firm similarly engaged. Mr. Rosenbloom holds a Bachelor's degree from Bucknell University, a Master's degree from Columbia University, and a law degree from the Cornell Law School.

Mr. Rosenbloom's merger and acquisition advisory and litigation support work has involved him with companies as diverse as Blockbuster Video, VNU, American Express, Act III Communications, Hyatt Corp., Continental Airlines, Inc., Trans Union Corp., Singer Corporation and Axel Johnson Inc.

His contributions on investment banking related topics have appeared in Inc., Forbes, Business Week, The Harvard Business Review, Matthew Bender's Corporate Counsel's Annual, Mergers and Acquisitions Magazine, D&B Reports and the National Law Journal. He has been co-editor or editor of Matthew Bender's Federal Tax Valuation Digest, the Prentice-Hall Handbook of International Mergers and Acquisitions, John Wiley & Sons International M&A Joint Ventures and Beyond, Due Diligence in the Global Economy (Bloomberg Publishing) and is a contributor to Kvint's The Global Emerging Market In Transition (Fordham University Press). Mr. Rosenbloom has lectured before the American Institute of Certified Public Accountants, the Financial Executives Institute, and forums under the auspices of the Wharton School of the University of Pennsylvania, Cornell's Johnson Graduate School of Management and Cornell Law School. Mr. Rosenbloom is an Adjunct Professor at the Stern School of Business at New York University where he teaches courses in private equity investing and international mergers and acquisitions. He is an active member of the panel of arbitrators of the American Arbitration Association and the New York Stock Exchange and a member of the panel of mediation for Supreme Court, New York County and the United States District Court, Eastern District of New York.

Appendix B

CASES IN WHICH ARTHUR H. ROSENBLOOM HAS TESTIFIED AS AN EXPERT AT DEPOSITION OR TRIAL WITHIN THE PRECEDING FIVE YEARS

Year	Case	Court
2000	Compass Aerospace Corp. v Alinabal Holdings Corporation (deposition)	U.S. District Court, Southern District of New York
2001	Realsearch v Numico (deposition, hearing testimony)	Private arbitration, Pittsburgh, PA
2001	H.I.G. Capital Inc. v Orius Corp. (deposition)	Circuit Court of Florida, Palm Beach County
2003	Gotham Partners L.P. v Hallwood Realty Partners, L.P. et al. (deposition and trial testimony)	Delaware Court of Chancery
2004	In re Pro Air, Inc. (deposition and trial testimony)	U.S. District Court, Western District of Washington
2004	Ultimate Juice Holdings v Sexton (deposition)	Supreme Court, New York County

Appendix C

Produced Documents

Documents

MS 9
MS 10
MS 39
MS 40
MS 57
MS 88
MS 93
MS 103
MS 111
MS 112
MS 118
MS 120
MS 133
MS 134
MS 169
MS 242
MSC 0002390-2392
MSC 0007544-0007773
MSC 0026098
MSC 0027593-27621
CPH 9
CPH 16
CPH 33
CPH 34
CPH 70
CPH 89
CPH 206
CPH 207
CPH 212
CPH 0255478
CPH 0520972
CPH 1094250-1094302
CPH 1102037-1102103
CPH 1257349
CPH 1416623-1416690
FUNB 016564-67

Testimony

3/7/2000 Fannin Testimony
2/6/2001 Porat Testimony
9/15 2003 Tyree Testimony
11/14/2003 Tyree Testimony
2/13/2004 Fuchs Testimony
11/17/2004 Perelman Testimony
11/18/2004 Perelman Testimony
11/18/2004 Dickes Testimony
11/23/2004 Porat Testimony
12/01/2004 Levin Testimony
12/02/2004 Levin Testimony

Expert Reports

12/07/2004 Expert Report of George P. Fritz
12/07/2004 Expert Report of William N. Horton

#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiffs,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

CASE NO.: 2003 CA 005045 AI

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: February 1, 2005

TIME: 8:45 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

Coleman (Parent) Holdings Inc.'s Motion for Adverse Inference Instruction Due to Morgan Stanley's Destruction of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order.

Moving counsel certifies that he or she contacted opposing counsel and attempted to resolve the discovery dispute without hearing.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all Counsel on the attached list, this 26th day of Jan., 2005.

JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 478-0754
Attorney for Plaintiff

COUNSEL LIST

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Sumner Square
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Suite 400
Washington, D.C. 20036-3206

#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC., CASE NO.: 2003 CA 005045 AI

Plaintiffs,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,
_____/

RE-NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: February 1, 2005

TIME: 8:45 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

CPH's Motion to Deem Certain Documents Admissible and for Sanctions Due to Morgan Stanley's Disregard of Court Order

Moving counsel certifies that he or she contacted opposing counsel and attempted to resolve the discovery dispute without hearing.

Coleman Holdings, Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all Counsel on the attached list, this 26th day of Jan., 2005.

JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
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West Palm Beach, FL 33409
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Fax: (561) 478-0754
Attorney for Plaintiffs

Coleman Holdings, Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

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202 879-5200

Thomas A. Clare
To Call Writer Directly:
202 879-5993
tclare@kirkland.com

January 28, 2005

BY FACSIMILE

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: ***Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.***

Dear Mike:

I am enclosing our recent motion filed in Texas regarding the deposition of Donald Uzzi.

Sincerely,

Thomas A. Clare

Thomas A. Clare

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark C. Hansen, Esq. (by facsimile)

Enclosure

COPY

FILED

CAUSE NO. 05-00275-J

05 JAN 27 AM 9:53

COLEMAN (PARENT) HOLDINGS INC.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	THE 191ST JUDICIAL DISTRICT
	§	
MORGAN STANLEY & CO. INCORPORATED,	§	
	§	
Defendant.	§	DALLAS COUNTY, TEXAS
	§	

MOTION FOR ATTACHMENT OF THIRD-PARTY WITNESS DONALD R. UZZI

Defendant Morgan Stanley & Co., Incorporated ("Morgan Stanley") files this its application for a writ of attachment against third-party witness Donald R. Uzzi ("Uzzi"), and would respectfully show the court as follows:

I.

MOTION

1. Coleman (Parent) Holdings Inc. and Morgan Stanley are currently parties to a lawsuit pending in Palm Beach County, Florida, under cause number CA 03-5045 in the Circuit Court of the Fifteenth Judicial District (the "Florida Lawsuit").

2. The court in the Florida Lawsuit entered an order styled "Agreed Order Appointing Commissioners and Commissions," allowing Morgan Stanley to take the deposition of Uzzi in connection with that lawsuit; a true and correct copy of that order is attached hereto as Exhibit "A" and is herein incorporated by reference for all purposes. Although discovery is closed in the Florida lawsuit, the court in that lawsuit had provided Morgan Stanley special dispensation to take Uzzi's deposition by January 19, 2005; a true and correct copy of that order is attached hereto as Exhibit "B."

3. Morgan Stanley diligently but unsuccessfully sought to serve a deposition subpoena duces tecum on Uzzi. A true and correct copy of the subpoena duces tecum is attached hereto as Exhibit "C" and is herein incorporated by reference for all purposes.

4. Morgan Stanley consequently obtained authority from this Court on January 10, 2005 to serve and execute the subpoena through substituted service by leaving a true copy of the subpoena with anyone over sixteen years of age at Uzzi's confirmed and usual place of abode in Dallas County, Texas. A true and correct copy of the Order is attached as Exhibit "D" and incorporated herein by reference of all purposes.

5. Morgan Stanley properly served the Deposition Subpoena Duces Tecum (with the appropriate witness fee) on Sally Hummel-Uzzi, a person over sixteen years of age, at Uzzi's confirmed and usual place of abode in Dallas County, Texas. A true and correct copy of the Notice of Filing of Return of Service of Subpoena is attached hereto as Exhibit "E" and is incorporated herein by reference.

6. Donald R. Uzzi failed to appear at the deposition on January 19, 2005 at 9:30 a.m. at the offices of Haynes and Boone, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202 as the subpoena commanded. *See* Exhibit "F" hereto, which is incorporated herein by reference.

7. The court in the Florida Lawsuit has provided Morgan Stanley with a final opportunity to take Uzzi's deposition by February 4, 2005. A true and correct copy of the order so providing is attached as Exhibit "G" and incorporated herein by reference.

II.

SUPPORTING EVIDENCE

8. The affidavit of Victor D. Vital concerning fees is attached as Exhibit "H" and incorporated herein by reference.

III.

PRAYER

Since Donald R. Uzzi has failed to obey the subpoena properly served and all witness fees have been tendered, Morgan Stanley requests that this Court deem Donald R. Uzzi in contempt of court pursuant to Texas Rule of Civil Procedure 176.8.

For these reasons, Morgan Stanley respectfully requests that:

1. A writ of attachment issue against Donald R. Uzzi, and that he be ordered to appear before this Court and show cause why he should not be held in contempt;
2. Morgan Stanley be awarded its costs; and
3. Morgan Stanley is granted such other and further relief as the Court may deem just and equitable.

Dated: January 26, 2005.

Respectively Submitted,

Victor D. Vital
State Bar No. 00794798
Altresha Q. Burchett
State Bar No. 24045582

HAYNES AND BOONE, L.L.P.
901 Main Street, Suite 3100
Dallas, Texas 75202-3780
Telephone: 214-651-5000
Facsimile: 214-651-5940

ATTORNEYS FOR
MORGAN STANLEY & CO., INC.

EXHIBIT A

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

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

AGREED ORDER APPOINTING COMMISSIONERS AND COMMISSIONS

THIS CAUSE, having come before the Circuit Court in and for Palm Beach County, State of Florida, on the agreement of the parties, and

WHEREAS, it appears to the Court that:

1. Defendant Morgan Stanley & Co. Incorporated ("MS & Co.") desires to take the videotaped depositions of and obtain documents from the following witnesses who reside in California, Connecticut, Kansas, Minnesota, New York, Texas, and the District of Columbia and who have knowledge of facts relevant to this case:

Karen Kay Clark
1674 Amarelle Street
Newbury Park, CA 91320

Frank N. Gifford
126 Taconic Road
Greenwich, CT 06831-3139

Robert J. Duffy
16 Saint Nicholas Road
Darien, CT 06820-2823

16div-010418

Joseph P. Page
921 Sheridan Street, Apt. 119
Wichita, KS 67213-1363

William H. Spoor
622 West Ferndale Road
Wayzata, MN 55391

Adam Emmerich
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Steven Cohen
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Steven K. Geller
301 East 79th Street, Apt. 4H
New York, NY 10021-0932

Donald Uzzi
4209 Beverly Dr.
Dallas, TX 75205-3020

Ann Dibble Jordan
2940 Benton Place NW
Washington, DC 20008

2. You are hereby appointed as commissioners to take the videotaped testimony (and obtain the requested documentation) of the above witnesses and other witnesses whose discovery is sought in the commissions' jurisdiction under oath and on oral examination in accordance with the applicable Florida Statutes and Rules of Civil Procedure:

Esquire Santa Ana
2100 North Broadway, Second Floor
Santa Ana, CA 97206

Del Vecchio Reporting
117 Randi Drive
Madison, CT 06443

Harper Court Reporting
P.O. Box 3008
Wichita, KS 67201

Kirby Kennedy & Associates
5200 Wilson Road #219
Minneapolis, MN 55424

Esquire Deposition Services
216 E. 45th Street, 8th FL
New York, New York 10017-3304

Esquire Deposition Services
703 McKinney Avenue #320
Dallas, Texas 75202

Esquire Deposition Services
1020 19th Street NW, #621
Washington, DC 20036

or any person able to administer oaths pursuant to the laws of California, Connecticut, Kansas, Minnesota, New York, Texas, and the District of Columbia and duly authorized by him.

3. This order does not purport to grant the power of the commissioners appointed to subpoena witnesses or documents, but simply the power to administer oaths and transcribe deposition testimony.

DONE AND ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida this ____ day of January, 2004.

SIGNED AND DATED

ELIZABETH T. MAASS
Circuit Court Judge

ELIZABETH T. MAASS

Copies furnished to:

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& SHIPLEY, P.A.
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Jerold S. Solovy
JENNER & BLOCK, LLC
One IBM Plaza
Suite 4400
Chicago, Illinois 60611
Telephone: (312) 222-9350
Facsimile: (312) 527-0484

16div-010421

EXHIBIT B

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

ORDER GRANTING MORGAN STANLEY'S
MOTION FOR LEAVE TO TAKE DEPOSITION OF DONALD R. UZZI

THIS CAUSE having come before the Court on December 22, 2004 upon Morgan Stanley's Motion for Leave to Take Deposition of Donald R. Uzzi, and the Court having heard argument of counsel, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that:

1. Morgan Stanley's Motion for Leave to Take Deposition of Donald R. Uzzi is GRANTED, in part.

2. Morgan Stanley shall have until Jan. 19, 2005 to take Mr. Uzzi's deposition, which shall be without prejudice to Plaintiff's right to seek to bar the testimony or grant any unfair surprise or prejudice, as well as the visual evidentiary grants.*

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 22 day of December, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

* Defendant shall serve on Plaintiff by mail a copy of each subpoena directed to Mr. Uzzi.

WPB#587529.6

Copies furnished to:

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci, P.C.
Thomas A. Clare
KIRKLAND & ELLIS LLP
655 15th Street, N.W. – Suite 1200
Washington, D.C. 20005

Mark C. Hansen
Rebecca Beynon
KELLOG, HUBER
Sumner Square
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Jack Scarola
SEARCY, DENNEY, SCAROLA,
BARNHARDT & SHIPLEY, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, Fl 33409

Jerold S. Solovy
JENNER & BLOCK, LLC
One IBM Plaza
Suite 4400
Chicago, Il 60611

EXHIBIT C

THE STATE OF TEXAS

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.
MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

DEPOSITION SUBPOENA DUCES TECUM

TO: Any sheriff or constable of the State of Texas or other person authorized to serve and execute subpoenas as provided in Texas Rule of Civil Procedure 176.5.

You are commanded to summon **Donald R. Uzzi**, 4201 Lomo Alto Drive, Apt. 307, Dallas, TX 75219, to appear at the principal offices of HAYNES AND BOONE, LLP, 901 Main Street Suite 3100, Dallas, Texas 75202, on **Wednesday, January 19, 2005 at 9:30 a.m.** to give testimony at a videotaped oral deposition and to permit inspection and copying of documents or tangible things to be used as evidence in this case.

Donald R. Uzzi is commanded to attend the oral deposition and to produce and permit inspection and copying of the following documents or tangible things described in the attached Exhibit 1. These documents and materials shall be brought with the witness and produced prior to the deposition on January 19, 2005, at HAYNES AND BOONE, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202.

Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both. TEX. R. CIV. P. 176.8(a).

DO NOT FAIL to return this writ to the Circuit Court of the Fifteenth Judicial Circuit In and For Palm Beach County, Florida with either the attached officer's return showing the manner of execution or the witness's signed memorandum showing that the witness accepted the subpoena.

ISSUED on December 27, 2004.

By: _____

Sean Tremde
Texas State Bar No. 24034176
KIRKLAND & ELLIS LLP,
655 15th Street, N.W., Suite 1200,
Washington, D.C. 20005

This subpoena was issued pursuant to Texas Rule of Civil Procedure 201.2, the Order of the Circuit Court of the Fifteenth Judicial Circuit In and For Palm Beach County, Florida entered on January 21, 2004 and attached hereto as Exhibit 2, and at the request of Defendants' attorneys of record Thomas D. Yannucci, P.C., Lawrence P. Bemis (FL Bar No. 618349), and Thomas A. Clare of KIRKLAND & ELLIS LLP, 655 15th Street, N.W., Suite 1200, Washington, D.C. 20005; Mark C. Hansen, James M. Webster, III, Rebecca A. Beynon of KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C., Sumner Square, 1615 M Street, N.W., Suite 400, Washington, D.C. 20036; Joseph Ianno, Jr. (FL Bar No. 655351), CARLTON FIELDS, P.A., 222 Lakeview Ave., Suite 1400, West Palm Beach, FL 33401.

EXHIBIT 1

DEPOSITION SUBPOENA DUCES TECUM

You are hereby requested to produced the following documents pursuant to the definitions and instructions contained herein:

DOCUMENTS REQUESTED

1. All documents concerning the Coleman Transaction.

2. All documents concerning the Subordinated Debenture Offering.

3. All documents concerning the Bank Facility, or the Credit Agreement.

4. All documents reflecting or concerning any communications between or among any of Sunbeam, CPH, MAFCO, CSFB, Arthur Andersen, MS & Co., MSSF, Davis Polk, Wachtell, or Skadden in 1997 or 1998.

5. All documents provided by you in any Litigation or SEC Administrative Proceeding.

6. All calendars, diaries, timekeeping sheets or records maintained by you concerning any activities related to Coleman Transaction, the Subordinated Debenture Offering, the Bank Facility, the Credit Agreement.

7. All documents related to Sunbeam's Financial Information for all or any portion of 1996, 1997, and 1998, including but not limited to Financial Statements and documents concerning Sunbeam's forecasts and plans for revenue or earnings.

8. All documents related or referring to any cost-reduction or sales program or policy in place at Sunbeam during 1997 and 1998, including but not limited to documents concerning the "early buy" program, "Initiatives for Success", and "bill and hold" sales and the "no returns" policy.

9. All documents concerning returns of Sunbeam goods or product in 1997 and 1998, including but not limited to documents regarding the "no returns" policy and conversations or communications regarding the deletion of return authorizations from the J.D. Edwards system.

10. All documents pertaining to negotiations concerning the acquisition of Coleman, Signature Brands, and First Alert, including but not limited to documents concerning conversations or communications of any kind between or among any of MS & Co., MSSF, CPH or MAFCO personnel or representatives.

11. All documents concerning Synergies that might be achieved from a business combination of Sunbeam, Coleman, Signature Brands, and First Alert, or any combination thereof.

12. All documents related to or supporting the March 16, 1998 Representation Letter provided to Arthur Anderson, including but not limited to any drafts of such letter and any Financial Information used or referenced in writing the letter or drafts.

13. All documents concerning any "comfort letter" pertaining to the Subordinated Debenture offering or the Credit Agreement, including but not limited to Arthur Andersen's letters dated March 19, 1998 and March 25, 1998 and any drafts of such letters.

14. All documents concerning any investigation, analysis, or due diligence conducted by Sunbeam or its Advisors pertaining to the Coleman Transaction, including but not limited to documents and Financial Information pertaining to March 18, 1998 and March 24, 1998 conference calls.

15. All documents related to Sunbeam's March 19, 1998 press release, including but not limited to documents pertaining to the contents or drafting of the press release, the decision to issue the press release, and the decision to include the press release in the Offering memorandum.

16. All documents concerning the March 19, 1998 drafting session and/or meeting that took place at Global Financial Press concerning the Offering Memorandum, including but not limited to documents concerning any conversations or communications of any kind involving MS & Co. or Arthur Andersen personnel.

17. All documents related to the sale of the Subordinated Debenture, including but not limited to documents pertaining to roadshows or other communications with investors or analysts.

DEFINITIONS

1. "Advisors" shall mean financial advisors, legal advisors, accountants, consultants and any other third-party advising or assisting Sunbeam in any way with the Coleman Transaction, including but not limited to Arthur Anderson, Coopers & Lybrand, Llama Company, MS& Co., MSSF, and Skadden.

2. "Arbitrations" shall mean *Albert J. Dunlap and Sunbeam Corporation*, No. 32 160 00088 99 (AAA); and *Russell A. Kersh and Sunbeam Corporation*, No. 32 160 00091 99 (AAA).

3. "Arthur Andersen" shall mean Arthur Andersen LLP and any of its former or present partners, officers, directors, employees, representatives and agents.

4. "Bank Facility" shall mean the Credit Agreement, including amendments, and all funds extended by Lenders to Sunbeam pursuant to the Credit Agreement, including but not limited to Tranche A, Tranche B, and the Revolving Credit Facility.

5. "Communication" shall mean any exchange or transmittal of information by any means of transmission, including, without limitation, face-to-face conversation, mail, overnight delivery, Internet, telephone, electronic mail, or facsimile.

6. The term "concerning" shall mean relating to, referring to, describing, evidencing, or constituting.

7. "Coleman" shall mean Coleman Company, Inc. and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

8. "Coleman Transaction" shall mean Sunbeam's acquisition of Coleman Company, Inc. from CPH and all related communications, agreements, and transactions, including the February 27, 1998 Agreements and the March 30, 1998 closing.

9. "Cooper & Lybrand" shall mean the former Coopers & Lybrand LLP, and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents.

10. "CPH" shall mean Coleman (Parent) Holdings Inc. and any of its former or present officers, directors, employees, representatives and agents.

11. "Credit Agreement" shall mean the agreement entered into by Sunbeam, as borrower with Lenders, dated March 30, 1998 and all amendments thereto.

12. "CSFB" shall mean Credit Suisse First Boston LLC and any of its former or present officers, directors, employees, representatives and agents.

13. "Davis Polk" shall mean Davis Polk & Wardwell and any of its former or present partners, officers, directors, employees, representatives and agents.

14. "Document" shall mean any recording in any tangible form of any information, whether handwritten, typed, printed, stored on computer disks, tapes, or databases, or otherwise reproduced. "Document" or "documents" also includes electronic documents whether stored on

servers or hard drives, e-mail, backup tapes, voicemail and video and audio recordings. A draft or non-identical copy is a separate document within the meaning of this term.

15. "Financial Information" shall mean information concerning the past or present financial condition of Sunbeam or Sunbeam securities.

16. "Financial Statements" shall mean documents reflecting Financial Information, including without limitation quarterly reports, yearly reports, balance sheets, statements of income, earnings, cash flow projections, and sources and applications of funds.

17. "First Alert" shall mean First Alert, Inc., and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

18. The term "identify" (with respect to documents) shall mean to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).

19. "Lenders" shall mean the entities listed on Schedule 2.01 of the Credit Agreement under the heading "Lenders" and any other person that shall have become a party to the Credit Agreement as a Lender pursuant to an assignment and acceptance.

20. "Litigations" shall mean *In re Sunbeam Securities Litigation*, 98-8258-Civ.-Middlebrooks (S.D. Fla); *Camden Asset Management L.P. v. Sunbeam Corporation*, 98-8773-Civ.-Middlebroks and 98-8275-Civ.-Middlebrooks (S.D. Fla); *Krim v. Dunlap*, No. CL 983168AD (15th Jud. Cir., Fla.); *Stapleton v. Sunbeam Corp.*, No. 98-1676-Civ.-King (S.D. Fla); *Sunbeam Corp. v. PricewaterhouseCoopers LLP*, No. CL 005444AN (15th Jud. Cir., Fla.); *In re Sunbeam Corp., Inc.*, No. 01-40291 (AJG) (Bankr. S.D.N.Y.) and any adversary proceedings therein; *SEC v. Dunlap*, No. 01-8437-Civ.-Middlebrooks (S.D. Fla.); *Oaktree Capital Management LLC v. Arthur Andersen LLP*,

No. BC257177 (L.A. Cty., CA); and *Coleman (Parent) Holdings Inc. v. Arthur Andersen LLP*, No. CA 01-06062AN (15th Jud. Cir., Fla.), or other litigation concerning the Coleman Transaction.

21. "Llama Company" shall mean Llama Company and any of its former or present partners, officers, directors, employees, representatives and agents.

22. "MAFCO" shall mean MacAndrews & Forbes Holdings, Inc. and any of its officers, directors, former or present employees, representatives and agents.

23. The "March 19, 1998 Press Release" shall mean the press release issued by Sunbeam on March 19, 1998 concerning the shortfall of first quarter 1998 sales numbers and the reasons for such shortfall.

24. "MS & Co." shall mean Morgan Stanley & Co. Inc. and any of its former or present officers, directors, employees, representatives and agents.

25. "MSSF" shall mean Morgan Stanley Senior Funding, Inc. and any of its former or present officers, directors, employees, representatives and agents.

26. The term "person" shall mean any natural person or any business, legal or governmental entity or association.

27. The term "relating to" shall mean concerning, evidencing, referring to, or constituting.

28. The "Relevant Period," unless otherwise indicated, shall be from January 1, 1996 through the date of service of this subpoena.

29. "SEC" shall mean the Securities and Exchange Commission.

30. "SEC Administrative Proceedings" shall mean *In the Matter of Sunbeam Corp.*, SEC Administrative Proceeding File No. 3-10481, and *In the Matter of David C. Fannin*, SEC Administrative Proceeding File No. 3-10482.

31. "Signature brands" shall mean Signature Brands USA, Inc. and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents

32. "Skadden" shall mean Skadden, Arps, Slate, Meagher & Flom, LLP and any of its former or present partners, officers, directors, employees, representatives and agents.

33. "Subordinated Debentures" shall mean the Sunbeam's Zero Coupon Convertible Senior Subordinated Debentures Due 2018.

34. "Subordinated Debenture Offering" shall mean the offering of Sunbeam's Subordinated Debentures.

35. "Sunbeam" shall mean Sunbeam Corporation and any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, and agents.

36. "Synergies" shall mean post-acquisition gains through increased revenue and/or decreased cost.

37. "Wachtell" shall mean Wachtell Lipton Rosen & Katz and any of its former or present partners, officers, directors, employees, representatives and agents.

38. The terms "you" or "your" shall mean Donald R. Uzzi and any of Donald R. Uzzi's present and former representatives and agents.

INSTRUCTIONS

1. Documents shall be produced as they are kept in the usual course of business, or organized and labeled to correspond to the categories in this Request. Documents attached to each other should not be separated. Documents consisting of items previously produced in the Litigations, Arbitrations, and/or SEC Administrative Proceedings with Bates numbering shall be produced in Bates number order.

2. All documents shall be produced in the file folder, envelope or other container in which the documents are kept or maintained by you. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks.

3. The relevant period, unless otherwise indicated, shall be from January 1, 1996 through the date of service of this subpoena, and shall include all documents and information which relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received prior or subsequent to that period. Please supplement or correct your responses to these requests if, at any time, you become aware that your responses are incomplete or incorrect in any request.

4. If you claim the attorney-client privilege, or any other privilege or work-product protection for all or any portion of a document, you shall provide a privilege log that describes the withheld material sufficiently to allow Morgan Stanley to test the privilege or protection asserted.

5. The following rules of construction apply:

1. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be outside their scope;

2. The term "including" shall be construed to mean "without limitation"; and

3. The use of the singular form of any word include the plural and vice versa.

EXHIBIT D

CAUSE NO. 05-00275-J

COLEMAN (PARENT) HOLDINGS INC.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	THE 191ST JUDICIAL DISTRICT
	§	
MORGAN STANLEY & CO. INCORPORATED,	§	
	§	
Defendant.	§	DALLAS COUNTY, TEXAS
	§	

ORDER FOR MORGAN STANLEY & CO. INCORPORATED'S MOTION FOR SUBSTITUTED SERVICE

On January 10, 2005, this Court heard and considered Morgan Stanley & Co., Incorporated's ("Morgan Stanley") Motion for Substituted Service of a deposition subpoena on third-party witness Donald R. Uzzi ("Uzzi"). After considering the Motion and accompanying evidence and having found that Morgan Stanley diligently attempted to serve Uzzi according to the affidavit and other evidence presented with the Motion, but was unsuccessful, it is hereby ORDERED that Morgan Stanley may effectuate substituted service on Uzzi with the subpoena duces tecum:

1. By leaving a true copy of the subpoena (along with this Order) with anyone over sixteen years of age at Uzzi's usual place of abode at 4201 Lomo Alto Drive, Unit 307, Dallas County, Texas 75219-1515;

2. By attaching a copy of the subpoena (along with this Order) to the door of Uzzi's confirmed and usual place of adobe at 4201 Lomo Alto Drive, Unit 307, Dallas County, Texas 75219-1515; or

3. _____

IT IS FURTHER ORDERED that the return of the person effectuating substituted service of the subpoena be endorsed on or attached to the subpoena, state when and how the subpoena was served, and be signed by the same.

SIGNED on January 10, 2005.

M. Kent Lewis
JUDGE PRESIDING

Retired ~~Former~~ Judge 71st Judicial District Court Sitting for Judge 191st Judicial District Court Sitting for Judge 191st Judicial District Court Dallas County, Texas.

EXHIBIT E

COPY

CAUSE NO. 05-00275-J

FILED
2005 JAN 13 AM 11:51
JIM HAMLIN
DALLAS CO. TEXAS
DEPUTY

COLEMAN (PARENT) HOLDINGS INC.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	THE 191st JUDICIAL DISTRICT
	§	
MORGAN STANLEY & CO. INCORPORATED,	§	
	§	
Defendant.	§	DALLAS COUNTY, TEXAS
	§	

NOTICE OF FILING OF RETURN OF SERVICE OF SUBPOENA

On January 10, 2005, this Court heard and granted Morgan Stanley & Co., Incorporated's Motion for Substituted Service of a deposition subpoena on third-party witness Donald R. Uzzi. Defendant served a copy of the subpoena along with the court order authorizing substituted service. A true and correct copy of the return of service of subpoena is attached hereto as Exhibit "A".

Respectively Submitted,

Victor D. Vital
State Bar No. 00794798
Altresha Q. Burchett
State Bar No. 24045582

HAYNES AND BOONE, L.L.P.
901 Main Street, Suite 3100
Dallas, Texas 75202-3780
Telephone: 214-651-5000
Facsimile: 214-651-5940

ATTORNEYS FOR
MORGAN STANLEY & CO., INC.

RETURN OF SERVICE OF SUBPOENA

I, Troy Essink, (1) personally delivered a true copy of the Deposition Subpoena Duces Tecum (along with a court order authorizing substituted service, issued by the 191st Judicial District of Dallas County, Texas) to Sally Hummel-Uzzi, wife to third-party witness Donald R. Uzzi and person over sixteen years of age, at 4201 Lomo Alto Drive, Unit 307, in Dallas County, Texas on January 12, 2005, at approximately 4:30 p.m., and (2) tendered Sally Hummel-Uzzi the witness fee of $10.00 in cash.

By _____
Troy Essink, Licensed Private Investigator working with Verasys, L.L.C.

EXHIBIT F

CAUSE NO. 05-00275-J

COLEMAN (PARENT) HOLDINGS, INC., § IN THE DISTRICT COURT OF

Plaintiff, §

V. § 191st JUDICIAL DISTRICT

MORGAN STANLEY & CO. INCORPORATED, §

Defendant. § DALLAS COUNTY, TEXAS

ORIGINAL

AFFIDAVIT OF NONAPPEARANCE

I, Lisa Smith, a Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following facts, to wit:

That on the 12th day of January, 2005, Notice of Oral Deposition was issued and caused to be served upon Donald Uzzi to take the Oral Deposition of Donald Uzzi in the above-styled cause;

That on the 19th day of January, 2005, at 9:30 a.m., I personally appeared at the offices of Haynes and Boone, LLP, located at 901 Main Street, Suite 3100, Dallas, Texas, for the purpose of reporting the Oral Deposition of the witness on behalf of the Defendant pursuant to said Notice, and that Counsel for the Defendant, Mr. Victor D. Vital, appeared;

That at 9:39 a.m. the following statement was put into the record:

(Exhibit Nos. 1 and 2 were marked.)

MR. VITAL: I'm Victor Vital, Texas counsel to Morgan Stanley and Company, Incorporated in this matter. We're

here for the deposition of Donald Uzzi. We have learned this morning that Mr. Uzzi is not going to appear for his deposition. I am present at 9:09 a.m. Mr. Uzzi is not here.

I am going to offer and enter into the record Exhibit No. 1 to this deposition as an order for Morgan Stanley and Company, Incorporated's motion for substituted service authorizing a deposition subpoena to be served on Mr. Uzzi through substituted means since he evaded service of the subpoena for a number of months.

Pursuant to Exhibit No. 1, Morgan Stanley served a subpoena on Mr. Uzzi's wife, Sally Hummel-Uzzi, on January 12th, 2005 at 4:30 p.m. The return of service was properly executed by the gentleman who served the subpoena, attached to this deposition and entered into the record as Exhibit No. 2, which reflects the return of the service of the subpoena. It also attaches the notice of deposition subpoena duces tecum itself and the subpoena duces tecum that was authorized to be served by substituted means pursuant to Exhibit No. 1.

So I have entered into the record Exhibit No. 1, which is the order authorizing substituted service, and Exhibit No. 2, which is the notice of deposition, subpoena duces tecum. The subpoena duces tecum itself as well as the return of service shown that it was properly served on Ms. Uzzi through substituted means pursuant to Exhibit No. 1.

And I'd like the record to reflect, again, the

nonappearance of Mr. Uzzi.

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

MR. VICTOR D. VITAL
Haynes and Boone, LLP
901 Main Street, Suite 3100
Dallas, Texas 75202 3789
(214) 651-5123
(214) 651-5940 (Fax)

That I remained at the place aforesaid until 9:41 a.m., January 19, 2005, at which time the witness had not appeared.

Lisa Smith

LISA SMITH, CSR
Esquire Deposition Services
1700 Pacific Avenue, Suite 4750
Dallas, Texas 75201
Cert. No. 7491
Cert. Expires: 12/31/05
(214) 257-1436

STATE OF TEXAS)

Subscribed and sworn to before me, the undersigned Authority, on this the 26 day of January, 2005.

NOTARY PUBLIC Wayne Rennke My Commission Expires October 30, 2007

Wayne Rennke

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

Cert. Expires: 10-30-07

EXHIBIT G

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON MORGAN STANLEY & CO. INCORPORATED'S MOTION TO EXTEND TIME TO DEPOSE DONALD UZZI

THIS CAUSE came before the Court January 21, 2005 on Morgan Stanley & Co. Incorporated's Motion to Extend Time to Depose Donald Uzzi, with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Morgan Stanley & Co. Incorporated's Motion to Extend Time to Depose Donald Uzzi is Granted, in part. Defendant shall have until February 4, 2005 to complete Mr. Uzzi's deposition, without prejudice to Plaintiff's right to object to the use of the deposition at trial on the basis of undue prejudice, surprise, or any other evidentiary basis.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 21 day of January, 2005.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci
655 15th Street, NW, Suite 1200
Washington DC 20005

EXHIBIT H

CAUSE NO. 05-00275-J

COLEMAN (PARENT) HOLDINGS INC.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	THE 191ST JUDICIAL DISTRICT
	§	
MORGAN STANLEY & CO. INCORPORATED,	§	
	§	
Defendant.	§	DALLAS COUNTY, TEXAS
	§	

VICTOR D. VITAL'S AFFIDAVIT CONCERNING FEES

STATE OF TEXAS	§
	§
HARRIS COUNTY	§

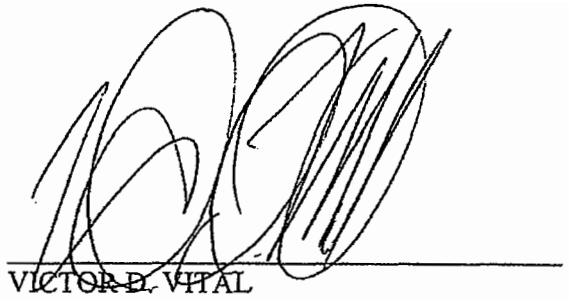
BEFORE ME, the undersigned Notary Public, on this day personally appeared Victor D. Vital and being by me fully sworn on his oath, deposed as stated as follows:

1. I, Victor D. Vital, am the local attorney for Morgan Stanley & Company, Incorporated in the above-entitled matter. Donald R. Uzzi has been duly summoned by a Texas subpoena, which the court authorized to be served by substituted means on January 10, 2005. The subpoena commanded Donald R. Uzzi to appear and testify at a deposition and to produce documents on January 19, 2005 at 9:30 a.m. at Haynes and Boone, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202.

2. The proof of service on that subpoena indicates that (a) service of the subpoena was properly executed using the substituted means authorized by the 191st Judicial District of Dallas County, Texas with (b) all necessary witness fees tendered to Donald R. Uzzi. .Specifically, cash was tendered in the amount of $10.00, which Troy Essink (a licensed Texas

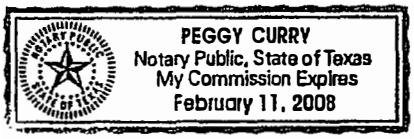
private investigator) delivered to Sally Hummel-Uzzi (a person over 16 years of age) on January 12, 2005, together with the subpoena and court order authorizing substituted service.

FURTHER AFFIANT SAYETH NOT.

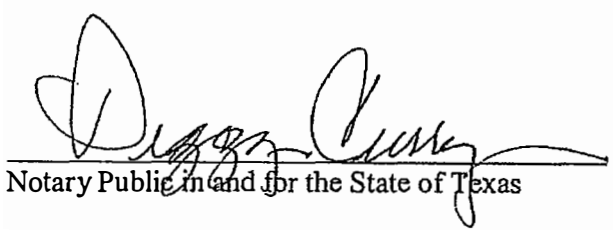


VICTOR D. VITAL

SWORN TO AND SUBSCRIBED before me on this 25th day of January, 2005.



(PERSONALIZED SEAL)



Notary Public in and for the State of Texas

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed Morgan Stanley's Motion in Limine No. 12 to Exclude CPH's Experts from Improperly Inflating Damages by Applying Unjustified "Control Premiums" and a Hypothetical "Investment Value" under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the service list below by facsimile and Federal Express on this 26th day of January, 2005.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.
Sumner Square
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999

Counsel for Morgan Stanley & Co. Incorporated

CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368
E-mail: jianno@carltonfields.com

BY: Joseph Ianno, Jr.
Joseph Ianno, Jr.
Florida Bar No. 655351

SERVICE LIST

Jack Scarola
SEARCY, DENNEY, SCAROLA, BARNHARDT & SHIPLEY, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy
Michael Brody
JENNER & BLOCK, LLC
One IBM Plaza, Suite 400
Chicago, IL 60611

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

CONFIDENTIAL – FILED UNDER SEAL

Morgan Stanley & Co. Incorporated's Motion in Limine No. 12 to Exclude CPH's Experts from Improperly Inflating Damages by Applying Unjustified "Control Premiums" and a Hypothetical "Investment Value".

THIS ENVELOPE CONTAINS MATERIAL SUBJECT TO A PROTECTIVE ORDER ENTERED IN THIS ACTION. IT IS NOT TO BE OPENED NOR THE CONTENTS THEREOF DISPLAYED, REVEALED, OR MADE PUBLIC, EXCEPT BY WRITTEN ORDER OF THE COURT

CONFIDENTIAL – FILED UNDER SEAL

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BY: _____
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Florida Bar No: 655351

Counsel for Morgan Stanley & Co. Incorporated

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed Morgan Stanley's Motion in Limine No. 13 to Strike the Expert Opinion of Samuel J. Kursh as Untimely and Cumulative under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the service list below by facsimile and Federal Express on this 26th day of January, 2005.

Thomas D. Yannucci, P.C.
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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

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Morgan Stanley & Co. Incorporated's Motion in Limine No. 13 to Strike the Expert Opinion of Samuel J. Kursh as Untimely and Cumulative.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed Morgan Stanley's Motion in Limine No. 14 to Exclude CPH Expert's Reliance on Irrelevant Dicta From the Delaware Chancery Court Opinion in *Prescott Group Small Cap, L.P. v. Coleman Company* under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the service list below by facsimile and Federal Express on this 26th day of January, 2005.

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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

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CONFIDENTIAL – FILED UNDER SEAL

Morgan Stanley & Co. Incorporated's Motion in Limine No. 14 to Exclude CPH Expert's Reliance on Irrelevant Dicta From the Delaware Chancery Court Opinion in *Prescott Group Small Cap, L.P. v. Coleman Company*.

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WPB#571259.25

16div-010462

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed Morgan Stanley's Motion in Limine No. 15 to Preclude Expert Testimony of Michael Wagner Beyond What is Disclosed in His Expert Reports under seal.

CERTIFICATE OF SERVICE

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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

CONFIDENTIAL – FILED UNDER SEAL

Morgan Stanley & Co. Incorporated's Motion in Limine No. 15 to Preclude Expert Testimony of Michael Wagner Beyond What is Disclosed in His Expert Reports.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed Morgan Stanley's Motion in Limine No. 16 to Strike the Expert Opinion of CPH Expert Blaine Nye for Applying the Incorrect Damages under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the service list below by facsimile and Federal Express on this 26th day of January, 2005.

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Chicago, IL 60611

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

CONFIDENTIAL – FILED UNDER SEAL

Morgan Stanley & Co. Incorporated's Motion in Limine No. 16 to Strike the Expert Opinion of CPH Expert Blaine Nye for Applying the Incorrect Damages Standard.

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Counsel for Morgan Stanley & Co. Incorporated

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed Morgan Stanley's Motion in Limine No. 17 to Exclude CPH's Expert Blaine Nye from Relying on an Unproven Assumption and Simple Arithmetic to Calculate CPH's Damages under seal.

CERTIFICATE OF SERVICE

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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

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Morgan Stanley & Co. Incorporated's Motion in Limine No. 17 to Exclude CPH's Expert Blaine Nye from Relying on an Unproven Assumption and Simple Arithmetic to Calculate CPH's Damages.

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16div-010474

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed Morgan Stanley's Motion in Limine No. 18 to Exclude Testimony of Plaintiff's Expert Douglas Emery under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the service list below by facsimile and Federal Express on this 26th day of January, 2005.

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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

CONFIDENTIAL – FILED UNDER SEAL

Morgan Stanley & Co. Incorporated's Motion in Limine No. 18 to Exclude Testimony of Plaintiff's Expert Douglas Emery.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed Morgan Stanley's Motion in Limine No. 19 to Exclude the Testimony of William Horton under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the service list below by facsimile and Federal Express on this 26th day of January, 2005.

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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

CONFIDENTIAL – FILED UNDER SEAL

Morgan Stanley & Co. Incorporated's Motion in Limine No. 19 to Exclude the Testimony of William Horton.

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Counsel for Morgan Stanley & Co. Incorporated

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed Morgan Stanley's Motion in Limine No. 20 to Exclude Testimony of Michael J. Gillfillan under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the service list below by facsimile and Federal Express on this 26th day of January, 2005.

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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

CONFIDENTIAL – FILED UNDER SEAL

Morgan Stanley & Co. Incorporated's Motion in Limine No. 20 to Exclude the Testimony of Michael J. Gillfillan.

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Florida Bar No: 655351

Counsel for Morgan Stanley & Co. Incorporated

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON MORGAN STANLEY'S MOTION TO RECONSIDER AND REHEAR ORDER DENYING DISMISSAL PURSUANT TO RULE 1.061 FLA. R. CIV. P. (FORUM NON CONVENIENS)

THIS CAUSE came before the Court, in Chambers, on Morgan Stanley's Motion to Reconsider and Rehear Order Denying Dismissal Pursuant to Rule 1.061 Fla. R. Civ. P. (Forum Non Conveniens). Based on a review of the Motion, it is

ORDERED AND ADJUDGED that Morgan Stanley's Motion to Reconsider and Rehear Order Denying Dismissal Pursuant to Rule 1.061 Fla. R. Civ. P. (Forum Non Conveniens) is Denied. See Local Rule 6.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 27 day of January, 2005.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
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1615 M Street, NW, Suite 400
Washington, DC 20036

M A N D A T E

from

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

This cause having been brought to the Court by appeal, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause as may be in accordance with the opinion of this Court, and with the rules of procedure and laws of the State of Florida.

WITNESS the Honorable GARY M. FARMER, Chief Judge of the District Court of Appeal of the State of Florida, Fourth District, and seal of the said Court at West Palm Beach, Florida on this day.

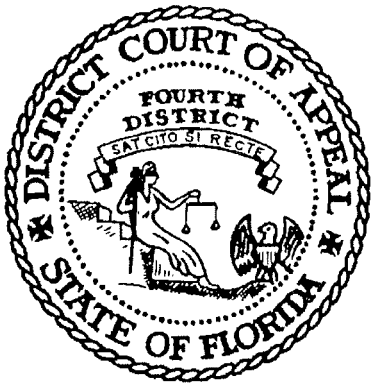
DATE: January 28, 2005

CASE NO.: 4D04-135

COUNTY OF ORIGIN: Palm Beach

T.C. CASE NO.: 03-5045 CAAI, 502003CA005045XXXXAI

STYLE: MORGAN STANLEY & CO., INC. v. COLEMAN (PARENT) HOLDINGS, INC.



Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal

ORIGINAL TO: Sharon R. Bock, Clerk

cc:

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Jack Scarola
Christopher Landau
Michael K. Winston

Mark C. Hansen
Joseph Ianno, Jr.
Michael Brody
Ronald L. Marmer
Jeffrey T. Shaw

cs

16div-010489

Sherry, Bridget E.

From: Kimberly Chervenak [kchervenak@kirkland.com]
Sent: Monday, January 31, 2005 12:32 PM
To: #MS-Coleman - K&E
Subject: Fw: Emailing: MS - 20050128 Mandate.pdf

----- Forwarded by Kimberly Chervenak/Washington DC/Kirkland-Ellis on 01/31/2005 12:29 PM -----

"Dillard, Joyce" <JDillard@CarltonFields.com>

01/31/2005 12:26 PM

To "Lawrence Bemis" <LBemis@kirkland.com>, "Thomas Clare" <tclare@kirkland.com>, "Ianno, Joseph" <JIanno@CarltonFields.com>

cc "Kimberly Chervenak" <kchervenak@kirkland.com>, "Victoria Alterman" <VAlterman@kirkland.com>

Subject Emailing: MS - 20050128 Mandate.pdf

<<MS - 20050128 Mandate.pdf>>
Your files are attached and ready to send with this message.

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COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

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

CASE NO: 2003 CA 005045 AI

COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO DEEM CERTAIN THIRD-PARTY DOCUMENTS ADMISSIBLE AT TRIAL

Coleman (Parent) Holdings Inc. ("CPH") by its attorneys, respectfully requests that this Court enter a Order deeming certain documents of third-parties Arthur Andersen LLP ("Andersen") and Sunbeam Corporation (n/k/a American Household, Inc.) ("Sunbeam") admissible at trial. In support of this motion, CPH states as follows:

1. This motion arises because of Morgan Stanley's latest attempts to interfere with CPH's efforts to establish the admissibility of certain documents of Andersen and Sunbeam. CPH, as this Court is aware, has been attempting to establish the admissibility of these documents for months: On October 22, 2004, CPH served deposition notices on Andersen and Sunbeam, seeking depositions to address the authenticity and admissibility of various Andersen and Sunbeam documents. *See* Exs. A, B. Subsequently, after Andersen and Sunbeam objected that CPH should work with Morgan Stanley in an effort to stipulate to the authenticity and admissibility of the documents in question, CPH on November 22, 2004 sent a letter to Morgan Stanley asking it to stipulate concerning the Andersen and Sunbeam documents. *See* Ex. C. Morgan Stanley never responded to CPH's letter.

2. As a result, CPH requested that Andersen and Sunbeam provide written certifications concerning certain specified documents pursuant to Fla. Stat. § 90.902(11), which provides that:

> [Extrinsic evidence of authenticity of the document is not a condition of admissibility with respect to] [a]n original or a duplicate of evidence that would be admissible under § 90.803(6), which is maintained in a foreign country or domestic location and is a accompanied by a certification or declaration from the custodian of the records or another qualified person certifying or declaring that the record: (a) Was made at or near the time of the occurrence of the matter set forth by, or from information transmitted by, a person having knowledge of those matters; (b) Was kept in the course of the regularly conducted activity; and (c) Was made as a regular practice in the course of the regularly conducted activity, provided that falsely making such a certification or declaration would subject the maker to criminal penalty under the laws of the foreign or domestic location in which the certification or declaration was signed.

Anderson provided a § 90.902(11) certification with respect to certain specified documents on January 20, 2005 and Sunbeam provided a certification with respect to certain specified documents on January 25, 2005. *See* Exs. D, E.

3. Promptly thereafter, on January 28, 2005, CPH provided the certifications to Morgan Stanley along with written notice of CPH's intention to use the documents to which the certifications pertain at trial. *See* Ex. F. CPH provided that notice in accordance with Fla. Stat. § 90.803(6)(c), which provides in pertinent part that:

> A party intending to offer evidence under paragraph (6)(a) [concerning documents kept in the course of regularly conducted business activity] by means of a certification or declaration shall serve a reasonable written notice of that intention upon every other party and shall make the evidence available for inspection sufficiently in advance of its offer in evidence to provide to any other party a fair opportunity to challenge the admissibility of the evidence . . . .

More than a week later, on February 6, 2005, Morgan Stanley wrote objecting to CPH's use of the Andersen and Sunbeam documents at trial on the ground that the "alleged certification . . . is procedurally defective and untimely." *See* Ex. G.

4. Morgan Stanley's objection, in addition to being unexplained, is baseless. There is nothing "procedurally defective" about the certifications: Both certifications are in full accordance with the requirements of § 90.902(11). Nor is there any question about the timeliness of the certifications: CPH provided the certifications to Morgan Stanley almost a month before trial and Morgan Stanley has known of CPH's intention to rely on the Andersen and Sunbeam documents for months.

WHEREFORE, because the certifications provided by Andersen and Sunbeam are procedurally proper and timely, CPH respectfully requests that this Court enter an Order ruling that the documents listed in the certifications attached hereto as Exhibits D and E are admissible at trial subject only to possible objections for relevance.

Dated: February 8, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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#1210229.v1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 8th day of February, 2005.

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Sherry, Bridget E.

From: Veronica Pierce [vpierce@kirkland.com]
Sent: Tuesday, February 08, 2005 4:46 PM
To: #MS-Coleman - K&E
Subject: 20050208 CPH's Motion to Deem Certain Third-Party Documents Admissible at Trial

20050208 CPH's Motion to Deem ...

(See attached file: 20050208 CPH's Motion to Deem Certain Third Party Documents Admissible at Trial.pdf)

Veronica Pierce
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SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
Attorneys at Law

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VIA FACSIMILE 561-659-7368
January 31, 2005

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Joseph Ianno, Jr., Esquire
Carlton Fields, et al.
222 Lakeview Avenue, Suite1400
West Palm Beach, FL 33401

Re: Coleman(Parent)Holdings Inc. v. Morgan Stanley & Co., Inc.
Matter No.: 029986-230580

Dear Joe:

Enclosed is a copy of CPH's Motion to Remove Confidentiality Designations from Summary Judgment-Related Pleadings filed by CPH. Also enclosed is our Notice of Hearing on the motion for February 3, 2005.

If there is a possibility of resolving any of the issues raised in the motion without the necessity of court intervention, please call me. Since my schedule often makes it difficult to reach me by phone during regular business hours, I invite you, if necessary, to call me at home in the evening at 561-575-2427.

Sincerely,

JACK SCAROLA
JS/mm
Enc.

cc: Thomas Clare, Esq. (Via Fax)
Jenner & Block LLP (Via Fax)
Mark Hansen, Esq. (Via Fax)

#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiffs,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

CASE NO.: 2003 CA 005045 AI

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: February 3, 2005

TIME: 8:45 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

Coleman (Parent) Holdings Inc.'s Motion to Remove Confidentiality Designations from Summary Judgment-Related Pleadings filed by CPH.

Moving counsel certifies that he or she contacted opposing counsel and attempted to resolve the discovery dispute without hearing.

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to all Counsel on the attached list, this 31st day of Jan., 2005.

JACK SCAROLA
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Fax: (561) 478-0754
Attorney for Plaintiff

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO REMOVE CONFIDENTIALITY DESIGNATIONS FROM SUMMARY JUDGMENT-RELATED PLEADINGS FILED BY CPH

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, respectfully requests that this Court enter an Order removing the confidentiality designations from the following pleadings and directing the Clerk to place the pleadings in the public court file: CPH's Response in Opposition to Morgan Stanley's Motion for Summary Judgment (filed December 23, 2004), CPH's 12-Volume Appendix to CPH's Summary Judgment Filing (filed January 3, 2005), CPH's Response to Morgan Stanley's Proposed Findings of Fact and Conclusions of Law in Support of its Motion for Summary Judgment (filed January 11, 2005), and CPH's 8-Volume Supplemental Appendix to CPH's Summary Judgment Filing (filed January 11, 2005). In support of this motion, CPH states as follows:

1. CPH filed the above summary judgment-related pleadings under seal because the pleadings refer to and attach documents that have been designated as confidential by CPH, by several third parties, and by Morgan Stanley. With respect to CPH's prior confidentiality designations, CPH hereby waives those designations.

2. With respect to the confidentiality designations of third parties, CPH has written each of those third parties identifying the documents produced by them that are cited in or attached to CPH's summary judgment-related pleadings, and has asked the third parties whether

they intend to continue to assert the confidentiality of their documents. *See* Exs. A-F. With one exception, all of the third parties have written CPH, advising that they agree to waive the confidentiality designations with respect to the documents for use in this litigation. *See* Exs. G-J. The one exception is the law firm of Davis Polk & Wardwell, Morgan Stanley's attorney, which advised CPH that it would be up to Morgan Stanley to decide whether the single document in question should be kept confidential. *See* Ex. K.

3. As for Morgan Stanley, the only party that presently is asserting confidentiality with regard to some of the documents, CPH has written Morgan Stanley on several occasions asking whether it would waive the confidentiality designations. *See* Exs. L-N. Morgan Stanley has not responded to CPH's inquiries. Any attempt by Morgan Stanley to continue to assert the confidentiality of the documents would be baseless, because Paragraph 4 of the Stipulated Confidentiality Order provides that the only documents that can be designated as confidential are documents that the designating party "believes, in good faith, constitute, contain, reveal or reflect proprietary or confidential trade secrets or technical, business, financial or personnel information of a current nature." *See* Ex. O ¶ 4. The Stipulated Confidentiality Order further states that "the party making the [confidential] designation shall bear the burden of proof" of establishing the documents' confidentiality. *See id.* ¶ 15. Morgan Stanley, however, cannot carry that burden with respect to any of the documents cited in or attached to CPH's summary judgment-related pleadings.[1]

Wherefore, CPH respectfully requests that this Court enter an Order removing the confidentiality designations from the following pleadings and directing the Clerk to place the pleadings in the public court file: CPH's Memorandum in Opposition to Morgan Stanley's Motion for Summary Judgment (filed December 23, 2004), CPH's 12-Volume Appendix in

[1] This Court subsequently modified the Stipulated Confidentiality Order, but the provisions cited herein were not affected by the Court's modifications.

Support of its Summary Judgment Filing (filed January 3, 2005), CPH's Response in Opposition to Morgan Stanley's Findings of Fact and Conclusions of Law (filed January 11, 2005), and CPH's 8-Volume Supplemental Appendix in Support of its Summary Judgment Filing (filed January 11, 2005).

Dated: January 31, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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Ronald L. Marmer
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#1206454

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 31st day of Jan., 2005.

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Attorneys for Coleman(Parent)Holdings Inc.

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JENNER&BLOCK

January 12, 2005

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VIA FEDERAL EXPRESS

Christopher P. Malloy
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New York, New York 10036

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
No. 03-5045 AI (15th Jud. Cir., Palm Beach County, FL)

Dear Chris:

In the above litigation, we recently have cited and attached the following documents produced by your firm in some recent pleadings, but have designated the pleading as "confidential" under the Stipulated Confidentiality Order entered in the case:

SASMF 10709	Mar. 7, 1998 Morgan Stanley memo re Accounting Due Diligence Call [CPH 0635893]
SASMF 10710-10711	Project Laser Accounting Due Diligence List of Questions [CPH 0635894-0635895]
SASMF 10807-10808	Mar. 18, 1998 fax from Morgan Stanley to Skadden Arps re Mar. 19, 1998 press release [CPH 0635991-0635992]
SASMF 17227-17256	Apr. 28, 1998 Letter from Skadden to SEC attaching chronology [CPH 1042288-1042317]
SASMF 19645-19687	Skadden time keeping detail for period March 1, 1998 to March 31, 1998 (redacted)
SASMF 19679	Skadden time keeping detail for A. Deitz
SASMF 17741-17748	Feb. 4, 1998 Confidentiality Agreement between The Coleman Company Inc. and Sunbeam Corporation [CPH 0642925-0642932]

In accordance with the procedures established by the Court, in the near future, it will be necessary to address whether the documents produced by your client in fact should be treated as confidential under the Stipulated Confidentiality Order. For your information, the only materials that are confidential under the Stipulated Confidentiality Order are those materials that "the party or non-party believes, in good faith, constitute, contain, reveal or reflect proprietary or confidential trade secrets or technical, business, financial or personnel information of a current nature." *See* Stipulated Confidentiality Order, ¶ 4.

EXHIBIT
A

16div-010506

JENNER&BLOCK

Please advise me as soon as possible whether your client would object to the removal of the confidentiality designation from the documents referenced herein. For your convenience, I have enclosed copies of those documents for your review. In the event that you desire to maintain the confidentiality of any of the documents, we will notify you of the date and time of the hearing before the Court.

Very truly yours,

Michael T. Brody

MTB:sd
Enclosure

cc: Joseph Ianno, Jr.

#1199785

JENNER&BLOCK

January 12, 2005

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VIA FEDERAL EXPRESS

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Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
No. 03-5045 AI (15th Jud. Cir., Palm Beach County, FL)

Dear Chris:

In the above litigation, we recently have cited and attached the following document produced by your client, Howard Kristol, in a recent pleading, but have designated the pleading as "confidential" under the Stipulated Confidentiality Order entered in the case:

HK SOC 00794-00805	Draft Question and Answer Script for Conference Call, dated March 1, 1998 [CPH 1026942-1026953]

In accordance with the procedures established by the Court, in the near future, it will be necessary to address whether the document produced by your client in fact should be treated as confidential under the Stipulated Confidentiality Order. For your information, the only materials that are confidential under the Stipulated Confidentiality Order are those materials that "the party or non-party believes, in good faith, constitute, contain, reveal or reflect proprietary or confidential trade secrets or technical, business, financial or personnel information of a current nature." *See* Stipulated Confidentiality Order, ¶ 4.

Please advise me as soon as possible whether your client would object to the removal of the confidentiality designation from the document referenced herein. For your convenience, I have enclosed a copy of the document for your review. In the event that you desire to maintain the confidentiality of the document, we will notify you of the date and time of the hearing before the Court.

Very truly yours,

Michael T. Brody

Enclosure

cc: Joseph Ianno, Jr.

EXHIBIT
B

JENNER&BLOCK

January 12, 2005

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VIA FEDERAL EXPRESS

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mbrody@jenner.com

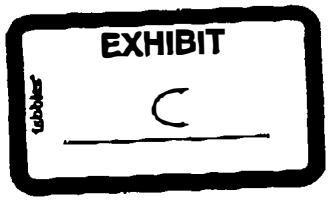
Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., No. 03-5045 AI (15th Jud. Cir., Palm Beach County, FL)*

Dear Scott:

In the above litigation, we recently have cited and attached the following documents produced by your client, Arthur Andersen, in some recent pleadings, but have designated the pleadings as "confidential" under the Stipulated Confidentiality Order entered in the case:

AA 166173-166417	Sunbeam Corporation Restatement Binder containing Andersen Interview Memoranda dated July-November 1998 [CPH 0062489-0062733]
AA 188506-188576	Sunbeam Corporation Report to Board of Directors: Restatement Adjustments, prepared by Arthur Andersen LLP, dated October 16, 1998 [CPH 0084462-0084532]

In accordance with the procedures established by the Court, in the near future, it will be necessary to address whether the documents produced by your client in fact should be treated as confidential under the Stipulated Confidentiality Order. For your information, the only materials that are confidential under the Stipulated Confidentiality Order are those materials that "the party or non-party believes, in good faith, constitute, contain, reveal or reflect proprietary or confidential trade secrets or technical, business, financial or personnel information of a current nature." *See* Stipulated Confidentiality Order, ¶ 4.



JENNER&BLOCK

Please advise me as soon as possible whether your client would object to the removal of the confidentiality designation from the documents referenced herein. For your convenience, I have enclosed copies of those documents for your review. In the event that you desire to maintain the confidentiality of any of the documents, we will notify you of the date and time of the hearing before the Court.

Very truly yours,

Michael T. Brody

MTB:sd
Enclosure

cc: Joseph Ianno, Jr.

#1199758

JENNER&BLOCK

January 12, 2005

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VIA FEDERAL EXPRESS

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West Palm Beach, Florida 33401

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., No. 03-5045 AI (15th Jud. Cir., Palm Beach County, FL)*

Dear Mark:

In the above litigation, we recently have cited and attached the following documents produced by your client, American Household, Inc. (f/k/a Sunbeam Corporation) in some recent pleadings, but have designated the pleadings as "confidential" under the Stipulated Confidentiality Order entered in the case:

SB 248700-248708	Draft question and answer script for conference call, dated Feb. 28, 1998 [CPH 0483399-0483407]
SB 248642-248651	Draft question and answer script for conference call, dated Mar. 1, 1998 [CPH 0483341-0483350]
SB 0014697-0014705	Draft question and answer script for conference call, dated Mar. 1, 1998 [CPH 0253547-0253555]
SB 251292-251294	Mar. 25, 1998 Sunbeam press release re debenture offering [CPH 0485991-0485993]
SB 238449-238466	Oct. 9, 1997 Morgan Stanley Dean Witter analyst report re The Coleman Company Inc. [CPH 0473148-0473165]
SB 087859	Aggressive Time Line for Transaction [CPH 0324558]
SB 351945-351946	Dec. 8, 1997 Sunbeam memorandum re Perelman and Sunbeam/Coleman merger [CPH 0586586-0586587]
SB 232287-232288	Document listing Key Point to Come Out of Meeting [CPH 0466948-0466949]
SB 237823-237830	Sept. 5, 1997 engagement letter between Sunbeam and Morgan Stanley

SB 247391-247399	Laser Corporation Key Assumptions [CPH 0482090-0482098]
SB 0013021-0013041	Mar. 15, 1998 Sunbeam Roadshow Speaking Points [CPH 0251869-0251889]

In accordance with the procedures established by the Court, in the near future, it will be necessary to address whether the documents produced by your client in fact should be treated as confidential under the Stipulated Confidentiality Order. For your information, the only materials that properly are treated as confidential under the Stipulated Confidentiality Order are those materials that "the party or non-party believes, in good faith, constitute, contain, reveal or reflect proprietary or confidential trade secrets or technical, business, financial or personnel information of a current nature." *See* Stipulated Confidentiality Order ¶ 4.

Please advise me as soon as possible whether your client would object to the removal of the confidentiality designation from the documents referenced herein. For your convenience, I have enclosed copies of those documents for your review. In the event that you desire to maintain the confidentiality of any of the documents, we will notify you of the date and time of the hearing before the Court.

Very truly yours,

Michael T. Brody

Michael T. Brody

MTB:sd
Enclosure

cc: Joseph Ianno, Jr.

#1199781

JENNER&BLOCK

January 12, 2005

Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611-7603
Tel 312 222-9350
www.jenner.com

Chicago
Dallas
Washington, DC

Michael T. Brody
Tel 312 923-2711
Fax 312 840-7711
mbrody@jenner.com

VIA FEDERAL EXPRESS

Steven R. Paradise
Vinson & Elkins LLP
666 Fifth Avenue
New York, New York 10103

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co. No. 03-5045 AI (15th Jud. Cir., Palm Beach County, FL)*

Dear Steven:

In the above litigation, we recently have cited and attached the following document produced by your client Credit Suisse First Boston, in a recent pleading, but have designated the pleading as "confidential" under the Stipulated Confidentiality Order entered in the case:

CSFBC 0001550-0001561	CSFB Interoffice Memorandum re proposed sale of The Coleman Company Inc. to Sunbeam Corporation, dated February 25, 1998 [CPH 1121260-1121271]

In accordance with the procedures established by the Court, in the near future, it will be necessary to address whether the document produced by your client in fact should be treated as confidential under the Stipulated Confidentiality Order. For your information, the only materials that are confidential under the Stipulated Confidentiality Order are those materials that "the party or non-party believes, in good faith, constitute, contain, reveal or reflect proprietary or confidential trade secrets or technical, business, financial or personnel information of a current nature." *See* Stipulated Confidentiality Order, ¶ 4.

Please advise me as soon as possible whether your client would object to the removal of the confidentiality designation from the document referenced herein. For your convenience, I have enclosed a copy of the document for your review. In the event that you desire to maintain the confidentiality of the document, we will notify you of the date and time of the hearing before the Court.

Very truly yours,

Michael T. Brody

Michael T. Brody

Enclosure
cc: Joseph Ianno, Jr.

EXHIBIT
E

JENNER&BLOCK

January 12, 2005

Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611-7603
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Chicago
Dallas
Washington, DC

Michael T. Brody
Tel 312 923-2711
Fax 312 840-7711
mbrody@jenner.com

VIA FEDERAL EXPRESS

James Murray
Davis Polk & Wardwell
450 Lexington Ave.
New York, New York 10017

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
No. 03-5045 AI (15th Jud. Cir., Palm Beach County, FL)

Dear Mr. Murray:

In the above litigation, we recently have cited and attached the following document produced by your firm in a recent pleading, but have designated the pleading as "confidential" under the Stipulated Confidentiality Order entered in the case:

James Lurie Timekeeping Record for March 18, 1998

In accordance with the procedures established by the Court, in the near future, it will be necessary to address whether the document produced by your client in fact should be treated as confidential under the Stipulated Confidentiality Order. For your information, the only materials that are confidential under the Stipulated Confidentiality Order are those materials that "the party or non-party believes, in good faith, constitute, contain, reveal or reflect proprietary or confidential trade secrets or technical, business, financial or personnel information of a current nature." *See* Stipulated Confidentiality Order, ¶ 4.

Please advise me as soon as possible whether your client would object to the removal of the confidentiality designation from the document referenced herein. For your convenience, I have enclosed a copy of the document for your review. In the event that you desire to maintain the confidentiality of the document, we will notify you of the date and time of the hearing before the Court.

Very truly yours,

Michael T. Brody

Michael T. Brody

MTB:sd
Enclosure
cc: Joseph Ianno, Jr.

#1199805

EXHIBIT
F

16div-010514

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
FOUR TIMES SQUARE
NEW YORK 10036-6522
TEL: (212) 735-3000
FAX: (212) 735-2000
http://www.skadden.com

DIRECT DIAL
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DIRECT FAX
(917) 777-3702

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SINGAPORE
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TORONTO

January 26, 2005

BY FACSIMILE

Michael T. Brody, Esq.
Jenner & Block
One IBM Plaza
Chicago, IL 60611-7603

Re: Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co. – Skadden's Document Production

Dear Michael:

I write in response to your letters dated January 12, 2005 and January 19, 2005, in which you have asked us to remove the confidentiality designations relating to SASMF 10709, SASMF 10710-10711, SASMF 10807-10808, SASMF 17227-17256, SASMF 19645-19687, SASMF 19679, SASMF 17741-17748, and HK SOC 00794-00805. In the event these materials are actually used in the Court proceedings, we will not stand by the confidentiality designations. However, if these materials are not used in the Court proceedings, we would expect you to keep them confidential.

Please let me know if you have any further questions.

Very truly yours,

Christopher P. Malloy

cc: Kathryn Rothman, Esq. (by facsimile)

EXHIBIT
tabbies
G

CURTIS, MALLET-PREVOST, COLT & MOSLE LLP

FRANKFURT MUSCAT
HOUSTON PARIS
LONDON STAMFORD
MEXICO CITY WASHINGTON, D.C.
MILAN

ATTORNEYS AND COUNSELORS AT LAW
101 PARK AVENUE
NEW YORK, NEW YORK 10178-0061

TELEPHONE 212-696-6000
FACSIMILE 212-697-1559
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E-MAIL INFO@CM-P.COM
INTERNET WWW.CM-P.COM

WRITER'S DIRECT
TELEPHONE 212-696-6197
E-MAIL SFISCHER@CM-P.COM

January 14, 2005

VIA FACSIMILE

Michael T. Brody
Jenner & Block LLP
One IBM Plaza
Chicago, Illinois 60611-7603

Re: ***Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.***
Case No. 502003CA005045

Dear Michael:

I am writing regarding your January 12, 2005 letter to me concerning the confidentiality of certain documents. Specifically, you requested that Arthur Andersen LLP "remove" the designation of the "Confidential" from documents labeled Exhibit CPH 21 and Exhibit CPH 22, for use in the litigation captioned above.

Such documents are confidential and we are not willing to "remove" such designation. We will, however, waive the confidentiality of those documents for use in the litigation captioned above. This waiver is limited to that litigation, and is not to be construed as a waiver of the confidentiality of any document produced in the case of *Morgan Stanley & Co., Inc. et al. v. Arthur Andersen LLP et al.*, No. 50 2003 CA 002257 XXXXMB (the "Morgan Stanley/Andersen Case"). By this waiver, Arthur Andersen LLP is granting no waiver of the confidentiality of, and expressly reserves all rights with respect to the confidentiality of, any document produced in connection with the Morgan Stanley/Andersen Case.

Sincerely,

Scott D. Fischer

cc: Mike Moscato, Esq.
Joseph Ianno, Esq.

EXHIBIT
H

Greenberg Traurig

MARK F BIDEAU, ESQ
WEST PALM BEACH OFFICE
DIRECT DIAL: (561) 650-7918
Email: bideaum@gtlaw.com

January 20, 2005

VIA FAX

Michael T. Brody, Esq.
Jenner & Block
One IBM Plaza
Chicago, IL 60611-7603

Re: Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.

Dear Mike:

I have your letter of January 19, 2005 and in accordance with the voice mail message I left for you earlier today, please be advised that Sunbeam will not be maintaining confidentiality as to any of the documents listed on your January 19th letter.

If you have any questions, please call me.

Very truly yours,

Mark F. Bideau

Mark F. Bideau

MFB/dl

cc: Steven Isko, Esq. (via fax)
Christopher Malloy, Esq. (via fax)

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ALBANY
AMSTERDAM
ATLANTA
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DENVER
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PHOENIX
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TALLAHASSEE
TYSONS CORNER
WASHINGTON, D.C.
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WILMINGTON

EXHIBIT
I

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Hilary L. Preston
Direct Dial (212) 237-0066
Direct Fax (917) 849-5387
hpreston@velaw.com

January 20, 2005

Via facsimile

Kathryn R. Rothman, Esq.
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005

Re: Subpoena dated December 12, 2003 (the "Subpoena") served on Credit Suisse First Boston LLC ("CSFB") in Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc. (Index No. 121095/03)

Dear Ms. Rothman,

In response to your representations that the information requested to be redacted by CSFB's waiver letter of January 19, 2005 has been previously disclosed publicly, CSFB revises its previous limited waiver and consents to a full waiver of confidentiality for the document Bates-labeled CSFBC0001550-CSFBC0001561, as requested by your letter of December 29, 2004.

Please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Hilary L. Preston

cc: Michael Brody, Esq. (by facsimile)

EXHIBIT
J

Bowler, Denise Kirkowski

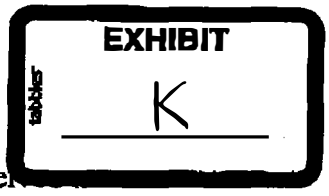
From: James Murray [jmurray@dpw.com]
Sent: Monday, January 24, 2005 7:15 PM
To: Bowler, Denise Kirkowski
Subject: Re: CPH v. Morgan Stanley: follow up on confidential document

Denise: This isn't quite right. I said that the removal of the confidentiality designation raised a question regarding the privilege non-waiver issue relating to this time entry, and that as any privilege belongs to our client, and not us, our client would need to be involved. Accordingly, I do think it makes sense for you to follow up with Morgan Stanley. Thanks, James Murray

At 11:25 AM 1/24/2005 -0600, you wrote:

> Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., <?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />*
>
> *No. 03-5045 AI (15th Jud. Cir., <?xml:namespace prefix = st1 ns = "urn:schemas-microsoft-com:office:smarttags" />Palm Beach County, FL)*
>
> Dear James:
>
> I write to follow up on our conversation last Thursday and to see whether your firm objects to the removal of the confidentiality designation for the document "James Lurie Timekeeping Record for March 18, 1998." I believe you indicated that the objection belongs to Morgan Stanley; please advise us if that is your position and we will follow up with Morgan Stanley.
>
> Please let us know as soon as possible; we have a hearing before the court on Wednesday and would like to have this issue resolved before then.
>
> Sincerely, Denise Bowler

Denise Kirkowski Bowler
Jenner & Block LLP
1 IBM Plaza
Chicago, IL 60611
(312) 840-8671
(312) 840-8771 (fax)
dbowler@jenner.com



This message may contain confidential or privileged information. If you rece

error, please notify the sender by reply e-mail and delete the message without copying or disclosing it.

JENNER&BLOCK

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www.jenner.com

Chicago
Dallas
Washington, DC

Michael T. Brody
Tel 312 923-2711
Fax 312 840-7711
mbrody@jenner.com

January 13, 2005

By Telecopy

Joseph Ianno, Jr.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., No. 03-5045 AI (15th Jud. Cir., Palm Beach County, FL)*

Dear Joe:

As you know, we filed our opposition to Morgan Stanley's summary judgment motion, supporting twelve-volume appendix, our response to Morgan Stanley's proposed findings of fact and conclusions of law, and the supporting eight-volume appendix under seal because those filings refer to and attach documents that have been designated as confidential by various parties and third parties. Please advise us as soon as possible whether Morgan Stanley intends to maintain the confidentiality designations with respect to any of the documents cited in these pleadings, and if so, which documents Morgan Stanley claims are confidential.

Very truly yours,

Michael T. Brody

Michael T. Brody

cc: Thomas A. Clare, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

#1199754

EXHIBIT
L

Bowler, Denise Kirkowski

From: Bowler, Denise Kirkowski
Sent: Thursday, January 20, 2005 11:39 AM
To: 'jianno@carltonfields.com'
Subject: CPH v. MS & Co.: follow up on confidential documents

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., No. 03-5045 AI (15th Jud. Cir., Palm Beach County, FL)*

Dear Joe:

I write to follow up on Michael Brody's January 13, 2005 letter to you regarding the use of documents designated as confidential in our opposition to Morgan Stanley's summary judgment motion, our response to Morgan Stanley's proposed findings of fact and conclusions of law, and the supporting appendices. Please advise us as soon as possible whether Morgan Stanley intends to maintain the confidentiality designations with respect to any of the documents cited in these pleadings, and if so, which documents Morgan Stanley claims are confidential.

Sincerely, Denise Bowler

Denise Kirkowski Bowler
Jenner & Block LLP
1 IBM Plaza
Chicago, IL 60611
(312) 840-8671
(312) 840-8771 (fax)
dbowler@jenner.com

This message may contain confidential or privileged information. If you received this in error, please notify the sender by reply e-mail and delete the message without copying or disclosing it.

EXHIBIT
M

JENNER&BLOCK

January 26, 2005

Jenner & Block LLP
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Tel 312-222-9350
www.jenner.com

Chicago
Dallas
Washington, DC

Michael T. Brody
Tel 312 923-2711
Fax 312 840-7711
mbrody@jenner.com

By Telecopy

Joseph Ianno, Jr.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Joe:

I write to follow up on my January 13, 2005 letter and my colleague Denise Bowler's January 20, 2005 email regarding the use of documents designated as confidential in our opposition to Morgan Stanley's summary judgment motion, our response to Morgan Stanley's proposed findings of fact and conclusions of law, and the supporting appendices. In the letter and email, we asked you to advise us as soon as possible whether Morgan Stanley intends to maintain the confidentiality designations with respect to any of the documents cited in these pleadings, and if so, which documents Morgan Stanley claims are confidential. We have not received a response from you.

Also, we inquire specifically about the document, "James Lurie Timekeeping Record for March 18, 1998," which was produced by Davis Polk & Wardwell in this litigation. Davis Polk & Wardwell has advised us to follow up with your client about the removal of the confidentiality designation for this document. Please advise us as soon as possible whether Morgan Stanley intends to maintain the confidentiality designations with respect to this document or any of the documents cited in the above-referenced pleadings.

Very truly yours,

Michael T. Brody

Michael T. Brody

cc: Thomas A. Clare, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
James Murray, Esq. (by telecopy)
Jerold S. Solovy, Esq.

#1199754v2

EXHIBIT
N

16div-010523

cc: Samuels Blasi

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

COLEMAN (PARENT) HOLDINGS INC., Plaintiff; v. MORGAN STANLEY & CO., INC., Defendant.	Case No.: 2003 CA 005045 AI Judge Elizabeth I. Maass

STIPULATED CONFIDENTIALITY ORDER

The parties hereto hereby stipulate and agree to the following Confidentiality Order:

1. Scope of Order. This Order shall apply to all non-public and Confidential (as hereinafter defined) materials produced in this litigation and all testimony given in any deposition by any party to the litigation or by any person or entity that is not a party hereto (a "non-party"), to all non-public and Confidential information disclosed by any party hereto during the course of the captioned litigation and to all non-public information disclosed to any party hereto by any non-party in response to the service of a subpoena or notice of deposition on a non-party in connection with the captioned litigation ("Litigation Materials").

2. This Order shall not apply to any document, testimony or other information that (a) is already in a receiving party's possession at the time it is produced, (b) becomes generally available to the public other than as a result of disclosure in violation of this Order or in breach of any other legal obligation, or (c) becomes available to a party other than through voluntary or required production from a person or party who obtained the document, testimony or other information without any confidentiality restriction.

EXHIBIT

O

3. Litigation Materials and the information derived therefrom shall be used solely for the purpose of preparing for and conducting this litigation, and shall not be disclosed or used for any other purpose.

4. Any party or non-party may designate as "Confidential" any Litigation Materials or portions thereof which the party or non-party believes, in good faith, constitute, contain, reveal or reflect proprietary or confidential trade secrets or technical, business, financial or personnel information of a current nature. If a party or non-party produces Litigation Materials that have been produced in another litigation or to any government entity and such Litigation Materials have been designated confidential or were accompanied by a request that confidential treatment be accorded them, such Litigation Materials shall be deemed to have been designated "Confidential" for purposes of this Stipulation and Order.

5. Any documents or other tangible Litigation Materials may be designated as "Confidential" by marking every such page "Confidential" or by informing the other party in writing that such material is Confidential. Such markings will be made in a manner which does not obliterate or obscure the content of the document or other tangible Litigation Material. If Litigation Material is inspected at the choice of location of the party or non-party producing or disclosing Litigation Materials (a "producing party"), all such Litigation Material shall be presumed at such inspection to have been designated as Confidential by the producing party until such time as the producing party provides copies to the party that requested the Litigation Material. Production of Confidential Material for inspection and copying shall not constitute a waiver of confidentiality.

6. Depositions or other testimony may be designated "Confidential" by any one of the following means:

(a) stating orally on the record, with reasonable precision as to the affected testimony, on the day the testimony is given that this information is "Confidential"; or

(b) sending written notice designating, by page and line, the portions of the transcript of the deposition or other testimony to be treated as "Confidential" within 10 days after receipt of the transcripts.

7. The entire transcript of any deposition shall be treated as Confidential Material until thirty days after the conclusion of the deposition. Each page of deposition transcript designated as Confidential Material shall be stamped, as set forth in paragraph 5 above, by the court reporter or counsel.

8. In the event it becomes necessary at a deposition or hearing to show any Confidential Material to a witness, any testimony related to the Confidential Material shall be deemed to be Confidential Material, and the pages and lines of the transcript that set forth such testimony shall be stamped as set forth in paragraph 5 of this Stipulation.

9. Litigation Materials designated "Confidential" and any copies thereof, and the information contained therein, shall not be given, shown, made available or communicated in any way to anyone except:

(a) The Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida (the "Court") (including Clerks and other Court personnel). Litigation Materials designated "Confidential" and any copies thereof, and the information contained therein, that are filed with the Court or any pleadings, motions or other papers filed with the Court, shall be filed under seal in a separate sealed envelope conspicuously marked "Filed Under Seal – Subject to Confidentiality Order," or with such other markings as required by Court rules, and shall be kept under seal until further order of the

Court. Where possible, only those portions of filings with the Court that disclose matters designated "Confidential" shall be filed under seal;

(b) counsel to the parties, including co-counsel of record for the parties actually assisting in the prosecution or defense of this litigation, and the legal associates and clerical or other support staff who are employed by such counsel or attorneys and are working under the express direction of such counsel or attorneys;

(c) parties and current officers and employees of parties to the extent reasonably deemed necessary by counsel disclosing such information for the purpose of assisting in the prosecution or defense of this litigation;

(d) outside photocopying, graphic production services, litigation support services, or investigators employed by the parties or their counsel to assist in this litigation and computer personnel performing duties in relation to a computerized litigation system;

(e) any person who is a witness or deponent, and his or her counsel, during the course of a deposition of testimony in this litigation;

(f) any person who is a potential fact witness in the litigation, provided, however, that a person identified solely in this subparagraph shall not be permitted to retain copies of such Litigation Material;

(g) court reporters, stenographers, or videographers who record deposition or other testimony in the litigation;

(h) experts or consultants retained in connection with the litigation;

(i) any person who is indicated on the face of a document to have been an author, addressee or copy recipient thereof, provided, however, that a person identified

solely in this subparagraph shall not be permitted to retain copies of such Litigation Material; and

(j) any other person, upon written consent from the party or person who designated such Litigation Materials "Confidential."

10. Before any person included in paragraph 9(f) or (h) is given access to Litigation Materials designated "Confidential," and before any person included in subparagraph 9(e) is permitted to retain any copy of Litigation Materials designated Confidential, such person shall be provided with a copy of this Order and shall acknowledge in a written statement, in the form provided as Exhibit A hereto, that he or she read the Order and agrees to be bound by the terms thereof. Such executed forms shall be retained in the files of counsel for the party who gave access to Litigation Materials to the person who was provided such access. Such executed forms shall not be subject to disclosure under the Florida Rules of Civil Procedure unless a showing of good cause is made and the Court so orders.

11. The inadvertent production of privileged or arguably privileged materials shall not be determined to be either: (a) a general waiver of the attorney-client privilege, the work product doctrine or any other privilege; or (b) a specific waiver of any such privilege with respect to documents being produced or the testimony given. Notice of any claim of privilege as to any document claimed to have been produced inadvertently shall be given within a reasonable period of time after discovery of the inadvertent production, and, on request by the producing party, all inadvertently produced materials as to which a claim of privilege is properly asserted and any copies thereof shall be returned promptly.

12. Nothing in this Order shall prevent any producing party from disclosing or using its own "Confidential" Litigation Materials as it deems appropriate, and any such disclosure shall not be deemed a waiver of any party's right or obligations under this Order with

respect to any other information. If a party or non-party that designates information "Confidential" discloses or uses such "Confidential" Litigation Materials in a manner inconsistent with the claim that such information is confidential, any party may move the Court for an order removing such "Confidential" designation pursuant to paragraph 15 herein. Nothing in this Stipulation and Order shall impose any restrictions on the use or disclosure by any party of documents, materials, testimony or other information produced as Litigation Material obtained by such party independently of discovery in this litigation.

13. The parties do not waive any right to object to any discovery request, or to the admission of evidence on any ground, or seek any further protective order, or to seek relief from the Court from any provision of this Order by application on notice on any grounds.

14. If any party objects to the designation of any Litigation Materials as "Confidential," the party shall first state the objection by letter to the party that made such designations. The parties agree to confer in good faith by telephone or in person to attempt to resolve any dispute respecting the terms or operation of this Order. If the parties are unable to resolve such dispute within 5 days of such conference, any party may then move the Court to do so. Until the Court rules on such dispute, the Litigation Materials in question shall continue to be treated as "Confidential," as designated.

15. Upon motion, the Court may order the removal of the "Confidential" designation from any information so designated. In connection with any motion concerning the propriety of a "Confidential" designation, the party making the designation shall bear the burden of proof.

16. Within 60 days of the conclusion of this litigation as to all parties, all Litigation Materials designated "Confidential" and all copies or notes thereof shall be returned to counsel for the producing party who initially produced the Litigation Materials, or destroyed,

except that counsel may retain their work product and copies of court filings, transcripts, and exhibits, provided said retained documents will continue to be treated as provided in this Order, as modified by rulings of the Court. If a party chooses to destroy documents after the litigation has concluded, that party shall certify such destruction in writing to the producing party upon written request for such certification by the producing party.

17. The failure of any party to challenge the designation by another production party of Litigation Material as "Confidential" during the discovery period shall not be a waiver of that party's right to object to the designation of such material at trial.

18. This Stipulation applies to all non-parties that are served with subpoenas in connection with this litigation or who otherwise produce documents or are noticed for deposition in connection with this litigation, and all such non-parties are entitled to the protection afforded hereby upon signing a copy of this agreement and agreeing to be bound by its terms.

19. Any party may move to modify the provisions of this Order at any time or the parties may agree by written stipulation, subject to further order of the Court, to modify the provisions of the Order. Should any non-party seek access to the Confidential Material, by request, subpoena or otherwise, the party or recipient of the Confidential Material from whom such access is sought, as applicable, shall promptly notify the producing party who produced such Confidential Materials of such requested access and shall not provide such materials unless required by law or with the consent of the producing party.

20. This Order shall not apply to any Litigation Materials offered or otherwise used by any party at trial or at any hearing held in open court. Prior to the use of any Litigation Materials that have been designated Confidential at trial or any hearing to be held in open court, counsel who desires to so offer or use such Confidential Material shall take reasonable steps to afford opposing counsel and counsel for the producing party who produced such Confidential

Material a reasonable opportunity to object to the disclosure in open court of such Confidential Material, and nothing herein shall be construed a wavier of such right to object.

21. Written notice provided pursuant to this Order shall be made to counsel of record by facsimile.

22. The provisions of this Order shall survive the final termination of the case for any retained Confidential Litigation Material thereof.

COLEMAN (PARENT) HOLDINGS, INC.

By _____
John Scarola
SEARCY, DENNEY, SCAROLA, BARNHART & SHIPLEY P.A.
2139 Palm Beach Lake Boulevard
West Palm Beach, FL 33409

Jerold S. Solovy
Ronald L. Marmer
Robert T. Markowski
Deirdre E. Connell
JENNER & BLOCK, LLC
One IBM Plaza, Suite 4400
Chicago, IL 60611

MORGAN STANLEY & CO., INC.

By _____
Joseph Ianno, Jr.
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci, P.C.
Thomas A. Clare
Brett McGurk
KIRKLAND & ELLIS
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005

SO ORDERED;

This _____ day of _____, 2003

SIGNED AND DATED
JUL 31 2003
JUDGE ELIZABETH T. MAASS

_____
CIRCUIT JUDGE

COPIES PROVIDED TO COUNSEL OF RECORD ON THE ATTACHED LIST

COUNSEL LIST

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COLEMAN (PARENT) HOLDINGS INC.

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

COLEMAN (PARENT) HOLDINGS INC., Plaintiff, v. MORGAN STANLEY & CO., INC., Defendant.	Case No.: 2003 CA 005045 AI Judge Elizabeth I. Maass

Exhibit A

DECLARATION OF ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I, _____, declare under penalty of perjury that:

1. My address is _____.

2. My present employer is _____.

3. My present occupation or job description is _____.

4. I hereby certify and agree that I have read and understand the terms of the Confidentiality Order in the above-captioned actions. I further certify that I will not use "Confidential" information for any purpose other than this litigation among the parties, and will not disclose or cause "Confidential" information to be disclosed to anyone not expressly permitted by the Order to receive "Confidential" information. I agree to be bound by the terms and conditions of the Order.

5. I understand that I am to retain in confidence from all individuals not expressly permitted to receive information designated as "Confidential," whether at home or at

work, all copies of any materials I receive which have been designated as "Confidential," and that I will carefully maintain such materials in a container, drawer, room or other safe place in a manner consistent with the Order. I acknowledge that the return or destruction of "Confidential" material shall not relieve me from any other continuing obligations imposed upon me by the Order.

6. I stipulate to the jurisdiction of this Court.

Date: _____

_____
(Signature)

Document No. 945236

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

655 Fifteenth Street, N.W.
Washington, D.C. 20005

202 879-5000

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Thomas A. Clare
To Call Writer Directly:
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tclare@kirkland.com

January 31, 2005

BY FACSIMILE

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: ***Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.***

Dear Mike:

I am enclosing a recent order from the Texas court granting the writ of attachment for Donald Uzzi.

Sincerely,

Thomas A. Clare

Thomas A. Clare

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark C. Hansen, Esq. (by facsimile)

Enclosure

CAUSE NO. 05-00275-J

COPY

COLEMAN (PARENT) HOLDINGS INC.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	THE 191ST JUDICIAL DISTRICT
	§	
MORGAN STANLEY & CO. INCORPORATED,	§	
	§	
Defendant.	§	DALLAS COUNTY, TEXAS
	§	

ORDER TO SHOW CAUSE AND FOR ATTACHMENT OF THIRD-PARTY WITNESS DONALD R. UZZI

On January 31, 2005, Morgan Stanley & Co., Incorporated's Motion for Attachment along with supporting evidence were presented to this Court. After having considered the Motion and the accompanying evidence, the Court makes the following findings:

1. Donald R. Uzzi was duly summoned by a properly served Texas subpoena (the "Subpoena"), which was (a) issued pursuant to a valid commission of the Circuit Court of the Fifteenth Judicial Circuit in Palm Beach County, Florida and (b) authorized to be served pursuant to substituted means permitted by this Court.
2. Service of the Subpoena was executed on January 12, 2005, and all lawful fees were tendered to Donald R. Uzzi, through substituted service.
3. Donald R. Uzzi was commanded to attend an oral deposition and to produce and permit inspection and copying of documents or tangible things at Haynes and Boone, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202 on January 19, 2005, at 9:30 a.m.
4. Donald R. Uzzi failed to appear at the deposition, as commanded by the Subpoena, and is thus in contempt of this Court.

IT IS THEREFORE ORDERED that a writ of attachment be issued, commanding any sheriff, constable, or other qualified person within the State of Texas, to arrest Donald R. Uzzi, if found within such person's jurisdiction, and to bring him in person before this Court on **February 3, 2005 at 1:30 p.m.** to show cause why he should not be held in contempt of this Court for failing to comply with the Subpoena.

IT IS FURTHER ORDERED that Donald R. Uzzi may be released, after being served with the writ of attachment and arrested, by posting a bail bond in the amount of $500.00.

IT IS SO ORDERED.

Dated: January 31, 2005. @ 12:10PM

PRESIDING JUDGE

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER AND NOTICE OF HEARING

This cause came before the Court February 1, 2005 on the parties' Joint ore tenus Motion to Continue, with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that the parties' Joint ore tenus Motion to Continue is Granted. Hearing on CPH's Motion to Deem Certain Documents Admissible and for Sanctions Due to Morgan Stanley's Disregard of Court Order and on CPH's Motion for Adverse Inference Instruction Due to Morgan Stanley's Destruction of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order set February 1, 2005 is canceled and is hereby reset for

February 2, 2005, at 9:30 a.m.

at the West Palm Beach Courthouse, Room 11A, 205 N Dixie Hwy, WPB, FL. It is further

ORDERED AND ADJUDGED that hearing on Motions in Limine and deposition designations is hereby set for

February 2, 2005, at 9:30 a.m. and February 3, 2005, at 1:30 p.m.

at the West Palm Beach Courthouse, Room 11A, 205 N Dixie Hwy, WPB, FL.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 17 day of February, 2005.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
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West Palm Beach, FL 33401

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Rebecca Beynon, Esq.
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1615 M Street, NW, Suite 400
Washington, DC 20036

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-4380 within two (2) working days of your receipt of this [describe notice]; if you are hearing or voice impaired, call 1-800-955-8771.

SPANISH

Si Ud. es una persona incapacitada que necesita de un servicio especial para participar en este proceso, Ud. tiene derecho a que le provean cierta ayuda sin costo alguno. Por favor pongase en contacto con el Coordinador de la Oficina Administrativa de la Corte ADA, situada en el 205 North Dixie Highway, Oficina 5.2500, West Palm Beach, Florida, 33401, teléfono (561) 355-4380, dentro de los dos (2) próximos días hábiles después de recibir esta [describa la notificación]; si tiene incapacidad de oir ó hablar llame al 1-800-955-8771.

CREOLE

Si ou sé yon moun ki Infim, ki bézwen ninpôt akomodasyon pou ka patisipé nan pwosè sa-a, ou gen dwa, san'l pa kouté'w anyin, pou yo ba'w kèk sèvis. Tanpri kontakté koôdinatè ADA ya nan Biro Administratif Tribinal nan cité Palm Beach la, ki nan 205 North Dixie Highway, Cham 5.2500, West Palm Beach, Florida 33401, niméro téléfonn-nan sé (561) 355-4380, rélé dé (2) jou dé lè ou résévwa [notis sa-a]; si ou bèbè ou byen soud rélé 1-800-955-8771.

FRENCH

Si vous êtes infirme, et en besoin de n'importe accommodation pour pouvoir participer á ces procédures, vous pouvez gratuitement recevoir, certains services. S'il-vous-plait contactez le coordinateur du Bureau Administratif du Tribunal de Palm Beach, située à 205 North Dixie Highway, Chambre 5.2500, West Palm Beach, Florida 33401, numéro de téléphone (561) 355-4380 durant deux (2) jours suivant la réception de [cette note]; si vous êtes muets ou sourds, appelez 1-800-955-8771.

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON MORGAN STANLEY & CO., INCORPORATED'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE came before the Court January 21, 2005 on Morgan Stanley & Co., Incorporated's Motion for Summary Judgment, with both parties well represented by counsel.

This case arises out of an acquisition transaction that was negotiated and consummated in late 1997 and early 1998, in which Coleman (Parent) Holdings, Inc. ("CPH"), sold its 82% interest in the Coleman Company, Inc. ("Coleman"), to Sunbeam Corporation ("Sunbeam"). Morgan Stanley & Co., Inc. ("MS & Co."), served as financial advisor to Sunbeam for parts of the acquisition transaction and served as the lead underwriter for a $750,000,000 debenture offering that Sunbeam used to finance the acquisition.

CPH's Complaint alleges claims against MS & Co. arising from this transaction for fraudulent misrepresentation, negligent misrepresentation, aiding and abetting fraud, and conspiracy, and seeks damages of at least $485 million.

By the time of the hearing, MS & Co. had distilled the material facts it believes are not disputed to three:

1. Ronald Perelman[1] controls CPH and is a sophisticated investor who was aided by sophisticated advisors.
2. Perelman would not have proceeded with the transaction had he known of the content of the comfort letters; the comfort letters, in turn, merely restated information contained in the interim financial statements.
3. CPH and its advisors closed the transaction without looking at Sunbeam's interim financial statements, which they had a contractual right to inspect.

From these facts MS & Co. argues that CPH is a sophisticated investor; that it had a right to review the interim financials, which it failed to exercise; that had it exercised that right it would have discovered the adverse performance reflected in the comfort letters; if it had, it would not have closed the transaction; and that its reliance on misstatements or omissions by MS & Co. cannot, as a matter of law, be reasonable "if it failed to avail itself of access to the very information that it accuses the defendant of misrepresenting or omitting." (MS & Co.'s Reply Memorandum, p.17).

CPH all but concedes it is a sophisticated investor aided by sophisticated advisors. It contends, though, that under New York law a claim for fraudulent misrepresentation by a sophisticated investor is precluded only if it failed to perform reasonable due diligence which, had it been completed, would have disclosed the discrepancy. It contends, further, that the Court should not grant summary judgment on isolated facts that could be presented to a jury out of context.

It is undisputed from the record that Perelman is a sophisticated investor under New York law, and that he controlled CPH. Consequently, CPH was required to use reasonable due diligence in investigating the transaction and may not recover for fraudulent misrepresentations the falsity of which would have been apparent had the proper investigation been completed. However, the Court has previously determined that New

---

[1]MS & Co. attempts to substitute Perelman for CPH throughout the Motion. While Perlman may control CPH, he is not CPH.

York law "engraft(s) a requirement that a party perform reasonable due diligence as to available information in order to prove that its reliance on a misrepresentation was reasonable." August 11, 2004 Order on Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc.'s Motion for Application of New York Law, p. 12. CPH was not required to use every available means to test Sunbeam or MS & Co.'s assertions. Rather, it was required to be reasonably diligent in investigating the transaction; obviously, that diligence was confined to the means available, and is a fact-sensitive inquiry. The Court cannot find, as a matter of law, that a failure to review the interim financial statements shows a lack of due diligence. Instead, whether CPH was reasonably diligent is a jury issue.

Under New York law, to recover for a negligent misrepresentation, CPH must show that it occupied a "special relationship" with MS & Co. MS & Co. argues that the record is devoid of evidence that such a relationship existed. CPH argues that it and its affiliated entities had enjoyed a long-term relationship with MS & Co.; that they had done over two dozen deals together; and that, indeed, MS & Co. exploited that relationship to restart negotiations after the disastrous December 1997 meeting between Perelman and Dunlap and in promoting the transaction to CPH. The Court agrees that there are disputed issues of material fact precluding summary judgment on the nature of CPH and MS & Co.'s relationship.

Based on the foregoing, it is

ORDERED AND ADJUDGED that Morgan Stanley & Co., Incorporated's Motion for Summary Judgment is Granted, in part, and Denied, in part. CPH is determined to be a sophisticated investor under New York law. In all other respects, the Motion is Denied.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 17 day of January, 2005.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
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Rebecca Beynon, Esq.
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Washington, DC 20036

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.
_____/

MEDIATION REPORT

Pursuant to Order of Court, mediation was held in the above-styled action on January 27, 2005. The parties reached an impasse at mediation.

JONATHAN B. MARKS
SIGNED IN HIS ABSENCE
TO AVOID DELAY

JN, Case Manager for Jonathan Marks

JONATHAN MARKS
Mediator

cc:

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#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

Case No. CA 03-5045 AI

ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO REMOVE CONFIDENTIALITY DESIGNATIONS FROM SUMMARY JUDGMENT-RELATED PLEADINGS FILED BY CPH

THIS CAUSE having come to be considered upon Coleman (Parent) Holdings Inc.'s Motion to Remove Confidentiality Designations from Summary Judgment-Related Pleadings filed by CPH, and the Court having reviewed the file and being fully advised in the premises, it is hereby,

ORDERED and ADJUDGED: Pl's MOTION IS GRANTED WITHOUT OBJECTION. Plaintiff shall file the unredacted copies referred to in the Motion.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this 22 day of Feb, 2005.

ELIZABETH T. MAASS
CIRCUIT COURT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

COUNSEL LIST

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16div-010548

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON MORGAN STANLEY'S MOTION IN LIMINE NO. 9 TO EXCLUDE IRRELEVANT AND PREJUDICIAL REFERENCES TO THE PRIOR MORGAN STANLEY SENIOR FUNDING INC. LITIGATION

THIS CAUSE came before the Court February 2, 2005 on Morgan Stanley's Motion in Limine No. 9 to Exclude Irrelevant and Prejudicial References to the Prior Morgan Stanley Senior Funding, Inc., Litigation, with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Morgan Stanley's Motion in Limine No. 9 to Exclude Irrelevant and Prejudicial References to the Prior Morgan Stanley Senior Funding, Inc., Litigation is Granted. The parties and their counsel shall not refer to or attempt to introduce into evidence, or otherwise place before the jury, the prior Morgan Stanley Senior Funding, Inc., litigation without first proffering the good faith basis to believe the matter is relevant and otherwise admissible outside the jury's presence.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 2nd day of February, 2005.

ELIZABETH T. MAASS
Circuit Court Judge

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Rebecca Beynon, Esq.
Sumner Square
1615 M Street, NW, Suite 400
Washington, DC 20036

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER AND NOTICE OF HEARING

This cause having come before the Court, it is

ORDERED AND ADJUDGED that hearing on CPH's ore tenus Motion to Participate in Search of Additional E-Mail Back up Tapes or Appoint Third Party to Conduct Search and Plaintiff's Motion in Limine (No. 14) is hereby set for

February 4, 2005, at 11:30 a.m.

at the West Palm Beach Courthouse, Room 11A, 205 N Dixie Hwy, WPB, FL. Any party, participant, or witness may appear by speaker telephone. Defendant's counsel shall be responsible for arranging a conference call, if needed. Any witness may testify by speaker telephone, on stipulation of counsel.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 8 day of February, 2005.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
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Jerold S. Solovy, Esq.
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Rebecca Beynon, Esq.
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1615 M Street, NW, Suite 400
Washington, DC 20036

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-4380 within two (2) working days of your receipt of this [describe notice]; if you are hearing or voice impaired, call 1-800-955-8771.

SPANISH

Si Ud. es una persona incapacitada que necesita de un servicio especial para participar en este proceso, Ud. tiene derecho a que le provean cierta ayuda sin costo alguno. Por favor pongase en contacto con el Coordinador de la Oficina Administrativa de la Corte ADA, situada en el 205 North Dixie Highway, Oficina 5.2500, West Palm Beach, Florida, 33401, teléfono (561) 355-4380, dentro de los dos (2) próximos días hábiles después de recibir esta [describa la notificación]; si tiene incapacidad de oir ó hablar llame al 1-800-955-8771.

CREOLE

Si ou sé yon moun ki Infim, ki bézwen ninpôt akomodasyon pou ka patisipé nan pwosè sa-a, ou gen dwa, san'l pa kouté'w anyin, pou yo ba'w kèk sèvis. Tanpri kontakté koôdinatè ADA ya nan Biro Administratif Tribinal nan cité Palm Beach la, ki nan 205 North Dixie Highway, Cham 5.2500, West Palm Beach, Florida 33401, niméro téléfonn-nan sé (561) 355-4380, rélé dé (2) jou dé lè ou résévwa [notis sa-a]; si ou bèbè ou byen soud rélé 1-800-955-8771.

FRENCH

Si vous êtes infirme, et en besoin de n'importe accommodation pour pouvoir participer á ces procédures, vous pouvez gratuitement recevoir, certains services. S'il-vous-plait contactez le coordinateur du Bureau Administratif du Tribunal de Palm Beach, située à 205 North Dixie Highway, Chambre 5.2500, West Palm Beach, Florida 33401, numéro de téléphone (561) 355-4380 durant deux (2) jours suivant la réception de [cette note]; si vous êtes muets ou sourds, appelez 1-800-955-8771.

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO DEEM CERTAIN DOCUMENTS ADMISSIBLE AND FOR SANCTIONS DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER

THIS CAUSE came before the Court February 2, 2005 on Coleman (Parent) Holdings, Inc.'s Motion to Deem Certain Documents Admissible and for Sanctions Due to Morgan Stanley's Disregard of Court Order, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that the Motion is Granted, in part. By 12 noon February 7, 2005, MS & Co. shall serve its sworn statement (i) as to documents designated as CPH 9, CPH 75, CPH 130, CPH 170, CPH 182, and CPH 217, averring to *all* information conveyed by or inferrable from what has been referred to as MS & Co.'s word processing stamp or computer footer and any other markings or identifiers associated with the documents, and the specific conveyed or inferrable information for each document; the averrment shall specifically state the methodology by which such information may be obtained or inferred; and (ii) as to documents CPH 264, CPH 265, and CPH 170, averring the authenticity, source, creation, use, maintenance, and business purpose of the document, to the best of MS & Co.'s corporate knowledge. MS & Co. shall use its best faith efforts to investigate the subject matter of the averments required by this Order. CPH shall have two business days after receipt of the sworn statement(s) to elect to depose a Rule 1.310 (b) (6) representative of MS & Co. concerning the information ordered to be included in the sworn

statement(s) by this Order, in which event MS & Co. shall produce the deponent within two business days for deposition in Palm Beach County, Florida. It is further

ORDERED AND ADJUDGED that CPH is entitled to an award of fees for preparing for and taking Mr. Doyle's prior deposition; for preparing and arguing the Motion to Deem Certain Documents Admissible and for Sanctions Due to Morgan Stanley's Disregard of Court Order; and for any related fees and costs. The amount thereof shall be determined at a later hearing. The Court reserves jurisdiction to award other sanctions.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 3rd day of February, 2005.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
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Washington, DC 20036

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON PLAINTIFF'S MOTION IN LIMINE (NO. 5) TO BAR EVIDENCE AND ARGUMENT CONCERNING THE HEALTH OF A MORGAN STANLEY EXECUTIVE

THIS CAUSE came before the Court February 2, 2005 on Plaintiff's Motion in Limine (No. 5) to Bar Evidence and Argument Concerning the Health of a Morgan Stanley Executive, with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Plaintiff's Motion in Limine (No. 5) to Bar Evidence and Argument Concerning the Health of a Morgan Stanley Executive is Granted. The parties and their counsel shall not refer to or attempt to introduce into evidence, or otherwise place before the jury, Ruth Porat's health without first proffering the good faith basis to believe the matter is relevant and otherwise admissible outside the jury's presence.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 3 day of February, 2005.

_____
ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
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Washington, DC 20036

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON PLAINTIFF'S MOTION IN LIMINE (NO. 7) TO BAR EVIDENCE AND ARGUMENT CONCERNING PLAINTIFF'S SETTLEMENT WITH ARTHUR ANDERSEN

THIS CAUSE came before the Court February 2, 2005 on Plaintiff's Motion in Limine (No. 7) to Bar Evidence and Argument Concerning Plaintiff's Settlement with Arthur Andersen, with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that the Motion is Granted, in part. No attorney, party, or witness shall testify concerning, make reference to, or otherwise place before the jury the amount of the settlement of Plaintiff's claim against Arther Anderson without first proffering the good faith basis to believe the matter is relevant and otherwise admissible outside the jury's presence. It shall be each counsel's obligation to inform his or her witnesses of the contents of this Order.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 3rd day of February, 2005.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON PLAINTIFF'S MOTION IN LIMINE (NO. 8) TO BAR EVIDENCE AND ARGUMENT CONCERNING THE VALUE OF MAFCO'S SETTLEMENT WITH SUNBEAM CORPORATION

THIS CAUSE came before the Court February 2, 2005 on Plaintiff's Motion in Limine (No. 8) to Bar Evidence and Argument Concerning the Value of MAFCO's Settlement with Arthur Andersen, with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that the Motion is Granted, in part. No attorney, party, or witness shall testify concerning, make reference to, or otherwise place before the jury the amount of the settlement of MAFCO's claim against Sunbeam Corporation without first proffering the good faith basis to believe the matter is relevant and otherwise admissible outside the jury's presence. It shall be each counsel's obligation to inform his or her witnesses of the contents of this Order.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 3 day of February, 2005.

ELIZABETH T. MAASS
Circuit Court Judge

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON PLAINTIFF'S MOTION IN LIMINE (NO. 18) TO BAR EVIDENCE AND ARGUMENT CONCERNING PLAINTIFF'S COUNSEL'S RETENTION OF PROFESSOR MARK GRINBLATT AS AN EXPERT IN PRIOR UNRELATED CASES

THIS CAUSE came before the Court February 3, 2005 on Plaintiff's Motion in Limine (No. 18) to Bar Evidence and Argument Concerning Plaintiff's Counsel's Retention of Professor Mark Grinblatt as an Expert in Prior Unrelated Cases, with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Plaintiff's Motion in Limine (No. 18) to Bar Evidence and Argument Concerning Plaintiff's Counsel's Retention of Professor Mark Grinblatt as an Expert in Prior Unrelated Cases is Granted, without prejudice to MS & Co.'s right on redirect, if otherwise appropriate, to question the witness concerning whether other clients have paid him fees for similar work equal to or in excess of the fees charged here. "Granted", for purpose of the Motion in Limine addressed in this Order, shall mean that the parties and their counsel shall not refer to or attempt to introduce into evidence, or otherwise place before the jury, the matter referred to without first proffering the good faith basis to believe the matter is relevant and otherwise admissible outside the jury's presence.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 3 day of February, 2005.

ELIZABETH T. MAASS
Circuit Court Judge

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON MORGAN STANLEY'S MOTION IN LIMINE NO. 3 TO EXCLUDE IRRELEVANT AND PREJUDICIAL REFERENCES TO CORPORATE CORRUPTION AND ACCOUNTING SCANDALS

THIS CAUSE came before the Court February 2, 2005 on Morgan Stanley's Motion in Limine No. 3 to Exclude Irrelevant and Prejudicial References to Corporate Corruption and Accounting Scandals, with all counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that the Motion is Granted, except that (i) any counsel may question an expert retained to opine on the due diligence required of CPH whether events that have transpired in the corporate world since April of 1998 have affected his or her opinion of the level of diligence which is due; however, neither the question nor the answer shall refer to any specifically identified or identifiable third-party; each counsel shall have the responsibility of notifying his or her retained experts of the contents of this ruling; and (ii) if a witness testifies that no business, entity, or other third-party would have completed the transaction or loaned money knowing or suspecting a fraud, that witness may be cross examined about his or her knowledge concerning whether other businesses, entities, or third parties have done so. "Granted", for purposes of the Motion in Limine addressed in this Order shall mean that the parties and their counsel shall not refer to or attempt to

introduce into evidence, or otherwise place before the jury, the matter referred to without first proffering the good faith basis to believe the matter is relevant and otherwise admissible outside the jury's presence.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 3rd day of February, 2005.

ELIZABETH T. MAASS
Circuit Court Judge

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER SPECIALLY SETTING HEARING

THIS CAUSE having come before the Court, it is hereby

ORDERED AND ADJUDGED that an evidentiary hearing on Coleman (Parent) Holdings Inc.'s Motion for Adverse Inference Instruction Due to Morgan Stanley's Destruction of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order is specially set before the Honorable Elizabeth T. Maass on February 14, 2005, at 9:30 a.m., in Courtroom 11A, 205 N. Dixie Hwy, WPB, FL 33401. By 12 noon February 8, 2005, MS & Co. shall provide CPH with a list of the name, address, and business title of each person it intends to present as a witness at hearing on the Motion, together with a summary of his or her expected testimony. Those individuals shall appear in Palm Beach County for deposition on either February 9, February 10, or February 11, 2005, as noticed by CPH. By 12 noon February 8, 2005, MS & Co. shall produce to CPH (i) all documents to be referred to or relied on by any of the witnesses in his or her testimony; and (ii) all documents within MS & Co.'s care, custody, or control addressing or related to the additional e-mail back up tapes, including matters relating to the time or manner in which they were discovered; by whom they were discovered; who else learned of their discovery and when; and the manner and timetable by which they were to be restored and made searchable, including any correspondence to or from outside or prospective outside vendors. "Documents" as used herein shall refer to the standard definition used by

CPH in its requests for production of documents to MS & Co. It is further

ORDERED AND ADJUDGED that the attorneys/parties must submit to the Court two (2) days before the hearing:

1. copies of all relevant pleadings;

2. a copy of any memorandum of law; and

3. copies of all case law authority.

This hearing shall not be canceled unless the issues of this motion have been settled, and an order entered, or the motion withdrawn.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 3rd day of February, 2005.

ELIZABETH T. MAASS
Circuit Court Judge

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If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-4380 within two (2) working days of your receipt of this [describe notice]; if you are hearing or voice impaired, call 1-800-955-8771.

SPANISH

Si Ud. es una persona incapacitada que necesita de un servicio especial para participar en este proceso, Ud. tiene derecho a que le provean cierta ayuda sin costo alguno. Por favor pongase en contacto con el Coordinador de la Oficina Administrativa de la Corte ADA, situada en el 205 North Dixie Highway, Oficina 5.2500, West Palm Beach, Florida, 33401, teléfono (561) 355-4380, dentro de los dos (2) próximos días hábiles después de recibir esta [describa la notificación]; si tiene incapacidad de oir ó hablar llame al 1-800-955-8771.

CREOLE

Si ou sé yon moun ki Infim, ki bézwen ninpôt akomodasyon pou ka patisipé nan pwosè sa-a, ou gen dwa, san'l pa kouté'w anyin, pou yo ba'w kèk sèvis. Tanpri kontakté koôdinatè ADA ya nan Biro Administratif Tribinal nan cité Palm Beach la, ki nan 205 North Dixie Highway, Cham 5.2500, West Palm Beach, Florida 33401, niméro téléfonn-nan sé (561) 355-4380, rélé dé (2) jou dé lè ou résévwa [notis sa-a]; si ou bèbè ou byen soud rélé 1-800-955-8771.

FRENCH

Si vous êtes infirme, et en besoin de n'importe accommodation pour pouvoir participer á ces procédures, vous pouvez gratuitement recevoir, certains services. S'il-vous-plait contactez le coordinateur du Bureau Administratif du Tribunal de Palm Beach, située à 205 North Dixie Highway, Chambre 5.2500, West Palm Beach, Florida 33401, numéro de téléphone (561) 355-4380 durant deux (2) jours suivant la réception de [cette note]; si vous êtes muets ou sourds, appelez 1-800-955-8771.

#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiffs,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

CASE NO: 2003 CA 005045 AI

ORDER DIRECTING THE UNSEALING OF DOCUMENTS

In response to motions filed by both plaintiff and defendant and upon stipulation of the parties, the Clerk of Court is directed to unseal the following specified pleadings:

PLEADING	DATE
Morgan Stanley & Co . Incorporated's Memorandum In Support Of Its Motion For Summary Judgment	12/10/04
Morgan Stanley & Co . Incorporated's Proposed Findings Of Fact And Conclusions Of Law In Support Of Its Motion For Summary Judgment	12/10/04
Morgan Stanley & Co . Incorporated's Appendix, Volumes 1 To 4, To Its Proposed Findings Of Fact And Conclusions Of Law In Support Of Its Motion For Summary Judgment	12/10/04
Coleman (Parent) Holdings Inc.'s Response In Opposition To Morgan Stanley's Motion For Summary Judgment	12/23/04
Coleman (Parent) Holdings Inc.'s Appendix To Coleman (Parent) Holdings Inc.'s Summary Judgment Filing Volumes 1-12	1/3/05
Morgan Stanley & Co . Incorporated's Reply Memorandum In Support Of Its Motion For Summary Judgment	1/7/05
Morgan Stanley & Co. Incorporated's Appendix, Labeled Volume 5, To Its Reply Memorandum In Support Of Its Motion For Summary Judgment	1/7/05
Coleman (Parent) Holdings Inc.'s Response To Morgan Stanley's Proposed Findings Of Fact And Conclusions Of Law In Support Of Its Motion For Summary Judgment	1/11/05

Coleman (Parent) Holdings Inc.'s Supplemental Appendix To Coleman (Parent) Holdings Inc .'S Summary Judgment Filing Volumes 1-8	1/11/05
Reply Memorandum In Support Of Morgan Stanley & Co . Incorporated's Proposed Findings Of Fact And Conclusions Of Law In Support Of Its Motion For Summary Judgment	1/17/05

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this _____ day of _____, 2005.

_____
ELIZABETH T. MAASS
CIRCUIT COURT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

COUNSEL LIST

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON COLEMAN (PARENT) HOLDINGS, INC.'S EMERGENCY MOTION TO ENFORCE COURT'S ORDER REGARDING PRETRIAL EXHIBITS

THIS CAUSE came before the Court February 4, 2005 on Coleman (Parent) Holdings, Inc.'s Emergency Motion to Enforce Court's Order Regarding Pretrial Exhibits, with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Coleman (Parent) Holdings, Inc.'s Emergency Motion to Enforce Court's Order Regarding Pretrial Exhibits is Granted. Plaintiff shall use the exhibit numbering system previously disclosed to MS & Co.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 8 day of February, 2005.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
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Washington, DC 20036

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S ORE TENUS MOTION TO PARTICIPATE IN SEARCH OF ADDITIONAL E-MAIL BACK UP TAPES OR APPOINT THIRD PARTY TO CONDUCT SEARCH

THIS CAUSE came before the Court February 4, 2005 on Coleman (Parent) Holdings, Inc.'s ore tenus Motion to Participate in Search of Additional E-Mail Back Up Tapes or Appoint Third Party to Conduct Search, with both parties well represented by counsel. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that the Motion is Granted, in part. MS & Co. shall continue to search the additional e-mail back up tapes as expeditiously as possible, and shall provide to CPH each e-mail required by the April 16, 2004 Agreed Order on CPH's Motion to Compel Concerning E-Mail and other Electronic Documents ("Agreed Order"), within 12 hours of its review by counsel for responsiveness and privilege. A privilege log shall be provided within 24 hours of review by counsel, should any responsive e-mail by withheld on grounds of privilege. It is further

ORDERED AND ADJUDGED that within 24 hours of a tape's being searched by MS & Co. in-house for responsive e-mails, MS & Co. shall provide a third party vendor selected by CPH but approved by MS & Co., whose approval may not be unreasonably withheld, both the raw tape and the recovered e-mail data tape. CPH shall supply the instructions to the third party vendor to search the tapes for items required by the Agreed Order. The product of the search shall be made available to counsel for MS & Co., which

shall review it as expeditiously as possible, devoting at least the amount of resources it devoted to the original review, and which shall certify whether the universe of documents reviewed is the same universe as produced by MS & Co.'s in-house search. MS & Co. shall produce each responsive e-mail pursuant to the Agreed Order or its privilege log for any withheld responsive e-mail, within 12 hours of review by counsel of a responsive e-mail not previously produced. The sole cost of the third party vendor shall be borne by MS & Co. The third party vendor shall be required to sign a confidentiality agreement acceptable to the parties, which consent may not be unreasonably withheld.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 4 day of February, 2005.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
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Washington, DC 20036

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON MORGAN STANLEY'S MOTION IN LIMINE NO. 1 TO EXCLUDE PERFORMANCE EVALUATIONS OR OTHER PROPENSITY EVIDENCE

THIS CAUSE came before the Court February 3, 2005 on Morgan Stanley's Motion in Limine No. 1 to Exclude Performance Evaluations or Other Propensity Evidence, with both parties well represented by counsel. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that the Motion is Granted, in part, and Denied, in part. CPH may introduce into evidence portions of William H. Strong's performance evaluations that (i) tend to prove that Strong was under or believed he was under economic pressure to produce revenues while employed at MS & Co. in the years 1997 and 1998, which the Court notes may include portions of evaluations pre-dating 1997; or (ii) tend to prove that Strong was less than candid with his colleagues, clients, or opposing parties about aspects of a transaction or contemplated transaction, provided in either event, that the part sought to be introduced reflects (a) comments made directly by Strong's colleagues based on personal knowledge; or (b) conclusions or assessments of Strong's evaluation directors based on the evaluations. The jury shall be instructed, if requested by counsel, that portions included in (ii), above, shall not be considered in determining MS & Co.'s liability, if any, to CPH, but may be considered only on the appropriateness and, if appropriate, the amount of punitive damages to be awarded if MS & Co. is found liable to CPH on a claim permitting an award of punitive damages. MS & Co. shall be permitted to introduce other portions of the evaluations necessary to satisfy the rule of completeness, provided the designated

portions otherwise meet the requirements of this Order. By 12 noon on Wednesday, February 9, 2005, CPH shall serve its designation of the portions of the Strong evaluations that it in good faith believes conform to the mandates of this Order. By Friday, February 11, 2005, at 5:00 p.m., MS & Co. shall serve its designation of the portions of Strong's evaluations that it in good faith believes conform to the mandates of this Order and need to be included to comply with the rule of completeness. Beginning February 14, 2005, counsel shall be prepared to offer argument to the Court concerning the portions that a party has designated which the opposing party contends do not meet the mandates of this Order. Either party may file with the Clerk its proffer of those portions of the evaluations it contends should be admissible but which are excluded by this Order.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 4 day of February, 2005.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
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#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiffs,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

CASE NO.: 2003 CA 005045 AI

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: February 14, 2005

TIME: 9:30 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

Coleman (Parent) Holdings Inc.'s Motion in Limine (No. 22) to Bar Improper Punitive Damages-Related Evidence and Argument

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Co., Inc.
Case No.: 2003 CA 005045 AI
Notice of Hearing

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all Counsel on the attached list, this 7th day of February, 2005.

JACK SCAROLA
Florida Bar No.: 169440
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Attorney for Plaintiff

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

COLEMAN (PARENT) HOLDINGS INC.'S MOTION IN LIMINE (NO. 22) TO BAR IMPROPER PUNITIVE DAMAGES-RELATED EVIDENCE AND ARGUMENT

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, respectfully requests that this Court enter an Order barring Morgan Stanley from presenting improper punitive damages-related evidence and argument at trial concerning the wealth of the executives of CPH and the purported harm that Morgan Stanley's stockholders would experience as a result of a sizeable punitive damages award in favor of CPH. Based on contentions Morgan Stanley has made to date, CPH anticipates that at trial, Morgan Stanley might attempt to tell the jury that it should not render a significant punitive damages award because neither CPH itself nor the CPH executives who would benefit from that award deserve or need to be enriched beyond whatever compensatory damages they might receive. Morgan Stanley also might attempt to tell the jury that it should not render a significant punitive damages award because such a verdict ultimately would hurt Morgan Stanley's stockholders. Morgan Stanley should be barred from presenting such evidence and argument at trial.

First, evidence and argument concerning the purported wealth of any of the ultimate beneficiaries at CPH of a punitive damages verdict would be irrelevant to the assessment of such damages. "Under Florida law, the purpose of punitive damages is not to further compensate the plaintiff, but to punish the defendant for its wrongful conduct and to deter similar misconduct by

it and other actors in the future." *Owens-Corning Fiberglas Corp. v. Ballard*, 749 So. 2d 483, 486 (Fla. 1999). In accordance with that settled principle, the wealth of the defendant is relevant to the punitive damages inquiry (because a consideration of that wealth is necessary to determine whether the award has a sufficient deterrent effect), but the wealth of the plaintiff decidedly is not relevant (*Batlemento v. Dove Fountain, Inc.*, 593 So. 2d 234, 242 (Fla. 5th DCA 1992)):

> In Florida, in determining the amount of punitive damages, the jury should examine the enormity of the offense and the finances of the party against whom damages are assessed. . . . We cannot agree that the financial status of the victim of a fraud is a relevant consideration in a jury's evaluation of whether to punish a defendant with an award of exemplary damages.

Thus, as a matter of Florida law, it would be improper for Morgan Stanley to present evidence or argument concerning the wealth of anyone at CPH who might benefit from an award of punitive damages. It would be equally improper to suggest any focus of attention on the disposition of punitives once they have been assessed. In other words, the jury's exclusive concerns are whether and in what amount additional damages should be taken from the defendant without regard to where the money goes.

Second, evidence or argument concerning the purported effect that a punitive damages award would have on Morgan Stanley's shareholders likewise would be inappropriate. "[S]ympathy for a party's weakness, poverty or misery" is not an appropriate consideration in the punitive damages inquiry. *Batlemento*, 593 So. 2d at 242. Indeed, the contention that "punitive damages unfairly punish innocent shareholders" is one that "has been rejected repeatedly" by the courts:

> It is the corporation, not the individual shareholders, that is recognized as an on-going legal entity . . . . True, payment of punitive damages claims will deplete corporate assets, which will possibly produce a reduction in net worth and thereby result in a reduction of the value of the individual shares. But the same is true of compensatory damages. Both are possible legal consequences of the commission of harmful acts in the course of doing business. To the same extent that damages claims may affect shareholders adversely, so do profitable sales of harmful

> products redound to their benefit (at least temporarily). These are the risks and rewards that await investors.

Fischer v. Johns-Manville Corp., 512 A.2d 466, 476 (N.J. 1986); *see also Moran v. Johns-Manville Sales Corp.*, 691 F.2d 811, 817 (6th Cir. 1982) ("We are not dissuaded from allowing punitive damages because this cost will ultimately be borne by 'innocent' shareholders. Punitive damage awards are a risk that accompanies investment"); *Doralee Estates, Inc. v. Cities Service Oil Co.*, 569 F.2d 716, 722 (2d Cir. 1977) ("It is true that stockholders ultimately bear the cost of liability, but those who have been given authority to avert environmental damage should be given some incentive to do so. 'Smart money' is the traditional way, and the type of modern tort represented here is a fair field for punitive damages").

The same conclusion applies here notwithstanding some language to the contrary in *Johns-Manville Sales Corp. v. Janssens*, 463 So. 2d 242 (Fla. 1st DCA 1984). In that decision, in the course of rejecting Johns-Manville's argument that it should not be subject to punitive damages as a matter of law because "the persons who will bear the award are current management, directors, shareholders, employees, and customers who had nothing to do with the alleged misconduct and lack of warnings on asbestos products in the 1930s, 1940s, and 1950s," the Appellate Court stated that "Johns-Manville presented little, if any, evidence to the jury to prove these contentions, which are more properly argued to the jury as factual matters to be considered in avoidance or mitigation of punitive damages. It is for the jury, not the court, to accept or reject these arguments in the exercise of its discretion to allow or deny an award of punitive damages." *See id.* at 252. This dicta from *Johns-Manville* is inapposite here, especially given that the primary wrongdoers of Morgan Stanley are not long-departed employees who are leaving the current stockholders bearing the burden years after the fact, but are highly compensated executives at the present time (such as Mr. Strong). In these circumstances, because any attempt by Morgan Stanley to present evidence or argument concerning the

purported effect a punitive damages verdict on stockholders would be improper, this Court should bar Morgan Stanley from engaging in that inquiry at trial.

Conclusion

For the foregoing reasons, CPH respectfully requests that this Court bar Morgan Stanley from presenting any evidence or argument concerning the wealth of the beneficiaries of any punitive damages award the jury might render and the purported harm that Morgan Stanley's stockholders would experience as a result of the sizeable punitive damages verdict.

Dated: February 7, 2005

Respectfully submitted,

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INCORPORATED'S MOTION FOR ENTRY OF UNDISPUTED FACTS PURSUANT TO RULE 1.510

Morgan Stanley & Co. Incorporated ("Morgan Stanley"), by and through its undersigned counsel, respectfully requests that the Court enter an Order pursuant to Fla. R. Civ. P. 1.510(d) finding that certain facts "exist without substantial controversy" and further ordering that such facts shall be "deemed established" in all further proceedings in this matter. In support of this Motion, Morgan Stanley states:

1. Pursuant to the Court's February 1, 2005 Order on Morgan Stanley's Motion for Summary Judgment, Morgan Stanley submits that the following five facts "exist without substantial controversy" and should be "deemed established":

(i) CPH, a sophisticated investor, was aided by sophisticated advisors in the Sunbeam-Coleman transaction.

(ii) CPH would not have proceeded with the Sunbeam-Coleman transaction had it known of the content of the comfort letters provided to Morgan Stanley by Sunbeam's auditors, Arthur Andersen.

(iii) The information contained in the comfort letters merely restated information contained in the interim financial statements.

(iv) CPH had a contractual right under the Merger Agreement to inspect Sunbeam's books and records, including its interim financial statements.

(v) CPH did not exercise its right to inspect Sunbeam's books and records, including the interim financial statements.

2. Pursuant to Rule 1.510(d), the Court is obliged to make an order setting forth the facts that "exist without substantial controversy." As the authors' commentary to Rule 1.510 states: "The entire rule is mandatory. ... The order must specify the facts which are not controverted. Upon the trial the order is used to indicate the facts which are established and as to which no proof is necessary." Fla. R. Civ. P. 1.510 authors' cmt. (1967); *see also Federal Ins. Co. v. Mercer*, 237 So. 2d 243, 246 (Fla. 4th DCA 1970) ("Where the court in ruling on a motion for summary judgment enters an order specifying that certain material facts exist without substantial controversy ... the Florida Rules of Civil Procedure require that on trial of the action the facts so specified shall be deemed established and the trial shall be conducted accordingly.")

WHEREFORE, Morgan Stanley requests that the Court enter an Order specifying that these five facts "exist without substantial controversy" pursuant to Rule 1.510(d) and providing such other and further relief as is just and proper.

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

MORGAN STANLEY'S OPPOSITION TO CPH'S MOTION IN LIMINE NO. 20 TO EXCLUDE PORTIONS OF EXPERT WITNESS GEORGE FRITZ'S TESTIMONY

Coleman (Parent) Holdings Inc. ("CPH") offers testimony from its expert William Horton that: (1) Coleman had no obligation to do its own due diligence before proceeding with the Sunbeam transaction; (2) Morgan Stanley had an obligation to do due diligence and to disclose information to its adversary across the table; and (3) that it would not be "usual and customary" for a company in Coleman's position to do due diligence on a transaction of this nature between the signing of the merger agreements and the closing of the deal. (Dec. 17, 2004 Responsive Report of William N. Horton at 3 (Ex. 1).)

CPH now seeks to preclude one of Morgan Stanley's experts, George Fritz, from rebutting these identical issues. CPH argues that Mr. Fritz is not qualified to opine on Coleman's due diligence. This argument, however, is based on distortions of Mr. Fritz's deposition testimony and irrelevant caselaw. In fact, Mr. Fritz has over forty years of experience on the topics set forth in his reports, including hands-on participation in "hundreds" of transactions that called for the performance of due diligence activities. (Jan. 19, 2005 Fritz Dep. at 44:21-45:16 (Ex. 2).) Mr. Fritz is eminently qualified to offer expert opinions on these issues, and CPH's motion to exclude his testimony should be denied.

In support of its position, Morgan Stanley states the following:

ARGUMENT

1. CPH advances three reasons why Mr. Fritz is supposedly unqualified to rebut its own expert's testimony regarding Coleman's due diligence obligations in connection with the merger transaction: (1) Fritz is an accountant, and only investment bankers are qualified to give opinions regarding due diligence matters; (2) Fritz relies on his judgment and experience — rather than any accounting rule or accounting literature — to support his position that Coleman should have requested more financial information regarding Sunbeam in response to the March 19 press release; and (3) Fritz could not quickly identify the names of the numerous transactions he has worked on in the last forty years involving the sale of a company in exchange for shares of a public company. None of these objections hold water.

2. ***First***, CPH argues that Fritz is not qualified to opine about due diligence issues related to the merger transaction because he is an accountant and not an investment banker. (CPH MIL No. 20 at 1-3.) Fritz is a certified public accountant with more than 40 years of experience in public accounting. He spent most of his career at Coopers & Lybrand. He was a partner there for twenty-six years, and he was a national consulting partner in the firm's New York office when he retired in 1997. (Fritz Dep. at 32:11-34:10; Dec. 7, 2004 Expert Report of George P. Fritz Report at 2 (Ex. 3) ("Fritz Report").) Mr. Fritz also served on the Public Oversight Board and the Transition Oversight Staff, predecessor organizations to the Public Company Accounting Oversight Board. (*Id.* at 2-3.)

3. In his career at Coopers & Lybrand, Mr. Fritz worked on "hundreds" of transactions that called for the performance of due diligence activities. (Fritz Dep. at 44:21-45:16.) In many of these transactions, Mr. Fritz was personally in charge of the due diligence activities. (*Id.*) In addition, Mr. Fritz provided in-firm consulting services to Coopers &

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Lybrand's Financial Services Advisory Group on "countless acquisitions and disposals." (*Id.* at 48:13-23.) Mr. Fritz also oversaw the New York office's review of public offering documents, which are frequently part of an acquisition transaction, filed with the Securities and Exchange Commission. (*See id.* at 30:10-31:5.)

4. During his career, Mr. Fritz also spent a great deal of time working on "poolings of interests," in which an acquisition occurs as the result of an exchange of shares. (*See id.* at 220:11-24.) Mr. Fritz testified that he is a "seasoned ... hand" in matters relating to public company acquisitions and mergers, including the due diligence activities that are conducted in connection with such transactions. (*Id.* at 216:19-23.)

5. CPH's assertion that Mr. Fritz is not an investment banker is certainly no basis for disqualifying his opinions. As is evident from this very case, investment bankers are not the only people who work on acquisition transactions, nor are they solely responsible for due diligence activities. To the contrary, accountants such as Mr. Fritz play equally central roles, and they participate directly in due diligence as investment bankers do. In this transaction for example, Arthur Anderson reviewed the working papers of Coleman's auditor, Ernst & Young LLP. (MS 109 at 11 (Ex. 4).) And Morgan Stanley's due diligence checklist for Coleman included a review of Coleman's interim financial statement. (*See* CPH Tr. 86 (Ex. 5).)

6. Mr. Fritz has participated directly and indirectly in due diligence activities throughout his career. Mr. Fritz's experience in this regard renders him at least as qualified as CPH's expert to offer an opinion as to due diligence obligations related to the Sunbeam transaction.

7. ***Second,*** CPH's motion makes two misleading statements about the substance of Mr. Fritz's deposition testimony: "Nor can Mr. Fritz identify a single matter in which he

participated, or even was aware of, involving due diligence that continued beyond the signing of a definitive merger agreement." and "[n]or can Fritz identify any transactions in which he participated in which the seller received stock in a public company buyer." (CPH MIL No. 20 at 2.)

8. CPH's statement that Mr. Fritz could not "identify a single matter in which he participated, or even was aware of, involving due diligence that continued beyond the signing of a definitive merger agreement," grossly misstates the record. (*Id.*) CPH never asked Mr. Fritz this question. In fact, the portion of the transcript to which CPH refers concerns the very different question whether Mr. Fritz could specifically recall companies that conducted due diligence after signing a merger agreement ***and also*** "as a result of that due diligence ... renegotiated a price or made changes." (Fritz Dep. at 233:13-14).

9. Mr. Fritz's testimony was that he was aware of what CPH could have done if it had conducted due diligence after the signing of the merger agreement because "as having been around these, that's — those are the normal things that occur, either pull the plug or redo the deal." (Fritz Dep. at 232:13-233:1.) He went on to testify that, "This is not something that I have seen from a distance. I mean, this is the — you know, my personal experience in dealing with clients." (Fritz Dep. at 232:7-10.)

10. CPH's statement, "[n]or can Fritz identify any transactions in which he participated in which the seller received stock in a public company buyer" is equally misleading. (CPH MIL No. 20 at 2.) In fact, Mr. Fritz testified that he worked on "many" such transactions:

> Q: Can you identify any transaction that you were involved in in which a company took shares in exchange for the sale of its interest in its company, so took shares in the acquiring company?
>
> A: None will – I – I can't quickly give you a recital of – of instances, but there have been many, yes.

(Fritz Dep. at 216:25-217:7.)

11. There is no Florida rule that requires an expert to have a perfect memory or to be able to give list the names or details of all prior transactions he worked on over a forty-year career off the top of his head. That Mr. Fritz may not be able to recite details of a particular transaction is material for cross-examination, but it provides no basis for excluding his testimony.

12. From the hundreds of merger and acquisition transactions on which he has worked, including transactions similar to this one, Mr. Fritz knows who owes due diligence obligations to whom. In particular, from his lengthy career participating in such deals, Mr. Fritz knows that a seller does not rely on an underwriter's due diligence, but rather conducts its ***own*** due diligence. CPH's efforts to exclude this testimony have no merit.

13. ***Third***, CPH's other transparent argument for disqualifying Mr. Fritz is that "Fritz has not cited to, and cannot provide citations to, any accounting or auditing literature to support his opinion as to what CPH should have done in investigating Sunbeam." (CPH MIL No. 20 at 2.) CPH's position appears to be that accountants are only permitted to testify as experts if their opinions are derived directly from GAAP or auditing literature. This is not the case under Florida law. There is nothing in the Florida Evidence Code that says expert testimony in all instances must be predicated upon rules or literature. Indeed, the Florida Evidence Code Section 90.702 specifically states that an expert may be qualified by "knowledge, skill, experience, training, or education."

14. Mr. Fritz's involvement in hundreds of merger and acquisition transactions is a sufficient basis from which he could conclude that a seller should have taken some steps in response to the negative Sunbeam press release on financial statement matters — first quarter

sales — ***particularly*** if it also had reason to know (as CPH did) as of February 23, 1998, that Sunbeam's sales were slow in the first quarter of 1998, and that Sunbeam's business plan was, in the opinion of Jerry Levin, quite a stretch and probably not achievable.

15. As Mr. Fritz's report makes clear, his opinion that CPH had reason to want to find out more about Sunbeam's financial condition is predicated directly on his expertise relating to "comfort letters" and the accounting standards governing them. (Fritz Report at 27-34.) Among other things, Fitz's opinion is that given CPH's familiarity with the comfort letter process, CPH should have known that it could have asked Andersen, Morgan Stanley, or Sunbeam for a copy of the Andersen comfort letter to Morgan Stanley as underwriter of debentures.

16. The fact that Mr. Fritz cannot cite to an accounting rule governing due diligence is irrelevant to his qualification to opine on the subject. Indeed, if there were a black-letter rule governing every party's due diligence obligations on merger transactions like this one, expert testimony on the subject may not be necessary.

17. Florida case law is replete with instances in which courts qualify experts based on their real-world experience. *See, e.g., Mathieu v. Schnitzer*, 559 So. 2d 1244, 1245 (Fla. 4th DCA 1990) ("To qualify as an expert in a given area, it must be shown that the witness has acquired special knowledge of the subject matter whether by study or through experience."). There simply is no legal support for CPH's position that Mr. Fritz should be disqualified because his opinion on financial due diligence is based on his personal experience with hundreds of merger transactions rather than a specific accounting rule or auditing literature.

18. ***Lastly***, the three cases on which CPH relies in support of its arguments are not relevant to the issues here. These cases concern experts that had no training or experience in the specific area in question. *See Goodyear Tire & Rubber Co., Inc. v. Ross*, 660 So. 2d 1109, 1111

(Fla. 4th DCA 1995) (declining to permit an expert on traffic control devices to testify regarding "portable rubber speed bumps," based on conclusion that the proffered expert had no knowledge of such speed bumps); *Sea Fresh Frozen Prods., Inc. v. Abdin*, 411 So. 2d 218, 219 (Fla. 5th DCA 1982) (marine chemist had no expertise in measuring the slipperiness of algae on a boat); *Haendel v. Paterno*, 388 So. 2d 235, 238 (Fla. 5th DCA 1980 (realtor and appraiser had no expertise in valuation of a closely held corporation). By contrast, Mr. Fritz's significant transactional work on mergers like those at issue here is more than sufficient to qualify him to opine on CPH's due diligence obligations on financial statement matters, and CPH offers no principled argument that would require his exclusion.

WHEREFORE Morgan Stanley respectfully requests that this Court deny CPH's motion seeking to limit the testimony of George P. Fritz.

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K&E LEGAL: 10175490.2

Exhibit 1

Exhibit 2

CIRCUIT COURT, FIFTEENTH JUDICIAL DISTRICT

IN AND FOR PALM BEACH COUNTY, FLORIDA

- - - - - - - - - - - - - - - - X

COLEMAN (PARENT) HOLDINGS, :

Plaintiff, : Case No. 2003 CA

v. : 005045 AI

MORGAN STANLEY & CO., INC., :

Defendant. :

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COPY

VIDEOTAPE DEPOSITION OF GEORGE P. FRITZ
District of Columbia
Wednesday, January 19, 2005

Reported by: Marijane Simon, RDR

Job No. 165113

matters -- oh, approval of the executive committee compensation and all the -- a variety of, as I say, governance matters.

Q. So the governance matters related to the governance of Coopers & Lybrand --

A. That's correct.

Q. -- rather than corporate governance of your clients?

A. That's correct.

Q. Okay. You indicated you were the assigned SEC reviewing partner?

A. I was one of them, yes.

Q. What did that mean? What does that mean?

A. Our firm -- And I -- I believe our -- our policy was very consistent with most of the other firms -- required that any public offering, be it registered with the SEC or not, have an -- an incremental review by an -- an -- an assigned partner referred to as an SEC consulting partner or an SEC reviewer. That required special training. I had -- I had a -- four weeks of intensive training in -- in -- in the national office in 1971 or so. And then there -- there were about -- oh, gosh -- 15 to 20 of us scattered

around the country. And every '33 Act filing -- Every public offering was required to have the documents reviewed by an SEC reviewing partner. And that review, of course, included a review of the underwriting agreement and the comfort letter.

Q. When you refer to the documents in the public filing, would you review the -- the prospectus or the document by which the securities were being sold?

A. Yes, it would be the entire registration statement which would include the -- The prospectus would have been Part One of the registration statement.

Q. Would you also review the Coopers & Lybrand statements that were included within the -- the registration statement?

A. Yes, it was an incremental reading of those statements, primarily for compliance with SEC regulations as opposed to a -- an engagement or concurring partner review, but it was also -- it also frequently turned up other issues. It wasn't -- You weren't restricted to SEC compliance, obviously.

Q. How long did you serve in that function?

A. I was -- I was named an SEC review partner in 1971 or '2. And I remained in that -- I remained an SEC reviewer for the rest of my career.

And when I -- And when I was in the New York office, in the -- in -- in -- I was also -- I coordinated all the SEC reviews with the SEC reviewers in the New York Metro area, and I would be the one that anybody would come to if they had a question about comfort letters.

Q. Approximately how many SEC reviewers were there at Coopers & Lybrand? Let's say in the nineties.

A. Yeah. Fifteen or twenty, maybe. You know, it would -- it varied from time to time, but --

Q. You also indicated that you were an engagement partner.

A. Yes, sir.

Q. Does that mean that you were the person responsible for Coopers & Lybrand's representation of a particular client?

A. It -- it meant that I was the partner responsible for the audits of those clients.

Q. What clients were you the engagement

partner for? Do you remember?

A. Oh, sure. I remember -- I can't remember them all, but --

Q. First, approximately how many are we talking about?

MR. WEBSTER: Throughout his career at Coopers?

MR. BRODY: Yes.

THE WITNESS: Well, the first twenty years when I was in Louisville, I -- a dozen, twenty.

When I came to New York, I -- I was in a national role where I had no direct engagement partner responsibilities. I went to Stamford where I was the managing partner and I couldn't have any engagement partner responsibilities as managing partner.

And then I was brought back into New York to -- to assume the responsibility for the audits of Philip Morris companies, worldwide responsibility for Philip Morris and another company called Viacom. I was also still functioning as a national consultant in that time in -- in -- in the SEC reviews in the New York office.

When I completed my seven-year time on Philip Morris, I went on as consulting partner on that engagement and others, but I -- Then I went on full time as a national consultant after that.

So the first 20 years of my career, very heavy engagement partner experience. The last half of my career, it was very intense, but it was limited to a couple of major -- very major clients. Philip Morris was virtually a full-time job.

BY MR. BRODY:

Q. Then you said you -- after you finished the Philip Morris engagement partner responsibility, you were a national consulting partner?

A. Again, yes.

Q. What does that mean?

A. Accounting firms have assigned partners whose duty it is to resolve accounting and auditing issues and just to be available, also, to discuss the application of accounting and auditing standards with -- with the engagement personnel in the field. Their primary obligation, however, is to resolve accounting, auditing, and SEC issues as they -- They are the last line of

opinion of a lawyer.

Q. Okay. In your report, you refer to, for example, Rule 144 offerings. You're familiar with the concept or the idea of a Rule 144 offering?

A. I am.

Q. Do you have any expertise -- Well, withdraw that.

Do you intend to testify as an expert on the duties of parties in a Rule 144 offering?

A. I don't intend to -- I'm not an expert in -- in what those duties are beyond the accounting and auditing aspects.

Q. Okay. And I think this is obvious from your resume, sir, but you've not worked as an investment banker; is that correct?

A. No, sir.

Q. And so you do -- not purport to have expertise as an investment banker?

A. I'm not an investment banker, no.

Q. In your accounting responsibilities, as an accountant, did you work on transactions in which a publicly held company was sold to another publicly held company?

A. Yes.

Q. How many?

A. Well, I worked on, perhaps, hundreds of these transactions in one capacity or another, but it may have been as simple as a -- a consultation with respect to structure or something like that, at one extreme; and to the other extreme, where I was actually in charge of the accounting or a large part -- portions of the due diligence efforts in connection with the acquisition of another public company.

So it ran -- It would run the gamut from my clients making or selling businesses to -- in addition to that, being in charge of -- of -- more actively in charge of due diligence activities, or at the other end, review -- just reviewing the SEC filings or consulting.

Q. Well, let's focus on one aspect that you just described that -- described there, and that is the issue of accounting due diligence. What do you mean by "accounting due diligence"?

A. Well, principally, what I mean by it, because it's -- it's -- it's difficult to say where any one aspect of due diligence stops and start. They all overlap. You don't do anything in a vacuum in due diligence. But if we had to --

there -- there may have been some, but I just don't remember them.

Q. Okay. But aside from that qualification which I'll return to, do you remember ever being active in due diligence in any of those transactions in which one of your clients sold a subsidiary to another company?

A. I guess we could debate what "active" means, but I certainly had consultation on -- on -- in those instances. I might not have been part of the due diligence team, if -- if that's what you're getting at.

Q. Do you remember any issues on which you were consulted about due diligence in one of those transactions in which a client of yours sold a subsidiary to another company?

A. Well, now that I sit here, I do also recall that I spent a lot of time consulting with our -- our -- what's called Financial Advisory Services Group. That included the full-time M&A or Mergers and Acquisitions personnel. I had numerous consultations with them on countless acquisitions and disposals.

But I -- I had -- had a practice of -- you know, get -- get rid of that, get done with

A. Okay.

Q. Is there a -- a -- a guidance from your accounting profession, either a professional standard or a policy or a pronouncement of a professional firm you're involved with or have been involved with that supports your opinion that in this circumstance someone like Coleman would have continued due diligence?

A. Oh, I think I understand your question now. Are you -- are you asking me if there's any specific accounting or auditing standard that discusses this or --

Q. We'll start with that.

A. Well, this -- I'm speaking in -- from my experience at 45 years as an auditor and significant involvement with political -- I mean, not political. Excuse me. It's getting late.

MR. WEBSTER: You're in Washington.

THE WITNESS: -- public -- public companies, and -- and -- you know, I -- I have a -- I'm not -- I don't purport to be a seasoned public company executive, but I am a seasoned public company hand in -- in the processes.

BY MR. BRODY:

Q. Can you identify any transaction that

you were involved in in which a company took shares in exchange for the sale of its interest in its company, so took shares in the acquiring company?

A. None will -- I -- I can't quickly give you a recital of -- of instances, but there have been many, yes.

Q. Can you -- Have you ever given any speeches or written any articles about that topic?

A. About that specific topic?

Q. Yeah, about the due diligence that a company taking shares in a transaction of this type -- and the due diligence that it would do.

A. No.

Q. You talk about the incentive of a company doing -- to -- to do due diligence where they're taking shares. Does it matter in your opinion if they're taking shares in a publicly held company?

A. It depends on the -- the size of the resulting ownership interest and the marketability of the shares. You know, again, if -- if a company sells a small business to a large public company, and it receives shares equal to 1/100 of 1 percent of the float, then it's impracticable to

another with many dozens of poolings of interests.

Well, one that quickly comes to mind were some of the AT&T poolings when they acquired the telecom company on the West Coast. I've forgotten the name of it now. That was a famous pooling case, but any number of -- Before poolings became outlawed, as an accounting consequence -- concept -- tax-free mergers and -- and poolings of interests were quite -- quite commonplace, and -- and -- particularly among our clientele.

Q. How would one of these poolings of interests work?

A. Well, a pooling of interest -- A pooling of interest -- A pooling -- Excuse me. A pooling of interests is an accounting concept, and it's contrasted to the -- to the accounting concept of a purchase. And it simply means that an acquisition that occurs as a result of an exchange of shares, if it met the very form-oriented rigors of the accounting standard, could be accounted for without a write-up of asset values. It would be re -- Everything would be recorded at historical amounts. The two companies would be brought together.

And -- and the major advantage that

A. So if they -- if they -- if they obtained further information and it were negative, what -- what could they do?

Q. Yes.

A. Well, I think they -- As I say, they could, like -- I guess there are other things they could do. They -- Other than renegotiating the price and pulling the plug on the deal, they could insist on operations changes at some -- and -- and -- and I presume that there's a -- virtually an endless litany of suggestions or demands that they could otherwise make.

Q. Is there anything in your background or experience as an accounting on -- as an accountant or an auditor that supports your view of what CPH could have done had it conducted additional due diligence between the date of the definitive agreement and the merger?

A. Is there anything in my background or experience that --

Q. Is there something that, by -- by nature of you being an expert accountant and auditor, informs that -- that opinion?

A. Well, I -- as -- as having been around these, that's -- those are the normal things that

occur, either pull the plug or redo the deal.

Q. So your -- your opinion is just based on your observation in the business world?

MR. WEBSTER: Objection. Misstates the record.

THE WITNESS: No. I'm -- I'm not -- I mean, I'm not a -- This is not something that I've seen from a distance. I mean, this is the -- you know, my personal experience in dealing with clients.

MR. BRODY: Okay.

BY MR. BRODY:

Q. In your personal experience, do you know of any instance in which a company that is selling its business to another company in exchange for stock has continued due diligence, and as a result of that due diligence, done any of these things, such as renegotiated a price or made changes?

A. Once again, you're calling on my frail memory. I -- I -- I -- I believe that those occurred, but I'm not going to be able to give you spite speci -- cite -- Excuse me -- cite specifics.

Q. Okay.

Exhibit 3

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

CASE NO: CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

EXPERT REPORT OF GEORGE P. FRITZ

I. Purpose of This Report

The purpose of this report is to express my opinion as to the several ways by which Coleman (Parent) Holdings Inc. ("CPH") could have obtained, prior to the sale of its interest in The Coleman Company, Inc. ("Coleman") to Sunbeam Corporation ("Sunbeam"), information relating to first quarter 1998 sales and earnings of Sunbeam. In two letters issued on March 19 and March 25, 1998,[1] Arthur Andersen LLP ("Andersen"), then the independent auditors of Sunbeam, informed Morgan Stanley & Co. Incorporated ("Morgan Stanley") that Sunbeam's sales and earnings for specified periods in the first quarter of 1998 had declined from the corresponding periods in 1997. Those two letters are commonly referred to as "comfort letters."

I will address whether CPH should have known (i) that the Andersen comfort letters existed and (ii) that the letters would have addressed declines, if any, in interim sales and earnings. I will discuss whether authoritative auditing standards in the United States would

[1] *See* March 19, 1998 Letter from Arthur Andersen LLP to Morgan Stanley, MS 9 ("March 19 Andersen Comfort Letter"); March 25, 1998 Letter from Arthur Andersen LLP to Morgan Stanley, MS 10 ("March 25 Andersen Comfort Letter").

have permitted Andersen to furnish the same or similar letters to CPH, had CPH requested them. Finally, I will review how CPH otherwise could have obtained the interim Sunbeam information.

My opinion, summarized in Section IV herein, is based on the facts and data in Section V and the detailed analyses in Sections VI and VII. My qualifications and the terms of my engagement are outlined in Section II.

II. Information About Expert

A. *Qualifications*

I am a founding member and managing director of Accounting & Auditing Consultants LLC ("A²C"), a specialized consulting firm formed in early 2004. The members of A²C are former partners of the "Big 4" accounting firms with a broad cross-section of professional experiences.

I have been a certified public accountant ("CPA") in New York, Connecticut, and Kentucky. In June 1959, I began my career in the public accounting profession after graduating *magna cum laude* from Xavier University, Cincinnati. In 1961, I became a CPA. I spent my entire career with Coopers & Lybrand L.L.P. ("C&L"), beginning with a regional firm that merged with C&L in 1970. I was admitted as a partner in 1971 and retired in 1997, although I continued until early 1999 as a full-time consultant to C&L and PricewaterhouseCoopers LLP ("PwC," the firm that was formed as the result of the 1998 merger of C&L and Price Waterhouse LLP).

Since my retirement from C&L/PwC, I have remained active in service to the public accounting profession. In 1999, I joined the staff of the Panel on Audit Effectiveness ("Panel"), commissioned by the Public Oversight Board ("POB"), a private

sector body that, until May 1, 2002, oversaw the accounting profession's self-regulatory process. The Securities and Exchange Commission ("SEC") had asked the POB to form the Panel and charged it with the responsibility to review and evaluate how audits of public companies are performed. After the Panel issued its report in 2000,[2] I served as a consultant to the POB, assisting in its oversight of the Auditing Standards Board of the American Institute of Certified Public Accountants ("AICPA"). Later, I joined the Transition Oversight Staff, which was the successor organization to the POB until the Public Company Accounting Oversight Board ("PCAOB") was organized pursuant to the Sarbanes-Oxley Act of 2002. I participated in the Transition Oversight Staff's study in 2002 of the independence quality control systems of the four largest audit firms.[3]

Currently, I am a member of several committees and task forces of the AICPA, including the Auditing Standards Board ("ASB"), the Audit Issues Task Force, and the Antifraud Programs and Controls Task Force. The ASB has nineteen members, only fifteen of whom are current audit practitioners. I am one of the "public interest" representatives on the ASB. The ASB promulgates generally accepted auditing standards ("GAAS"), which are the authoritative standards for the conduct of financial statement audits in the United States. (The PCAOB recently assumed authority for the issuance of standards for the audits of public companies, while the ASB continues to set standards for the audits of all other entities.)

My service to the AICPA before retirement from PwC had been substantial. For the five years prior to 1997 I was a member of the Accounting Standards Executive Committee

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[2] *See* Aug. 31, 2000 Report, "The Panel on Audit Effectiveness Report and Recommendations," *available at* http://www.pobauditpanel.org/index.html.

[3] *See* Dec. 19, 2002 Report, "Transition Oversight Staff's Report on the Independence Quality Control Systems of the Four Reviewed Firms," *available at* http://www.oversightstaff.org/reports.htm.

("AcSEC"), the senior technical accounting body of AICPA. I chaired several AcSEC task forces, including task forces on software revenue recognition, reorganizations, and consolidations.

Since retirement, I have spoken on accounting and auditing standards and regulation of the profession. I have been a speaker at the AICPA's annual SEC Conference in Washington; the International Symposium on Audit Research in Singapore; and on the AICPA's webcast on the use of forensic procedures in auditing financial statements.

My practical experience in the field of auditing is extensive. My audit engagement responsibilities at C&L included some of C&L's most important multinational clients. Also, for many years I was a member of a small group of national consulting partners who were responsible for the resolution of auditing and accounting issues for all of C&L's clients. As a national consulting partner, I also helped develop internal training programs and firm policies on various issues, including the issuance of "comfort letters."

I have never been retained or testified as an expert in connection with any litigation. There are references to securities laws in this report. I do not purport to be an expert in the securities laws or any other legal matters. Auditors of public companies, however, must have an awareness of the securities laws as they relate to financial statements and the auditor's role in the capital raising process. Auditing standards also contain several references to relevant sections of the federal securities laws. Any references to the securities laws in this report are based solely upon my understanding of these matters as an experienced auditor of public companies. My *curriculum vitae* is attached as Exhibit A.

B. *Terms of Engagement*

My engagement as an expert in accounting and auditing is pursuant to a letter of engagement among Kirkland & Ellis LLP (attorneys for Morgan Stanley), Morgan Stanley, and me (as a managing director of A^2C). My compensation is not dependent on the outcome of any litigation. My current compensation is at the rate of $450 per hour, plus out-of-pocket costs.

III. Documents Reviewed

In preparing this report and the opinion expressed herein, I reviewed documents that Morgan Stanley provided me as well as others that I requested from Morgan Stanley. Morgan Stanley provided me access to all documents that I requested. A complete list of such documents is attached as Exhibit D. Those documents and materials fall generally into these categories:

1. The CPH complaint against Morgan Stanley and Morgan Stanley's answer thereto.
2. Agreements related to Sunbeam's acquisition of Coleman, including
    - Agreement dated February 27, 1998, pursuant to which Sunbeam would purchase CPH's controlling interest in Coleman[4] (the "first step" of the merger);
    - Agreement dated February 27, 1998, whereby Sunbeam would acquire the remaining public minority interest in Coleman[5] (the "second step" of the merger);

[4] *See* Feb. 27, 1998 Agreement and Plan of Merger Among Sunbeam Corporation, Laser Acquisition Corp., CLN Holdings Inc. and Coleman (Parent) Holdings, Inc. ("Merger Agreement"), MS 93.

[5] *See* Feb. 27, 1998 Agreement and Plan of Merger Among Sunbeam Corporation, Camper Acquisition Corp. and The Coleman Company, Inc. ("Company Merge Agreement"), MS 117.

- Sunbeam's agreement dated as of March 29, 1998 to register with the Securities and Exchange Commission ("SEC") its shares issued to Coleman in the first step;[6] and
- Coleman's information statement dated December 6, 1999 (combined with a Sunbeam prospectus) sent to Coleman minority interest shareholders as part of the second step of the merger.[7]

3. Documents related to Sunbeam's sale of debentures in March 1998, including
   - Offering memorandum (dated March 19, 1998);[8]
   - Morgan Stanley agreement to initially purchase the debentures (similar to an underwriting agreement) (dated March 19, 1998);[9]
   - Comfort letters issued to Morgan Stanley by Andersen (dated March 19 and 25, 1998);[10]
   - Comfort letters issued to Morgan Stanley by Coleman's auditors (dated March 20 and 25, 1998);[11] and
   - Representation letters furnished by Sunbeam to Andersen in response to Andersen's comfort letter inquiries.[12]

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[6] *See* March 29, 1998 Registration Rights Agreement, MS 278.

[7] *See* Dec. 6, 1999 Notice of Merger and Appraisal Rights and Information Statement, Sunbeam Corporation Prospectus, MS 279.

[8] *See* March 19, 1998 Offering Mem., MS 166.

[9] *See* March 19, 1998 Purchase Agreement, MS 242.

[10] *See* March 19 Andersen Comfort Letter, MS 9; March 25 Andersen Comfort Letter, MS 10.

[11] *See* March 20, 1998 Letter from Ernst & Young LLP to CLN Holdings, Inc. and Morgan Stanley, MS 243 ("March 20 E&Y Comfort Letter"); March 25, 1998 Letter from Ernst & Young LLP to CLN Holdings, Inc. and Morgan Stanley, MS 0000462-464 ("March 25 E&Y Comfort Letter").

[12] *See* March 16, 1998 Letter from Sunbeam Corp. to Arthur Andersen LLP, CPH 120 ("March 16 Sunbeam Representation Letter"); March 23, 1998 Letter from Sunbeam Corp. to Arthur Andersen LLP, CPH 124 ("March 23 Sunbeam Representation Letter").

4. Sunbeam's periodic SEC filings, including its

   - 1997 Annual Report on Form 10-K (dated March 6, 1998);[13]
   - Quarterly Report on Form 10-Q for the first quarter of 1998 (dated May 15, 1998); and
   - Amended Quarterly Report on Form 10-Q/A for the first quarter 1998.[14]

5. Sunbeam press releases related to the first quarter 1998.[15]

In addition, I have reviewed professional auditing literature to the extent that I considered necessary and relevant, and have cited certain of that literature in this report. Exhibit C contains a list of cited Statements on Auditing Standards issued by the ASB and effective in 1998, the related AICPA codification references, and certain superseded authoritative documents mentioned for historical perspective.

IV. Opinion

My opinion is summarized below, and is based on the facts and data in Section V and the detailed analyses set forth in Sections VI and VII of this report.

In my opinion, prior to March 30, 1998 (the date on which Sunbeam acquired CPH's interest in Coleman), CPH had both the contractual right and multiple avenues of access to obtain Sunbeam's interim first quarter financial data, including access to the Andersen comfort letters. The merger agreement between CPH and Sunbeam provided both Sunbeam and CPH with reasonable access to the other party's books, records, and personnel *and* to the other party's financial advisers, legal counsel, accountants,

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[13] *See* Sunbeam Form 10-K for the Fiscal Year Ended December 28, 1997 (dated March 6, 1998), MS 12.

[14] *See* Sunbeam Amended Quarterly Report on Form 10-Q/A for the First Quarter 1998 (dated Nov. 25, 1998), MS 282.

[15] *See* March 19, 1998 Press Release, MS 39; April 3, 1998 Press Release, MS 58; May 11, 1998 Press Release, MS 115.

consultants, and other representatives.[16] In addition, Sunbeam was required to notify Coleman in the event of any material adverse changes to its financial performance, and CPH owed a corresponding contractual duty to Sunbeam.[17] Thus, CPH had the right to speak with anyone at Andersen or Sunbeam about Sunbeam's accounting policies and practices, and also about Sunbeam's 1998 interim first quarter financial data.

Accordingly, at any time prior to the sale, CPH could have requested that Sunbeam provide:

- Copies of the Andersen comfort letters issued to Morgan Stanley.[18] (The merger agreement gave CPH the right later to obtain similar comfort letters pursuant to CPH's registration rights[19]);
- Copies of the representation letter(s) Sunbeam furnished to Andersen, which were the source of much of the interim disclosures information contained in the Andersen comfort letters;[20]
- A comfort letter (or an equivalent letter) from Andersen addressed to CPH as an "other requesting party,"[21] covering the same matters as in the comfort letters to Morgan Stanley; or
- Pursuant to its contractual rights of access, any interim financial statements or other interim financial data for the first quarter of 1998.

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[16] *See* Merger Agreement § 6.7, MS 93.

[17] *See id.* § 6.8.

[18] *See* March 19 Andersen Comfort Letter, MS 9; March 25 Andersen Comfort Letter, MS 10.

[19] *See* March 29, 1998 Registration Rights Agreement, § 2.4(12), MS 278.

[20] *See* March 16 Sunbeam Representation Letter, CPH 120; March 23 Sunbeam Representation Letter, CPH 124.

[21] "Other requesting party" is discussed in Section VI.F, *infra*, of this report under "SAS 72: Comfort Letters Available to Other Requesting Parties."

Any such request for copies of Sunbeam letters of representation to Andersen would have been reasonable because Coleman's auditors, Ernst & Young ("E&Y"), issued contemporaneous comfort letters to Morgan Stanley, and Coleman (or its parent company) furnished similar representations about interim financial data to E&Y.[22] In addition to seeking copies of comfort or representation letters, CPH could have asked Sunbeam to allow Andersen or Coleman's auditors to perform specified procedures to seek to identify sales or earnings declines at Sunbeam.[23]

The authoritative standards that guide auditors in these areas (*i.e.*, GAAS) would have allowed Andersen to issue comfort or equivalent letters to CPH that would have identified the interim sales and earnings declines. Among other things, those standards specifically provide for the issuance of comfort letters to buyers and sellers in acquisitions where there is an exchange of shares,[24] as occurred in the Sunbeam/CPH transaction.

V. Facts and Data Relied Upon

The following is a summary of transactions and events from Sunbeam's first quarter of 1998 that are relevant to my opinion. A chronology of events cited herein is summarized in Exhibit B.

On February 27, 1998, Sunbeam agreed to acquire Coleman.[25] CPH indirectly owned over 80% of Coleman, and the balance was owned by public shareholders. The acquisition was to be accomplished in two steps, the first of which was the purchase on

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[22] *See* March 20 E&Y Comfort Letter, MS 243.

[23] As would have been permitted by the relevant standard then in effect, *viz.*, Statement on Auditing Standards No. 75, *Engagements to Apply Agreed-Upon Procedures to Specified Elements, Accounts, or Items of a Financial Statement* ("SAS 75").

[24] *See* AICPA Codification of Auditing Standards, AU § 634.05, *Letters for Underwriters and Certain Other Requesting Parties.*

[25] *See* Merger Agreement, MS 93; Company Merger Agreement, MS 117.

March 30, 1998, of CPH's 80% interest in Coleman for approximately $160 million cash and 14.1 million shares of Sunbeam common stock. The second step — the acquisition of the public minority interest in Coleman — was delayed, but was completed in January 2000, when Sunbeam issued to the Coleman shareholders cash, common stock, and, pursuant to a court-approved litigation settlement, warrants to purchase shares of Sunbeam common stock.

Coleman was one of three companies that Sunbeam contracted to acquire in February 1998. The other two acquisitions, which were completed in April 1998, were all-cash transactions.

In March 1998, Sunbeam initiated a financing plan that would provide it over $2 billion to (a) repay the indebtedness of the three companies about to be acquired (approximately $1.5 billion, of which approximately $1.1 billion went to repay indebtedness of Coleman and its parent companies), (b) repay its own indebtedness (approximately $202 million), and (c) pay the cash necessary for the acquisitions (approximately $500 million, of which approximately $261 million related to the Coleman acquisition).[26]

Sunbeam's financing sources were a new $1.7 billion credit facility (comprising term loans of up to $1.3 billion and a revolving credit facility of $400 million) and a private placement on March 25, 1998, of $2 billion (face value) of zero coupon convertible debentures with net proceeds of approximately $750 million. A Morgan Stanley affiliate (Morgan Stanley Senior Funding, Inc.) provided $680 million in loans to Sunbeam under

[26] *See* March 19, 1998 Offering Mem. at 23, MS 166. The $261 million included cash-out of options.

the $1.7 billion credit facility, and Morgan Stanley initially purchased all the debentures and resold them to qualified institutional buyers pursuant to a Rule 144A offering.[27]

The offering memorandum for the debentures, dated March 19, 1998,[28] included the 1995, 1996, and 1997 audited financial statements of Sunbeam and each of the companies to be acquired,[29] and pro forma financial data of Sunbeam setting forth the estimated effects of the acquisitions and the new financings. Although the debenture offering was exempt from registration with the SEC under Rule 144A, these financial statement presentations were substantially the same as those that would have been required in a registration statement filed with the SEC for the sale of securities.

Morgan Stanley conditioned its purchase of the debentures on the receipt of "comfort letters" from the auditors of Sunbeam and of each of the three companies to be acquired. Specifically, Morgan Stanley required that comfort letters be provided both on the date that the offering was launched (March 19, 1998) and on the closing date (March 25, 1998).[30]

Andersen's March 19, 1998, comfort letter set forth the amounts of sales and net income (loss) for January of 1998 and 1997, indicating that the 1998 amounts had declined

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[27] The SEC promulgated Rule 144A to permit certain companies to raise funds from sophisticated institutional investors without registering with the SEC. The disclosure requirements for 144A offerings are more relaxed than those for registered offerings. However, in a 144A offering the issuer may promise to register the securities shortly after issuance to enable the buyers to resell the securities in the public markets, and the private placement memorandum often forms the basis of the subsequent registration statement. In those instances, the issuer generally strives to make the disclosures in the private placement memorandum substantially equivalent to those in a registration statement filed under the Securities Act of 1933. Sunbeam granted registration rights to the purchasers of the debentures. *See id.* at 62-63.

[28] *See* March 19, 1998 Offering Mem., MS 166.

[29] The financial statements for Coleman in the offering memorandum were the consolidated statements of CLN Holdings Inc., a CPH subsidiary. CLN Holdings Inc. was a holding company and the indirect owner of the 82% interest in Coleman, the operating company. Coleman's statements were consolidated in the statements of CLN Holdings Inc. For ease of reference herein, the financial statements of CLN Holdings Inc. in the offering memorandum are referred to as the statements of Coleman. *See id.* at F-27 to F-54.

[30] *See* March 19, 1998 Purchase Agreement at 10-11, MS 242.

from 1997. That letter also stated that, although Sunbeam had not provided Andersen with any February 1998 financial statements, management had "provided net sales from December 29, 1997 through March 1, 1998, which were $72,018,000 as compared to $143,499,000 for the corresponding period of the preceding year."[31] Andersen indicated (without quantification) that the declines in sales and earnings continued through March 16, the cut-off date of the letter, and that the sales declines were "primarily due to the Company's new early-buy program for outdoor grills which accelerated outdoor grill sales into the fourth quarter of fiscal 1997" as well as "a non-recurring sale in January 1997 of discontinued stock keeping units and excess and obsolete inventory in connection with the Company's November 1996 restructuring."[32] Andersen noted that the decrease in net income was due primarily to the "sales decrease and a first quarter compensation charge from restricted stock issued in connection with new employment agreements for key officers."[33]

Andersen's March 25, 1998 comfort letter (the "bring-down letter")[34] reaffirmed and updated the information in the March 19 letter. The updated information included net sales and net income (loss) information for the first two months of 1998 and 1997. The March 25, 1998 letter again indicated that 1998 amounts had decreased from the prior year, and stated that the net loss for the first two months of 1998 of $41.2 million included "a

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[31] *See* March 19 Andersen Comfort Letter at 5, MS 9. Sunbeam had used a 52/53-week fiscal year-end close ending on the Sunday nearest December 31. Although Sunbeam continued to use a fiscal close for its January and February 1998 internal financial statements (five weeks from December 29, 1997 through February 1, 1998 for the fiscal month of January, and four weeks from February 2, 1998 through March 1, 1998 for fiscal February 1998), at the end of the first quarter 1998 Sunbeam adopted a calendar year- and quarter-end close. For ease of reference herein, references to Sunbeam's fiscal months of January and February are simply "January" and "February."

[32] *See id.* at 4.

[33] *See id.*

[34] *See* March 25 Andersen Comfort Letter, MS 10.

compensation charge of approximately $30.2 million recorded in February 1998 from restricted stock issued in connection with new employment agreements with key officers."[35]

Sales and earnings amounts cited in Andersen's letters included the following:

(000's)	*January 1997*	*January 1998*[36]	*January and 1997*	*February 1998*[37]
Net sales	$72,945	$28,984	$143,499	$72, 018
Net income (loss)	4,786	(9,510)	9,765	(41,190)

On March 19, 1998, Sunbeam issued a press release (which was disclosed as a "Recent Announcement" in the offering memorandum for the debentures).[38] The press release stated that "it is possible that [Sunbeam's] net sales for the first quarter of 1998 may be lower than the range of Wall Street analysts' estimates for $285 million to $295 million, but net sales are expected to exceed 1997 first quarter net sales of $253.4 million."[39]

On April 3, 1998, Sunbeam disclosed that its first quarter 1998 sales were expected to be approximately 5% less than comparable 1997 levels and that it expected to report a loss for the first quarter.[40] Sunbeam released its first quarter results on May 11, 1998.[41] In

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[35] *See id.* at 2.

[36] *See* March 19 Andersen Comfort Letter, MS 9.

[37] *See* March 25 Andersen Comfort Letter, MS 10.

[38] *See* March 19, 1998 Press Release, MS 39; March 19, 1998 Offering Mem. at 8, MS 166.

[39] *See* March 19, 1998 Press Release, MS 39.

[40] *See* April 3, 1998 Press Release, MS 58.

[41] *See* May 11, 1998 Press Release, MS 115.

November 1998 Sunbeam issued restated financial statements from the fourth quarter 1996 through the first quarter of 1998.[42] The first quarter amounts (in millions of dollars) were:

	Net sales	Net income (loss)
First quarter 1998:		
Range of Wall Street analysts' estimates*	$285 - $295	
As originally reported	$244.3	$(44.6)
As restated	$247.6	$(54.1)
First quarter 1997:		
As originally reported	$253.4	$ 6.8
As restated	$252.5	$(4.7)

*As indicated by Sunbeam in its March 19, 1998 press release, MS 39.

VI. Comfort Letters and Related Authoritative Professional Standards

The following is a discussion of authoritative professional standards that are relevant to this report.

A. *Generally Accepted Auditing Standards*

Generally accepted auditing standards are the authoritative pronouncements that guide auditors in the United States in conducting audits of financial statements and related services, such as the issuance of comfort letters. These standards are issued by the AICPA's Auditing Standards Board in the form of Statements on Auditing Standards ("SASs"), and codified by the AICPA in a reference volume. The codification organizes the SASs according to AU (*i.e.*, auditing) topics called AU Sections. For example, the standard relating to comfort letters (Statement on Auditing Standards No. 72, *Letters for*

[42] The restated first quarter amounts appear in Sunbeam's amended quarterly report on Form 10-Q/A filed with the SEC on November 25, 1998. *See* MS 282.

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Underwriters and Certain Other Requesting Parties ("SAS 72")) is included in the AICPA's codification under AU Section 634 and referred to as AU § 634. AU § 634 also includes two subsequent amendments to SAS 72.[43] AU § 634 in its current version was in effect in 1998.

The AICPA Code of Professional Conduct requires that an AICPA member comply with the SASs.[44] The SASs are authoritative because, prior to issuance, they have undergone a deliberative process by the Auditing Standards Board that is open to the public, including an exposure process seeking public comment from the accounting profession, regulators, academics and other interested parties. In 1998, the SASs issued by the Auditing Standards Board were authoritative for the audits of all entities.[45]

B. *Comfort Letters and Section 11 Defenses*

Comfort letters issued by auditors have their origins in the Securities Act of 1933 ("the Securities Act"). Section 11 of the Securities Act imposes possible liability on underwriters (among others) for materially misleading statements in, or omissions from, a registration statement for the offer of securities. However, a "due diligence" defense

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[43] *See* Statement on Auditing Standards 76, *Amendment to Statement on Auditing Standards No. 72, Letters for Underwriters and Certain Other Requesting Parties*, issued in September 1995 ("SAS 76"), and Statement on Auditing Standards 86, *Amendment to Statement on Auditing Standards No. 72, Letters for Underwriters and Certain Other Requesting Parties* ("SAS 86"), issued in March 1998; *see also infra* note 61. SAS 86 dealt principally with comfort letter comments on Management's Discussion and Analysis. SAS 86 is unrelated to the matters at issue in this report.

[44] *See* Rule 201, *General Standards,* and Rule 202, *Compliance with Standards*, of the AICPA Code of Professional Conduct, which require an AICPA member who performs an audit of financial statements to comply with standards promulgated by the Auditing Standards Board. The auditor should have sufficient knowledge of the SASs to identify those that are applicable and should be prepared to justify departures from the SASs.

[45] In 2003, pursuant to the Sarbanes-Oxley Act of 2002, the Public Company Accounting Oversight Board assumed the responsibility for setting auditing and related standards to be used in audits of public companies and initially adopted GAAS as its interim standards. The ASB continues to establish standards for the audits of non-issuers.

against liability is provided if an underwriter can demonstrate that it had, *after reasonable investigation*, reasonable grounds to believe and did believe that the statements were true.[46]

Under the provisions of the Securities Act, whether a registration statement is materially misleading or omits material facts is assessed as of its effective date. In other words, information contained in a registration statement must be true and there must be no material omissions when the SEC declares a registration statement effective.[47] If any information changes materially between the date that the registration statement is prepared and the date it becomes effective, the registration statement must reflect that change.

Accordingly, to establish a Section 11 due diligence defense, an underwriter must show that, as of the effective date of the registration statement, it had reasonable grounds to believe that, *after reasonable investigation,* the disclosures in the registration statement were true. However, with respect to any information in the registration statement that purports to be made on the authority of a named expert (*i.e.*, is "expertized"), the underwriter must only have no reasonable ground to believe that the "expertized" information is untrue, and need not make any additional investigation.[48] Because of the protection afforded by this provision, underwriters usually insist on including an "Experts" section in registration statements indicating the extent of reliance on experts and identifying material in the document that is "expertized." Audited financial statements are typically "expertized," and auditors consent in registration statements to references to their firms as experts in accounting and auditing.[49]

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[46] *See* Securities Act (15 USC § 77a *et seq.*), Section 11.b.3.

[47] *See* Securities Act, Section 11.a.

[48] *See* Securities Act, Section 11.b.3(A) and (C).

[49] Underwriters and their counsel generally include similarly worded indications of reliance on auditors in exempt offerings such as Rule 144A transactions. However, the auditors are not referred to as "experts"

Because of the auditor's familiarity with the company's operations and financial systems, underwriters ask auditors to perform directed procedures with respect to certain "non-expertized" financial and other data appearing in the registration statement, as well as information about whether changes in financial position or results of operations have occurred since the date of the most recent financial statements in the registration statement. Thus, a letter from an auditor on the results of those procedures provides a level of "comfort" (sometimes called "cold comfort") that the underwriter has been duly diligent in those areas of investigation — hence the term "comfort letter."

Comfort letters are not required by the Securities Act and are not filed with the SEC. However, underwriters uniformly condition their underwriting of sales of securities upon the receipt of comfort letters. No two offerings are the same, and therefore comfort letters are not identical in all respects. However, in all cases, an underwriter will ask the auditor to provide "comfort" regarding the most recent financial information and any indicated declines in sales and earnings, and the auditing standards provide a uniform structure for auditors to report this information.

C. *Content of Comfort Letters*

A typical comfort letter provides information regarding (a) the auditor's independence, (b) compliance of financial statements with applicable accounting requirements of the SEC, (c) the results of performing specified procedures on tables, statistics and other financial information contained in the registration statement (and apart from the financial statements), and (d) comments on any declines in sales and earnings or certain other financial statement changes during the "change period," *i.e.*, in general, the

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because the transaction is not a Securities Act offering, and the notion of liability relief for "expertized" data is unique to Section 11. *See, e.g.*, March 19, 1998 Offering Mem. at 71, MS 166.

period from the date of the most recent financial statements included in the registration statement until the cut-off date of the comfort letter (a few days before the effective date of the registration statement). Underwriters also ask for a "bring-down" comfort letter from the auditors at closing (typically a week after the effective date) that reaffirms and updates any matters addressed in the comfort letter that was delivered on the effective date.

D. *Comfort Letter Comments on Subsequent Changes*

Comments in comfort letters regarding any changes in financial statement items (such as declines in sales and earnings) help the underwriter assess whether any material changes have occurred that need to be disclosed or otherwise addressed in the registration statement. Years ago, underwriters asked auditors to provide "negative assurance" in comfort letters regarding subsequent changes — that is, to state that nothing had come to their attention to indicate that there had been a *material adverse change* in the issuer's financial position or results of operations.[50] In 1971, notwithstanding the then-longstanding practice of auditors providing such negative assurance, the AICPA proscribed the expression of any such negative assurance as to the absence of an adverse change.[51] The AICPA's Committee on Auditing Procedure reasoned that there was no common agreement or objective measure as to what constituted a "material adverse change" and

[50] The first authoritative guidance for accountants regarding comfort letters was Statement on Auditing Procedure No. 35, *Letters for Underwriters* ("SAP 35"), issued in November 1965 by the AICPA's Committee on Auditing Procedure ("CAP"). The CAP was the predecessor of the ASB, whose first pronouncement in 1972 was the codification of the 54 previously issued SAPs as Statement on Auditing Standards No.1. SAP 35 noted that there were sometimes differences of opinion as to what constitutes an "adverse change," and that some accountants looked primarily to absolute relationships between amounts in current and prior corresponding periods, while others thought it necessary to investigate the reasons for apparently adverse changes. SAP 35 did not resolve this issue, but advised that whichever approach was used, the client should consider disclosure.

[51] *See* Statement on Auditing Procedure No. 48, *Letters for Underwriters,* issued November 1971, which superseded SAP 35.

that, as a result, the term had been misinterpreted on some occasions by underwriters as encompassing judgments and conclusions not contemplated by auditors.

Thus, the thrust of current letters moved from subjectively determinable "material adverse changes" to objectively determinable changes in financial statement items. Instead of negative assurance as to the absence of a material adverse change, auditors now simply express negative assurance as to the absence of subsequent changes or declines in specified, objectively measurable financial statement items, such as revenues and earnings. If interim financial statements are available, and if a change such as a decline in sales or earnings occurs, the auditor cites the comparative amounts in the comfort letter.

While proscribing negative assurance as to adverse changes in 1971, the AICPA nonetheless continued a reporting accommodation unique to the Securities Act environment. Auditors were (and still are) allowed to express negative assurance as to the absence of declines in financial statement items up to the cut-off date of the letter, even without financial statements being available and based only on limited procedures.[52] However, if subsequent financial statements or other data are available and indicate declines in specified financial statement items, the auditor must report in the comfort letter the financial statement items and related comparative amounts.

The comfort letters provided by Andersen to Morgan Stanley on March 19 and 25, 1998, provide examples of how auditors report financial information in the "change period." The most recent Sunbeam financial statements in the offering memorandum were as of December 28, 1997 (the end of fiscal year 1997). Thus, the "change period" was from December 29, 1997, to March 16, 1998, the "cut-off date" of the first Andersen

[52] SAS 72 states that, in most cases, these procedures will be limited to the reading of the minutes and the inquiries of company officials (AU § 634.45).

comfort letter. On March 16, 1998, financial statements for January 1998 were available, and Andersen noted the amounts for specified financial statement items that had declined as compared to January 1997. Andersen further indicated (without quantification) that sales and net income for the first quarter of 1998 through the cut-off date had decreased from that same period in 1997. In the second ("bring-down") comfort letter of March 25, 1998, financial statements for February 1998 had become available and Andersen cited specific declines for the first two months of 1998 compared to that same period in 1997, and indicated (again without quantification) that sales and net income through the new cut-off date (March 23, 1998) had decreased.

E. ***Written Management Representations Supporting Responses to Auditor Inquiries***

A party requesting a comfort letter asks the auditor to inquire of management about several matters, the most important of which often relate to the "change period" described above. For example, the auditor inquires as to the availability of interim financial statements and minutes of meetings of the stockholders, the board of directors, and other appropriate committees, if any. The auditor reads any available interim minutes and financial statements and inquires of management as to whether (i) available interim financial statements are stated on a basis substantially consistent with that of the audited financial statements included in the registration statement and (ii) there were any changes in specified financial statement items (including declines in revenues and earnings) as of or through the date of those interim statements.

Further, the auditor inquires of management as to whether there were any changes in specified financial statement items (including declines in revenues and earnings) for the *entire* "change period," *i.e.*, from the date of the most recent financial statements included

in the registration statement to the cut-off date of the letter. As indicated above, the change period almost always includes an interval for which no financial statements will have been prepared. For example, in the March 19, 1998 Andersen comfort letter referred to in the preceding paragraph, that "dark" interval was from February 2, 1998 (the day after the date of the most recent available interim financial statements, for the fiscal month of January 1998[53]) through March 16, 1998, the comfort letter cut-off date.[54]

SAS 72 requires that management responses to the auditor's comfort letter inquiries be supported by appropriate *written* representations of the company officials.[55] Auditing standards also require that these written representations to auditors be signed by those members of management with overall responsibility for financial and reporting matters, typically including the chief executive officer, the chief financial officer and others with equivalent positions in the company.[56] The written representations Sunbeam furnished to Andersen on the cut-off dates of March 16 and 23, 1998 were signed by Albert J. Dunlap, Chairman and Chief Executive Officer; Russel A. Kersh, Executive Vice President Finance

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[53] *See supra* note 31.

[54] As a result of the knowledge of the company's internal control structure obtained by having audited the company's financial statements, the auditor can assess whether management has sufficient information to support positive representations as to the status of financial statement items at the letter's cut-off date. For example, a company may have "flash reports" or other condensed reporting techniques that may provide management with sufficient confidence to make the representations.

[55] *See* AU § 634.45 n.31. SAS 72 indicates that these answers "generally" should be supported by written representations by company officials. However, many auditors insist that the responses be supported by written representations (rather than document the results of oral discussions). Moreover, in Securities Act filings auditors are required to obtain written representations from officers about whether any subsequent events have occurred that may have a material effect on the audited financial statements (AU § 711.10), and frequently the two sets of representations are included in the same letter. Many auditors follow the requirements of AU § 711, *Filings Under Federal Securities Statutes,* in exempt transactions as well as Securities Act filings. For example, the Sunbeam letters to Andersen include both sets of representations.

[56] *See* AU § 333.10, *Management Representations.*

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and Administration; David C. Fanin, Executive Vice President General Counsel; and Robert J. Gluck, Vice President Chief Accounting Officer.[57]

F. *SAS 72: Comfort Letters Available to Other Requesting Parties*

Before 1993, auditing standards contemplated that comfort letters would be issued solely to underwriters, and then only in the context of registrations statements filed with the SEC under the Securities Act. However, auditors increasingly were being asked for comfort letters (or substantially equivalent reports) in two general circumstances.

First, parties other than underwriters requested such letters. For example, buyers and sellers sought "cross-comfort letters" in connection with acquisition transactions. Cross-comfort letters are letters issued by the seller's auditor to the buyer and by the buyer's auditor to the seller.

Second, underwriters sought comfort letters in connection with offerings and transactions not requiring registration under the Securities Act. Examples include foreign offerings, private placements under Rule 144A[58] (such as the Sunbeam debenture offering), and securities offerings by governmental and other issuers exempt from registration under the Securities Act.

In transactions exempt from registration with the SEC, including Rule 144A offerings, underwriters and others remain subject to the liability provisions of Rule 10b-5 under the Securities Exchange Act of 1934[59] for untrue or omitted statements made in connection with the purchase or sale of a security. Thus, even though Section 11 of the

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[57] *See* March 16 Sunbeam Representation Letter at 3, CPH 120; March 23 Sunbeam Representation Letter at 3, CPH 124.

[58] *See supra* note 27.

[59] *See* 17 CFR Part 240, General Rules and Regulations promulgated under the Securities Exchange Act of 1934, Rule 10b-5, *Employment of Manipulative and Deceptive Devices.*

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Securities Act does not apply to such transactions, many participants in exempt offerings nonetheless refer to it defensively as a standard against which violations of Rule 10b-5 may be measured. Thus, underwriters and financial intermediaries in exempt offerings generally require the receipt of comfort letters for due diligence purposes.

Before SAS 72 was adopted in 1993, practice had varied with respect to auditors' responses to requests for comfort letters by parties other than underwriters or in connection with exempt offerings. Accordingly, in February 1993, in order to provide for uniformity of practice, the AICPA's Auditing Standards Board issued SAS 72, which authoritatively stated for the first time (i) the conditions under which auditors could issue comfort letters to parties other than underwriters and for transactions not subject to the Securities Act, and (ii) guidelines for the content of those letters. SAS 72 acknowledged that there was a strong demand for comfort letters in a wide variety of circumstances.

G. *Comfort Letters to Buyers or Sellers in Business Combinations*

Of particular relevance to this report, SAS 72 specifically permits auditors to issue comfort letters to buyers or sellers (or both) in connection with acquisition transactions in which there is an exchange of stock. (SAS 72 cites as an example cross-comfort letters in a typical Form S-4 or merger proxy transaction.[60]) To obtain such comfort letters, requesting buyers or sellers must provide a letter to the auditor representing that they are knowledgeable with respect to the due diligence process under the Securities Act and that their review process is substantially consistent with that process. However, if such a representation cannot be made, a substantially similar version of a comfort letter

[60] Form S-4 is used to register securities with the SEC in connection with business combinations and exchange offers, and may be used as the proxy/information statement for the transaction.

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nonetheless may be issued.[61] This form of letter is different only in that information as to absence of changes in certain items of financial position and operations in the "change period" is attributed to management's positive assertions rather than the auditor's expressions of negative assurance.

SAS 72 also notes that a requesting party who does not meet the conditions for receipt of a comfort or equivalent letter still may engage an auditor to perform specified procedures and report on the results of those procedures.[62] That sort of limited service, referred to as an "agreed-upon procedures" engagement, is less than an audit or a review and consists of procedures applied by the accountant to specified financial statement accounts or elements. The requesting party and the accountant "agree upon" the procedures that the requesting party believes are appropriate for its purposes.

Many of the procedures requested in a comfort letter (or different procedures) could be performed in an agreed-upon procedures engagement. For example, a requesting party could ask the auditor to compare sales and earnings in the most recent available interim

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[61] *See* SAS 76, *Amendment to Statement on Auditing Standards No. 72, Letters for Underwriters and Certain Other Requesting Parties*, issued in September 1995. SAS 76 provided guidance on the form of report that could be issued to a qualified requesting party (including a buyer and seller in an acquisition) who could not furnish the representations required by SAS 72 regarding knowledge of the Securities Act due diligence process and performance of a review substantially consistent with that process. A "SAS 76" letter covers the same matters as a "standard" comfort letter; however, the accountant may not express negative assurance as to absence of changes in certain items of financial position and operations in the "change period" as in a "standard" letter. Rather, the accountant reports on the same information as the results of management inquiries. In a "standard" letter the accountant would state that "nothing came to *our* attention that there had been a decline in sales or earnings ...." However, in a "SAS 76" letter, the accountant would indicate that *officials of the company* stated that "there had been no decline in sales or earnings ...." In the codified AU § 634, the SAS 76 report example is Example Q.

[62] *See* SAS 75, *Engagements to Apply Agreed-Upon Procedures to Specified Elements, Accounts, or Items of a Financial Statement*, issued in September 1995 ("SAS 75"), superseding a similar standard issued in 1981. In 2000, the Auditing Standards Board withdrew SAS 75 in order to consolidate the guidance applicable to agreed-upon procedures engagements in what are called the "attestation" standards applicable to a variety of engagements to report on financial assertions other than financial statements. (SAS 75 was consolidated into Section 201, *Agreed-Upon Procedures Engagements*, of the AICPA's Codification of Statements on Standards for Attestation Engagements.) Unlike SAS 72 and 76, SAS 75 did not require that an accountant have an "audit base" of knowledge of an entity's control structure to perform agreed-upon procedures.

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financial statements to the corresponding amounts in the preceding year and report any indicated declines.

H. *Summary of Reporting Alternatives Under Professional Standards*

In sum, professional auditing standards provide requesting parties with a variety of ways to seek specific current information about a company from its auditors. Depending on the circumstances, auditors may issue a comfort letter (SAS 72), provide comparable information in a letter very similar to a comfort letter (SAS 76) or report on the results of having applied agreed-upon procedures (SAS 75).

VII. Analysis of Facts and Relevant Authoritative Standards

A. *CPH Had Reason To Wish To Obtain Sunbeam Interim Financial Information*

The CPH complaint indicates that Sunbeam's sales and earnings projections for the first quarter and full year of 1998 were discussed during the merger negotiations. In that regard, the complaint also indicates that CPH was made aware of Sunbeam's "early buy" program,[63] which Sunbeam disclosed in a public filing of its 1997 Form 10-K in early March 1998.[64] Thus, even before March 19, 1998, CPH might well have had a keen interest in any recent developments regarding the sales and earnings of Sunbeam.

In addition, as of February 23, 1998, CPH was aware that Sunbeam's January and February sales were "slow."[65] Coleman's chief executive officer has testified that, on this

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[63] *See* May 8, 2003 Complaint ¶ 39.

[64] *See* Sunbeam 10-K at 14, MS 12.

[65] I have been advised by counsel to Morgan Stanley that, on February 23, 1998, Morgan Stanley, Sunbeam, and CPH management met to discuss the transaction, and that Jerry Levin, then chief executive officer of Coleman, made notations on materials that were used at the meeting indicating he was informed that Sunbeam's January and February sales were "slow." *See* Sunbeam: Long Range Strategic Plan at MF 00016, MS 84.

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same date, he told CPH executives that Sunbeam's long-range sales and net income expectations "were quite a stretch" and that he "did not think they were achievable."[66]

Certainly, by at least March 19, 1998, CPH had a particular and significant reason to want to obtain interim Sunbeam financial information. Specifically, on that date, the same date on which the debenture offering was launched, Sunbeam issued a press release warning about first-quarter revenue expectations. To anyone familiar with the capital-raising process in the United States, that coincidence of timing would have at least suggested that the due diligence investigations undertaken in connection with the debenture offering had triggered the revenues warning. Any party familiar with securities underwritings would have known that the comfort letters issued by the auditors to the underwriter would have contained more specific interim information than appeared in the press release.

Also, the March 19, 1998 press release included a possible causal relationship that would have heightened CPH's interest in wanting to know more about Sunbeam's first quarter results. The press release stated that any shortfall from analysts' estimates of Sunbeam's sales would be due to "changes in inventory management and order patterns at certain of [Sunbeam's] major retail customers." Given CPH's awareness of the Sunbeam's "slow" sales in January and February 1998, as well as its awareness of Sunbeam's "early buy programs," CPH could well have wanted to determine more information Sunbeam's customers' inventory levels (or the "pipeline" of Sunbeam products).

[66] Dec. 2, 2004 Levin Dep. at 10.

B. *CPH Could Have Obtained Sunbeam Interim Financial Information in Numerous Ways*

If, as a result of Sunbeam's March 19, 1998 press release[67] or otherwise, CPH wanted information about quarter-to-date sales and earnings, it had at least five options for obtaining such information.

1. *CPH Could Have Requested and Received a Copy of Andersen's Comfort Letter to Morgan Stanley*

CPH could have obtained the underwriter's due diligence information about Sunbeam's interim financial information by requesting, from either Sunbeam or Morgan Stanley, a copy of the Andersen comfort letter(s).[68] SAS 72 afforded CPH, as a party to the merger transaction, the same right as Morgan Stanley to request and receive from Andersen a comfort letter that would address recent sales and earnings.

In my opinion, there is every reason to believe that CPH would have or should have known that in March 1998 that Andersen issued comfort letters to Morgan Stanley and that the letters would have addressed any identified decreases in interim sales and earnings.

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[67] *See* March 19, 1998 Press Release, MS 39.

[68] It is important to distinguish between the actual Andersen letters to Morgan Stanley and the information contained in those letters. As indicated throughout this report, it is my belief that CPH could have obtained the exact same *information* in a variety of ways. The Andersen letters were appropriately addressed to and, as required by AU § 634.61, restricted to the use of Morgan Stanley. Thus, Sunbeam or Morgan Stanley might have refrained from giving to CPH copies of the letters to Morgan Stanley. Because CPH was entitled to access to the same information, however, Sunbeam or Morgan Stanley might well just have given CPH copies of the Andersen letters as a matter of convenience. (As a matter of fact, and as described below in this section, Sunbeam agreed to later provide to CPH with a signed counterpart of an auditor's restricted comfort letter to the underwriter under the registration rights agreement with CPH. *See* March 29, 1998 Registration Rights Agreement § 2.4(12), MS 278.) If a copy of the letters to Morgan Stanley were not provided to CPH, and as explained in this section of the report, CPH would then simply ask that Andersen issue the same letter addressed to CPH either in addition to or instead of Morgan Stanley. Depending on whether CPH could furnish due diligence representations, Andersen would have issued either a "standard" comfort letter or a "SAS 76" comfort letter, each of which would have had the same information content. *See supra* note 61.

First, CPH was familiar with the comfort letter process.[69] Senior CPH officials have testified that CPH and its affiliates had participated in the issuance of billions of dollars of debt securities.[70] Accordingly, CPH's auditors would have, in prior transactions, provided underwriters with comfort letters regarding CPH's financial condition.

Second, CPH would have been familiar with the debenture offering, not only because it was integral to Sunbeam's funding the Coleman acquisition, but also because summary descriptions of Coleman's business and three years of Coleman's financial statements were included in the offering memorandum. The Coleman disclosures in the offering memorandum were more than a mere "paste and patch" from Coleman's SEC filings.[71] For example, Coleman's financial statement disclosures were modified from those in its 1997 Annual Report on Form 10-K to add a footnote about the potential technological impact of the year 2000[72] and to make conforming changes to company names. It is my opinion that Sunbeam would not have altered Coleman's public disclosures without Coleman's participation or at least its consent.

Similarly, the report of Ernst & Young LLP ("E&Y"), Coleman's auditors, that was contained in the offering memorandum was modified from E&Y's report in Coleman's 1997 Form 10-K to reflect that it was reporting on less financial statement data in the offering memorandum than they had in the Form 10-K. Again, in my opinion, Sunbeam

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[69] *See* Nov. 19, 2004 Gittis Dep. at 54:24-56:25, 112:1-5; June 25, 2004 Schwartz Dep. at 161:2-9, 195:23-196:8.

[70] *See* Gittis Dep. at 18:11-23; Nov. 17, 2004 Perelman Dep. at 49:15-20.

[71] The offering memorandum stated that information in the document with respect to Coleman and the other companies to be acquired had been derived from their SEC filings "or from information supplied by them for inclusion herein." *See* March 19, 1998 Offering Mem. at 3, MS 166.

[72] *See id.* at F-53 to F-54.

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would not have modified the information in E&Y's report without the participation of E&Y.

Third, the materials I have reviewed make clear that both Coleman officials and E&Y actively participated in aspects of Sunbeam's debenture offering. On March 12, 1998, Morgan Stanley held a due diligence meeting about Coleman that included presentations by Coleman's chief executive and finance officers and a plant tour of the Coleman facilities.[73] On the same day, E&Y participated in an accounting due diligence conference call organized by Morgan Stanley.[74] Morgan Stanley requested that E&Y and the auditors of each of the other three companies whose financial statements were to be included in the offering memorandum answer eighteen questions about their clients' accounting and control environments.[75] In my opinion, E&Y could not have done so without the knowledge and consent of CPH/Coleman.

Fourth, E&Y supplied comfort letters to Morgan Stanley.[76] *The letters were also addressed to Coleman's parent, CLN Holdings Inc.*[77] As part of its comfort letter procedures, and as required by SAS 72, E&Y made certain inquiries of management of CLN Holdings Inc. and, as explained in the preceding section, was required pursuant to applicable auditing standards to obtain written representations from management to support the results of the inquiries. In my opinion, as sophisticated business entities that had themselves participated in transactions involving substantial debt offerings and that had prior experience with the comfort letter process, CPH and CLN Holdings Inc. should have

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[73] *See* March 10, 1998 Memorandum, CPH 302.

[74] *See* March 10, 1998 Fax, MS 56.

[75] *See id.* at 3-4.

[76] *See* March 20 E&Y Comfort Letter, MS 243; March 25 E&Y Comfort Letter, MS 0000462-464.

[77] *See supra* note 29.

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been aware that Morgan Stanley would obtain a parallel comfort letter from Andersen, the auditor of the entity selling the securities (*i.e.*, Sunbeam).

As a result of this participation of Coleman and its auditors in the debenture offering, it is my opinion that the management of CPH would have or should have known that Andersen would issue comfort letters to Morgan Stanley in connection with Sunbeam's acquisition of Coleman and that those letters could include significant, specific information about recent sales and earnings trends.

2. *CPH Could Have Requested and Received a Copy of the Representation Letters Supplied by Sunbeam*

Pursuant to its contractual rights of access,[78] CPH could have requested copies of the representation letters supplied by Sunbeam's senior executives to Andersen to support Sunbeam's responses to Andersen's comfort letter inquiries about interim financial statement changes, including any declines in sales and earnings.

CPH would or should have known that Sunbeam's management would be furnishing similar written representations to Andersen that would be (and were) a primary source of any current trend information reported by Andersen in its comfort letter to Morgan Stanley, since Coleman's management at that time was responding to comfort letter inquiries from E&Y. Although I have not been provided a copy of letters from Coleman's management to E&Y regarding the statements made in the E&Y comfort letters, it is clear that Coleman provided such representations to E&Y. The E&Y comfort letters *specifically reference* such representations and state that E&Y made the same standard comfort letter inquiries about subsequent changes at Coleman that Andersen made of Sunbeam: "*We have inquired of Company officials* who have responsibility for financial

[78] Feb. 27, 1998 Merger Agreement § 6.7, MS 93.

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and accounting matters as to whether ... for the period from January 1, 1998, to March 18, 1998, there was any decrease, as compared with the corresponding period in the preceding year, in total operating revenues, income from operations or increase in net loss. *On the basis of these inquiries* and our summary of the minutes . . . nothing came to our attention that caused us to believe that there was any such increase or decrease . . . ."[79] E&Y's statement is consistent with standard practice; any auditor, in the normal course of preparing a comfort letter, would require management to provide such representations before issuing a comfort letter.[80]

Significantly, Coleman's responses to E&Y's comfort letter inquiries would have been supplied by the highest levels of management, including those who participated in Morgan Stanley's due diligence meetings. Comfort letter inquiries are not directed at middle or lower levels of management. By way of example, as described in the previous section, the Sunbeam representation letters were signed by four of the highest-ranking Sunbeam officers and contained specific data about comparative sales and earnings data for January and February of 1998 and 1997.

Not only would E&Y's inquiries to Coleman have made Coleman aware that its counterparty, Sunbeam, had similarly made its interim financial information available to other parties, but Sunbeam also had agreed to provide comfort letters to CPH or Coleman in each instance in which CPH or Coleman would have Securities Act liability (Section 11)

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[79] March 20 E&Y Comfort Letter at 2, MS 243 (emphasis added); March 25 E&Y Comfort Letter at 2, MS 0000463. The same language was included in the March 25 E&Y Comfort Letter, with the only change being the letter cut-off date (March 25, 1998 vs. March 18, 1998).

[80] *See supra* note 55.

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risks.[81] These agreements indicate that CPH was well aware of the importance and availability of comfort letters:

- *CPH registration rights agreement* - if the shares were sold through an underwriter, Sunbeam agreed to use reasonable best efforts to furnish to CPH *a signed counterpart of a comfort letter delivered to underwriters.*[82]
- *Coleman merger agreement* - Sunbeam and Coleman each agreed to use reasonable best efforts to cause their auditors to issue a *cross-comfort letter* to the other company.[83]

3. *CPH Could Have Requested and Received a Separate Comfort Letter from Andersen*

In addition to seeking a copy of the comfort letters that Andersen had provided to Morgan Stanley, CPH could have requested, and the authoritative auditing standards would have authorized, Andersen's furnishing a comfort letter directly to CPH that otherwise contained the same information as the letter addressed to Morgan Stanley.

If Sunbeam or Morgan Stanley had been reluctant to furnish a copy of the Andersen letter to CPH,[84] then Coleman could have requested that Sunbeam cause Andersen to issue a comfort letter with the same content but addressed to CPH.[85] If CPH had been unable to

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[81] As indicated previously, Morgan Stanley conditioned its initial purchase of the debentures on the receipt of comfort letters from the auditors of Sunbeam and each of the three companies Sunbeam would acquire (*See* March 19, 1998 Purchase Agreement at 10, MS 242). CPH was not a party to the purchase agreement between Morgan Stanley and Sunbeam, and the agreement did not provide for the issuance of comfort letters to CPH or any other entities not party to the agreement.

[82] *See* March 29, 1998 Registration Rights Agreement § 2.4(12), MS 278.

[83] *See* Company Merger Agreement § 7.3, MS 117.

[84] *See supra* note 68.

[85] *See* AU § 634.05.

supply to Andersen the due diligence representations required by SAS 72[86] to receive the identical letter,[87] CPH would still have been entitled, pursuant to SAS 76, to a substantially similar letter from Andersen covering the same matters, but referring to subsequent change comments as being the assertions of management rather than negative assurances of the auditor.[88]

4. ***CPH Could Have Invoked Its Contractual Rights of Access***

Finally, the February 27, 1998 Agreement and Plan of Merger between Sunbeam and CPH provided both Sunbeam and CPH with reasonable access to their counterpart's books, records and personnel *and* to the other's financial advisers, legal counsel, accountants, consultants, and other representatives.[89] Thus, CPH had a contractual right of access both to Sunbeam and Andersen personnel, as well as the contractual right, at any time prior to the sale of its interest in Coleman, to seek interim Sunbeam financial information such as that contained in the Andersen letters to Morgan Stanley.

5. ***CPH Could Have Engaged an Auditor to Perform Agreed-Upon Procedures***

If for any reason CPH had wanted more or different procedures applied to Sunbeam's interim information, and as provided for in AU § 634.10, CPH could have engaged Andersen, E&Y, or a third firm to perform specified procedures to identify and report changes in financial statement items, such as sales and earnings.

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[86] AU § 634.06-.07 call for written representations by the requesting party that it is knowledgeable of the Securities Act due diligence process and has performed a review substantially consistent with that process.

[87] As to the required due diligence representations to receive a "standard" comfort letter, the comfort letter from E&Y was addressed to both Morgan Stanley and CLN Holdings, Inc. E&Y stated that their letter was furnished in reliance on the required due diligence representations. *See* March 20 E&Y Comfort Letter at 1, MS 243.

[88] *See supra* note 61.

[89] *See* Merger Agreement § 6.7, MS 93.

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D. *Summary*

Based upon a review of the facts in this report, I conclude that, prior to the sale of its interest in Coleman to Sunbeam, CPH had several avenues available to it to obtain Sunbeam financial information related to the first quarter of 1998.

First, CPH could have requested from Sunbeam or Morgan Stanley a copy of Andersen's comfort letters to Morgan Stanley. As a seller in a business combination involving the exchange of stock, CPH could have requested, and the authoritative auditing standards would have sanctioned, Andersen's furnishing a comfort letter to CPH. CPH was or should have been aware that the Andersen letters existed and that they would have contained specific, important information about any changes in Sunbeam's first quarter 1998 sales and earnings.

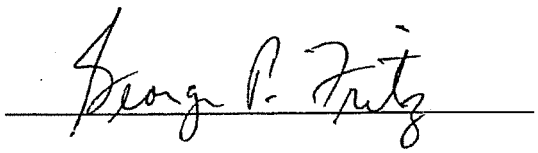
Second, pursuant to its contractual rights of access, CPH could have requested copies of the representation letters supplied by Sunbeam's senior executives to Andersen to support Sunbeam's responses to Andersen's comfort letter inquiries about interim financial statement changes, including any declines in sales and earnings. CPH knew or should have known of the existence of those representation letters and that those letters would have contained specific, important information about any changes in Sunbeam's first quarter 1998 sales and earnings.

Third, instead of a copy of the comfort letters to Morgan Stanley, CPH could have requested, and the authoritative auditing standards would have sanctioned, Andersen's furnishing a comfort letter addressed to CPH that otherwise contained the same information as the letter addressed to Morgan Stanley.

Fourth, CPH had contractual rights of access to Sunbeam records, personnel, accountants and other advisers and could have requested information directly from Sunbeam or its representatives, including Andersen.

Fifth, instead of a comfort letter, CPH could have requested, and the authoritative auditing standards would have sanctioned, that an accountant perform specified or "agreed upon" procedures with respect to Sunbeam financial statement accounts directed at determining, *e.g.,* if declines in interim sales and earnings had occurred.

Respectfully submitted



December 7, 2004

George P. Fritz

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 7th day of December, 2004.

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EXHIBIT A

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November 2004

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Summary:

I am a founding member of Accounting & Auditing Consultants LLC, formed in early 2004. I had been an audit partner of PricewaterhouseCoopers LLP ("PwC"). My 40-year career with PwC included worldwide engagement partner responsibilities for some of the firm's most important clients as well as firm-wide responsibilities for resolution of accounting and auditing issues.

Since retirement from PwC in 1999 I have assisted accounting oversight groups in several capacities.

Professional Background:

Since graduation, I have been involved with the public accounting profession. I have been a certified public accountant in Connecticut, New York, and Kentucky. Although I have been assisting accounting oversight groups, I do not currently perform any audits of financial statements.

1999-04: After retirement from PwC, I served as a consultant to the Public Oversight Board ("POB") and its successor, the Transition Oversight Staff ("TOS"). Those activities included:

- serving on the staff of the POB's Panel on Audit Effectiveness that issued its report and recommendations in 2000
- oversight of the process of setting auditing standards by the Auditing Standards Board
- participation in the oversight of the activities of the AICPA's Quality Control Inquiry Committee
- participation in the study of the independence quality control systems of the four largest audit firms

I am a member of the Antifraud Programs and Controls Task Force of the American Institute of CPAs and in 2004 joined the AICPA's Auditing Standards Board (as reconstituted after Sarbanes-Oxley).

1991-99: National consulting partner in the New York practice office of Coopers & Lybrand ("C&L") (PwC after the merger with Price Waterhouse in July 1998) -- my responsibilities included the resolution of accounting, auditing and SEC issues for audits of clients in the tri-state metropolitan practice area, and oversight of and assignments of reviews of SEC filings by designated firm reviewers. I was also the concurring partner on several major audits.

From 1991-1996 I was C&L's representative on the AICPA's Accounting Standards Executive Committee ("AcSEC"). AcSEC was the senior technical accounting body of the AICPA and was the profession's liaison with other accounting standard setters such as the Financial Accounting Standards Board. I chaired several AcSEC task forces, including software revenue recognition, reorganizations, and consolidations.

1984-91: Audit partner in the New York practice office of C&L -- during this period I served as worldwide engagement partner on the audits of some of the largest multinational clients of C&L, principally consumer products companies.

I also served as Regional Director of Accounting, Auditing and SEC services for the New York metro area. That role included oversight of firm quality control inspections of metro area audits and liaison with the external peer reviewers.

1982-84: Managing partner of the Stamford, Connecticut practice office of C&L -- in charge of all business and administrative activities of an office of approximately 150 professionals. As a member of Southwestern Area Commerce & Industry Association of Connecticut, Inc. ("SACIA"), I chaired SACIA's Fairfield County Funds Flow Task Force and its study of state tax flows from and to Fairfield County. My community activities also included membership in the Allocation Committee of United Way of Greenwich.

1979-82: National consulting partner in C&L's National Office in New York -- a member of the Accounting, Auditing and SEC Consulting Services group, which consulted with practice partners around the country on technical accounting and auditing matters. I was principal liaison for the northeastern practice offices of C&L. My duties involved participation in the establishment of firm technical policies and practices, preparation of various firm technical publications and letters of comment on proposed audit and accounting standards and SEC rules.

1971-79: Audit partner in the Louisville practice office of C&L -- admitted as a partner in 1971, I was in charge of many clients, public and non-public. I was a designated firm SEC reviewer and also the Regional Director of Accounting, Auditing and SEC Services for the Kentucky offices of C&L.

1959-70: Staff accountant and partner in the Louisville office of Yeager, Ford & Warren (regional firm that merged with C&L in 1970), serving many diverse clients, public and non-public. Before the merger with C&L I had been the SEC reviewer of Yeager, Ford &Warren and its technical consultant.

Education and Professional Associations:

Graduated *magna cum laude* with a Bachelor of Arts degree in 1959 from Xavier University, Cincinnati, Ohio.

Member of the American Institute of Certified Public Accountants, New York State Society of Certified Public Accountants, Connecticut and Kentucky Society of Certified Public Accountants.

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EXHIBIT B

SUMMARY CHRONOLOGY OF EVENTS CITED IN THIS REPORT

February 23, 1998	Sunbeam presents its Long-Term Strategic Plan to CPH
February 27, 1998	Sunbeam agrees to acquire Coleman
March 2, 1998	Sunbeam announces that it will acquire Coleman and two other publicly traded companies
March 12, 1998	Morgan Stanley holds a Coleman due diligence meeting, featuring presentations by Coleman management and a tour of a Coleman plant Morgan Stanley hosts an accounting due diligence conference call in connection with Sunbeam's zero-coupon debenture offering; the auditors of Sunbeam and Coleman participate and answer questions
March 16, 1998	Sunbeam furnishes letter of representations to Andersen in connection with Andersen's comfort letter to Morgan Stanley and the launch of the offering of debentures; letter indicates early first quarter sales and earnings declines
March 18, 1998	Andersen furnishes draft of comfort letter to Morgan Stanley, citing interim sales and earnings declines
March 19, 1998	Sunbeam issues press release stating that first quarter 1998 revenues may be lower than street estimates Andersen issues comfort letter to Morgan Stanley Morgan Stanley agrees to purchase Sunbeam zero-coupon debentures, launches 144A offering to qualifying buyers
March 20, 1998	Coleman auditors issue comfort letter to Morgan Stanley and CLN Holdings, Inc. in connection with debenture offering
March 23, 1998	Sunbeam furnishes updated letter of representations to Andersen in connection with closing of Morgan Stanley's purchase of debentures and Andersen's bring-down comfort letter to Morgan Stanley
March 25, 1998	Andersen and Coleman's auditors issue bring-down comfort

	letters to Morgan Stanley
	Sunbeam's debenture sale closes
March 29, 1998	Sunbeam agrees to register shares to be issued to CPH in connection with Sunbeam's purchase of CPH's controlling interest in Coleman
March 30, 1998	Sunbeam acquires CPH's interest in Coleman
April 3, 1998	Sunbeam announces lower first quarter 1998 sales and earnings expectations
May 11, 1998	Sunbeam announces first quarter 1998 results
May 15, 1998	Sunbeam files first quarter 1998 Form 10-Q report with the SEC
November 25, 1998	Sunbeam restates first quarter 1998 financial statements in amended Form 10Q/A
December 1999	Coleman issues notice to its public (minority) shareholders of plan for Sunbeam to acquire their interests in January 2000 for cash and Sunbeam shares

Note: This chronology is limited to those events that are cited in or relevant to this report.

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EXHIBIT C

RELEVANT AUTHORITATIVE AUDIT STANDARDS

Standard	Date Issued	Significance
Superseded standards:		
Statement on Auditing Procedure 35, *Letters for Underwriters* ("SAP 35")	November 1965	First authoritative guidance for accountants regarding comfort letters
Statement on Auditing Procedure 48, *Letters for Underwriters* ("SAP 48")	November 1971	Proscribed expressing negative assurance on material adverse changes (superseded SAP 35)
Statement on Auditing Standards 38, *Letters for Underwriters* ("SAS 38")	April 1981	Transitional guidance for comfort letters issued by new auditors and other updates (superseded SAP 48)
Standards in effect in 1998:		
Statement on Auditing Standards 72, *Letters for Underwriters and Certain Other Requesting Parties* ("SAS 72" - see Note 1, below)	February 1993	Permitted issuance of comfort letters to certain requesting parties *other than underwriters* (including buyers and sellers in acquisition transactions) and *outside* the environment of the Securities Act of 1933 (superseded SAS 38)
Statement on Auditing Standards 75, *Engagements to Apply Agreed-Upon Procedures to Specified Elements, Accounts, or Items of a Financial Statement* ("SAS 75" - see Note 2, below)	September 1995	Guidance on how to report on the results of procedures specified by the client that are less than an audit (superseded a similar standard issued in 1981)
Statement on Auditing Standards 76, *Amendments to Statement on Auditing Standards No. 72, Letters for Underwriters and Certain Other Requesting Parties* ("SAS 76" - see Note 1, below)	September 1995	Provided guidance on the form of comfort letter that could be issued to a qualified requesting party (including a buyer or seller in an acquisition) who could not furnish certain representations required by SAS 72

Notes:

1. SAS 72 and 76 have been codified into Section 634 of the Codification of Auditing Standards issued by the American Institute of Certified Public Accountants ("AICPA"), referred to as AU § 634. AU § 634 also includes the codification of another SAS 72 amendment (SAS 86, issued March 1998) that dealt with matters unrelated to those at issue in this report.

2. SAS 75 was withdrawn in 2000 and consolidated into Section 201, *Agreed-Upon Procedures Engagements*, of the AICPA's Statements on Standards for Attestation Engagements. The "attestation" standards are applicable to a variety of engagements to report on financial assertions other than historical financial statements.

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EXHIBIT D

Exhibit No.	Document Title
MS 9	March 19, 1998 Letter from Arthur Andersen LLP to Morgan Stanley
MS 10	March 25, 1998 Letter from Arthur Andersen LLP to Morgan Stanley
MS 12	Sunbeam Corp. 10-K for the Fiscal Year Ended December 28, 1997 (dated March 6, 1998)
MS 39	March 19, 1998 Press Release
MS 56	March 10, 1998 Fax
MS 58	April 3, 1998 Press Release
MS 84	Sunbeam: Long Range Strategic Plan
MS 93	Feb. 27, 1998 Agreement and Plan of Merger Among Sunbeam Corporation, Laser Acquisition Corp., CLN Holdings Inc. and Coleman (Parent) Holdings, Inc.
MS 115	May 11, 1998 Press Release
MS 117	Feb. 27, 1998 Agreement and Plan of Merger Among Sunbeam Corporation, Camper Acquisition Corp. and The Coleman Company, Inc.
MS 166	March 19, 1998 Offering Memorandum
MS 242	March 19, 1998 Purchase Agreement
MS 243	March 20, 1998 Letter from Ernst & Young LLP to CLN Holdings, Inc. and Morgan Stanley
MS 278	March 29, 1998 Registration Rights Agreement, § 2.4
MS 279	Dec. 6, 1999 Notice of Merger and Appraisal Rights and Information Statement, Sunbeam Corporation Prospectus
MS 282	Sunbeam Corp. 10-Q/A Amended Quarterly Report for the First Quarter 1998 (dated Nov. 25, 1998)
MS 0000462-464	March 25, 1998 Letter from Ernst & Young LLP to CLN Holdings, Inc. and Morgan Stanley
CPH 120	March 16, 1998 Letter from Sunbeam Corp. to Arthur Andersen LLP
CPH 124	March 23, 1998 Letter from Sunbeam Corp. to Arthur Andersen LLP
CPH 302	March 10, 1998 Memorandum

Exhibit 4

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

MORGAN STANLEY'S RESPONSE TO CPH'S MOTION IN LIMINE NO. 21 TO EXCLUDE PORTIONS OF EXPERT WITNESS ARTHUR H. ROSENBLOOM'S TESTIMONY

Morgan Stanley & Co. Incorporated ("Morgan Stanley") respectfully requests that this Court deny CPH's Motion In Limine No. 21 To Exclude Portions Of Expert Witness Arthur H. Rosenbloom's Testimony. This motion is duplicative of CPH's Motion in Limine No. 10 To Bar Evidence And Argument Concerning The Failure Of The Sunbeam Zero Coupon Subordinated Debenture Holders To Sue Morgan Stanley. Both motions seek identical relief: that the jury be barred from learning that the ***biggest losers*** in the Coleman-Sunbeam transaction aside from Morgan Stanley itself — the holders of approximately $2.014 billion of subordinated debentures — never sued Morgan Stanley for money damages related to the Coleman Sunbeam transaction. CPH argues, without citing a single case, that the failure of the Sunbeam debenture holders to sue Morgan Stanley is irrelevant and factually incorrect. The very statement CPH wants to exclude has been put ***directly at issue*** by CPH throughout these proceedings. At best, CPH's arguments go to the weight of such evidence, not its admissibility, and CPH's motion should be denied.

In support of its position, Morgan Stanley states the following:

I. CPH Put The Debenture Holders At Issue In This Case.

1. In this motion, as in CPH Motion in Limine No. 10, CPH takes issue with the statement of Morgan Stanley's expert witness, Arthur H. Rosenbloom, that: "'[A]ny obligation owed by Morgan Stanley as bond underwriter, was to the Sunbeam zero coupon convertible debenture bondholders (who, as I understand it never sued Morgan Stanley) and not to [CPH].'" (CPH MIL No. 10 at 1 (quoting Dec. 17, 2004 Expert Report of Arthur H. Rosenbloom at 17) (alteration in original); *see* CPH MIL No. 21 at 1.) What CPH fails to point out, however, is the fact Mr. Rosenbloom's reference to the debenture holders was in ***direct*** response to misleading arguments put forth by CPH.

2. CPH has continuously sought to capitalize on Morgan Stanley's duty as the sole manager and underwriter of Sunbeam's convertible debenture offering to imply incorrectly that Morgan Stanley had a duty of disclosure to CPH, even though CPH never purchased one Sunbeam debenture. The introduction of evidence that the ***actual*** debenture holders to whom Morgan Stanley ***did*** have such a duty chose not sue Morgan Stanley, gives the necessary and proper context to CPH's attempts to exploit Morgan Stanley's duty to those debenture holders. Indeed, to exclude the evidence would lead to confusion of the evidence and cause unfair prejudice to Morgan Stanley. Section 90.403 requires inclusion of this critical rebuttal evidence now that CPH has put the debenture holders at issue through Mr. Horton's expert report, their pleadings in opposition to Morgan Stanley's motion for summary judgment and in support of punitive damages, and through their trumpeting of the March 19, 1998 press release and a conversation between John Tyree of Morgan Stanley and Lawrence Bornstein of Arthur Andersen.

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3. ***Horton's Report.*** Throughout his report, CPH's expert, William Horton, relies on Morgan Stanley's role as sole manager and underwriter of Sunbeam's convertible debenture offering to conclude that: (1) CPH should be regarded as some kind of "indirect beneficiary" of the disclosures Sunbeam "***and/or***" Morgan Stanley made incident to the zero coupon convertible debenture offering underwritten by Morgan Stanley (Dec. 7, 2004 Expert Report of William N. Horton at 18 ("Horton Rpt.") (Ex. 1)); (2) some of the information in Arthur Andersen's comfort letter to Morgan Stanley's underwriting of Sunbeam's zero coupon convertibles gave rise to an obligation on Morgan Stanley's part to disclose the same information to CPH (*Id.* at 19-21; *see also* Dec. 23, 2004 CPH's Resp. in Opp. to MS Mot. for Summ. J. at 54-55 ("CPH SJ Resp.")); and (3) given Sunbeam's soft January and February sales disclosed in Arthur Andersen's comfort letter, Morgan Stanley had the power and the obligation to cancel the bond offering (Horton Rpt. at 21.)

4. Mr. Horton's concentration on Morgan Stanley's role as underwriter of the Sunbeam debenture offering opens the door to cross-examination at trial referencing the debenture holders' reactions to Morgan Stanley's conduct. *See Bozeman v. State*, 698 So. 2d 629, 631 (Fla. 4th DCA 1997) ("The 'opening the door' concept is based on considerations of fairness and the truth-seeking function of a trial, where cross-examination reveals the whole story of a transaction only partly explained in direct examination.").

5. ***Opposition to Summary Judgment And Motion for Punitive Damages.*** Throughout the proceedings in this action — even beyond Mr. Horton's expert report — CPH has attempted to piggyback off of Morgan Stanley's duty to the Sunbeam subordinated debenture holders under section 11 of the Securities Act of 1933, to create a common law duty under New York law running from Morgan Stanley to CPH — to whom Morgan Stanley owed no duty

under either the securities laws or the common law of New York. CPH has focused heavily on Morgan Stanley's role as the underwriter of the Sunbeam debentures and its duty to investors in that capacity:

> As Sunbeam's investment banker and the sole underwriter for the debenture offering, Morgan Stanley had a duty to investigate Sunbeam's finances and business operations. As a matter of law, that duty included an obligation to verify management's claims about Sunbeam's finances and business. The United States District Court for the Southern District of New York recently reemphasized that point in its December 15, 2004 decision in *In re Worldcom, Inc. Securities Litigation*: "The ***public*** relies on the ***underwriter*** to obtain and verify relevant information and then make sure that essential facts are disclosed."

(Jan. 10, 2005 CPH's Resp. to MS's Proposed Findings of Fact & Conclusions of Law in Supp. of Its Mot. for Summ. J. ¶ 16 ("CPH Fact Resp.") (emphasis added).)

6. At the punitive damages and summary judgment stages of these proceedings, CPH again attempted to capitalize on Morgan Stanley's role as underwriter of the debenture offering to establish that CPH "reasonably relied" on Morgan Stanley. (*See* CPH Fact Resp. ¶¶ 18, 298; CPH SJ Resp. at 53, 56) In addition, CPH has attempted on numerous occasions to stand in the shoes of the institutional investors who purchased the Sunbeam debentures, (*see* CPH SJ Resp. at 27; Sept. 21, 2004 CPH's Mot. to Am. Its Compl. to Seek Punitive Damages at 16 ("Mot. to Am.")), and to imply that Morgan Stanley breached its duty to those investors (*see* CPH SJ Resp. at 31, 80, 82, 84-85).

7. CPH wants this Court and the jury to conflate Morgan Stanley's duty to the Sunbeam debenture holders — with whatever duty follows under the federal securities laws — with Morgan Stanley's non-existent duty to CPH under New York law, and hold Morgan Stanley liable to CPH for a violation of Morgan Stanley duties, if any, under federal law. In one breath, CPH raises the issue of Morgan Stanley's possible liability to the debenture holders, yet in the

other, it seeks to prevent the jury from learning that the debenture holders themselves chose not to sue Morgan Stanley for its role in the debenture offering. CPH cannot have it both ways.

8. ***The March 19 Press Release.*** CPH has also sought to justify its reaction (or non-reaction) to the March 19, 1998 press release by comparing its response to that of the debenture holders:

> CPH was hardly alone in not being disturbed with the press release. The purchasers of the $750 million in debentures used to fund the transaction obviously were not upset and neither were the analysts following Sunbeam .... Based on the above facts, it cannot possibly be concluded as a matter of law that CPH failed to conduct a reasonable inquiry into Sunbeam's financial status, including its first quarter earnings for 1998.

(CPH SJ Resp. at 51.) Here too, CPH puts the actions and reactions of the debenture holders directly at issue in the case by implying that the debenture holders must not have known the truth about Sunbeam's first quarter earnings. CPH unfairly attempts, however, to keep the jury from hearing the rest of the story — *i.e.*, that even now that all the facts have come out, the debenture holders did not sue Morgan Stanley for fraud.

9. ***Bornstein's Comment Regarding the Debenture Offering.*** Most egregious of all is CPH's misuse of the interaction between John Tyree of Morgan Stanley and Lawrence Bornstein of Arthur Andersen as the two prepared for the March 20, 1998 closing of the ***debenture*** offering:

> On March 19, while Morgan Stanley was making final revisions to the ***debenture offering memorandum*** at the printer, Bornstein objected to the inclusion of the press release in the [***offering***] ***memorandum*** and confronted John Tyree of Morgan Stanley with skepticism that Sunbeam could exceed first quarter 1997 sales of $253.4 million. Bornstein told Tyree: "I've done the basic math, that they have done a million dollars in sales a day for the first 72 days and now they have to do — whatever it was, 12 to $15 million in sales for the next —... let's say 17 days, whatever the numbers were, and that I was very skeptical, that I remember saying to him that I don't think this company's turned around" Bornstein then warned Tyree: "You better hope to God that they do, because if not, you're all going to get sued."

(CPH SJ Resp. at 28 (internal citations omitted; underlined emphasis in original); *see* Mot. to Am. at 17 (internal citations omitted).)

10. If CPH succeeds in excluding the evidence that the debenture holders chose ***not*** to sue Morgan Stanley, CPH's love affair with Bornstein's warning to Tyree will be brought to an abrupt end. Mr. Bornstein was addressing Mr. Tyree in the context of the ***debenture offering*** as Morgan Stanley was making final revisions to the ***debenture offering memorandum***. Assuming for the sake of argument that the hearsay conversation actually occurred as stated, Mr. Bornstein, CPH would argue, was warning Mr. Tyree that Sunbeam and Morgan Stanley would be sued ***by the debenture holders***, not CPH. If CPH is permitted to introduce Mr. Bornstein's inflammatory statement to the jury, the jury is entitled to hear that the debenture holders did ***not*** in fact sue Morgan Stanley as Mr. Bornstein predicted.

11. CPH cannot be permitted to put at issue the debenture holders' reactions to Morgan Stanley's conduct, and then exclude their actual reaction when they are not favorable to CPH's theory of the case.

II. CPH's Factual Assertions Go To The Weight, Not The Admissibility Of This Evidence.

12. In addition to the fact that CPH itself put the contested fact at issue in the case, CPH's motion should also be denied because its arguments to exclude the evidence goes to the weight, not the admissibility of the evidence. CPH first asserts that the fact that the debenture holders did not sue Morgan Stanley "is not probative of whether Morgan Stanley wronged CPH." (CPH MIL No. 21 at 1.) This conclusory assertion is plain wrong. The fact that the investors who lost the most money on the transaction besides Morgan Stanley itself never pursued money damages from Morgan Stanley for their losses is directly probative of the key issue the jury will have to decide in the case — whether Morgan Stanley committed fraud by

hiding information about Sunbeam or whether, in fact, CPH failed to avail itself of the readily available information at its fingertips.

13. In the alternative, CPH suggests that the debenture holders actually did sue Morgan Stanley for fraud and that Mr. Rosenbloom's statement is "inaccurate". (CPH MIL No. 21 at 2.) In support of this clear "fallback" position, CPH cites to an equitable subordination proceeding from a bankruptcy court in New York in which a committee of unsecured Sunbeam creditors sought to have their claims prioritized over the claims of Morgan Stanley and the other secured lenders. Contrary to CPH's implication, this was not a civil lawsuit for money damages by the debenture holders against Morgan Stanley, as CPH has filed here. Rather, this was a specialized subordination proceeding under 11 U.S.C. § 510(c) of the U.S. Bankruptcy Code. *In re Sunbeam Corp.*, 284 B.R. 355, 362 (Bankr. S.D.N.Y. 2002), *appeal dismissed*, 287 B.R. 861 (S.D.N.Y. 2003). Moreover, the proceeding was summarily dismissed on Morgan Stanley's (and the other Lenders') motion to dismiss because the bankruptcy court ruled that the unsecured creditors committee had no standing to bring its claims against Morgan Stanley and the committee failed as a matter of law to meet the requirements for subordination under 11 U.S.C. § 510(c). Quite simply, the debenture holders, although their losses were surpassed only by the losses of Morgan Stanley itself, chose not to pursue money damages like CPH has done here against Morgan Stanley, and Mr. Rosenbloom should be permitted to so testify to rebut CPH's misleading analogies between the duties Morgan Stanley owed the debenture holders and its purported duty to CPH.

14. Whether this bankruptcy subordination proceeding makes Mr. Rosenbloom's statement that "as I understand it [the debenture holders] never sued Morgan Stanley" less persuasive is a classic question of the weight of the evidence, not its admissibility. *See, e.g.,*

Florida Dept. of Transp. v. Armadillo Partners, Inc., 849 So. 2d 279, 288 (Fla. 2003) (even assuming expert's valuation method omitted a factor, this exclusion affected the weight, not the admissibility of his testimony); *see also, H.K. Corp. v. Estate of Miller,* 405 So. 2d 218, 219 (Fla. 3d DCA 1981) (expert testimony permissible if objection goes to the weight, not the admissibility). CPH is free to cross-examine Mr. Rosenbloom regarding this bankruptcy subordination proceeding if and when Mr. Rosenbloom references the debenture holders' failure to sue at trial. *Florida Dept. of Transp.*, 849 So. 2d at 287-88 ("[expert's] opinion may be subject to impeachment or to having its weight reduced because of its failure to properly consider one of the many factors that may influence an opinion … but that failure should not prevent the opinion's admission, nor cause its complete exclusion from the jury's consideration). Just as in *Armadillo Partners*, the correct result here is for the jury to be permitted to hear Mr. Rosenbloom's testimony, CPH's cross, and decide for itself what weight to accord to this matter.

WHEREFORE, Morgan Stanley respectfully requests that the Court enter an order denying CPH's Motion in Limine No. 21 to Exclude Portions Of Expert Witness Arthur H. Rosenbloom's Testimony. This evidence is relevant and probative because of CPH's continuous attempts to conflate Morgan Stanley's duty to the debenture holders with its non-existent duty to CPH. CPH's objection to this testimony goes only to its weight, not its admissibility. ***Not*** permitting the introduction of such contextual, rebuttal evidence would contravene section 90.403 of the Florida Evidence Code.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and hand delivery on this 7th day of February 2005.

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

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.
_____/

NOTICE OF FILING PLEADING UNDER SEAL

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby gives notice that it has filed Exhibits 5, 10, 11, and 19 to Morgan Stanley's Response to February 3, 2005 Court Order under seal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the service list below by facsimile and hand delivery on this 7th day of February, 2005.

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IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

_____/

CONFIDENTIAL – FILED UNDER SEAL

Morgan Stanley & Co. Incorporated's Exhibits 5, 10, 11, and 19 to its Response to February 3, 2005 Court Order.

THIS ENVELOPE CONTAINS MATERIAL SUBJECT TO A PROTECTIVE ORDER ENTERED IN THIS ACTION. IT IS NOT TO BE OPENED NOR THE CONTENTS THEREOF DISPLAYED, REVEALED, OR MADE PUBLIC, EXCEPT BY WRITTEN ORDER OF THE COURT

CONFIDENTIAL – FILED UNDER SEAL

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16div-010674

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

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

CASE NO: 2003 CA 005045 AI

COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO ADVANCE MORGAN STANLEY'S TIME FOR ANSWERING CPH'S TENTH REQUEST FOR PRODUCTION

Coleman (Parent) Holdings Inc. ("CPH") by its attorneys, respectfully requests that this Court enter a Order directing Morgan Stanley to produce the documents responsive to CPH's Tenth Request for Production of Documents promptly. In support of this Motion, CPH states as follows:

1. On January 25, 2005, counsel for CPH obtained a copy of a November 10, 1998 Bloomberg article that describes William Strong's involvement in a corruption scandal in Italy while he was the head of Salomon Brothers International ("Salomon"). *See* Ex. A. The central scandal involved a joint venture that Eni SpA ("ENI"), Italy's largest energy company, wanted to commence to enter the insurance business. ENI was to be a 40% participant in the venture, with an insurer, Societa Assicuratrice Industriale SpA ("SAI"), being a 40% participant as well. Salomon held the remaining 20% share. But, unbeknownst to ENI, while simultaneously negotiating the terms of the venture, SAF was also negotiating a "put and call" arrangement with Salomon that permitted SAI to buy out Salomon and thereby seize control of the venture from ENI. During the course of the scandal, bribes were paid at various levels of the Italian government, all the way up to the President.

2. According to the Bloomberg article, Strong was indicted in 1998 while employed by Morgan Stanley, on charges that he played a role at Salomon in the ENI-SAI corruption scandal in 1992, the year before he left Salomon and joined Morgan Stanley. *Id.* Upon obtaining a copy of the Bloomberg article, counsel for CPH immediately began to search for additional information.

3. Through further investigation CPH obtained a copy of a National Association of Securities Dealers ("NASD") BrokerCheck report that summarizes information reported by William Strong on a June 2001 Form U-4, a form every broker must file with the NASD. *See* Ex. B. The BrokerCheck report reveals Strong's own admission that on October 8, 1998 an Italian Magistrate Judge in Milan charged Strong with "contributing toward causing the carrying out of the crime of corruption." *Id.* Strong was tried on the charges, and although the charge was eventually "extinguished by means of prescription" (a judicial determination that the statute of limitations precluded criminal sanctions), Strong was not acquitted. *Id.* According to Strong's Form U-4, the Court entered a finding that Strong's "role in the transaction technically falls within the scope of Section 116 of the Italian Criminal Code." *Id.* At the time of his Form U-4 filing in June 2001, Strong indicated his intent to appeal from this adverse judgment to "secure a ruling that [his] conduct was in no way improper." *Id.*

4. CPH has since obtained a copy of the last page of the appellate ruling, which is dated January 8, 2003. See Ex. C. Although the ruling is written in Italian, based on CPH's translation of the ruling, the appellate court absolved Strong on the ground that he did not commit the crime for which he was charged. *Id.*; *see also* Ex. D (translation of last page). However, during the 1998 time period relevant to this lawsuit, Strong was under indictment for the crime and was found in October 1998 by the Milan Judge to have engaged in conduct that

violated the Italian Criminal Code. Morgan Stanley's knowledge of and response to those 1998 circumstances, regardless of the exoneration by the appellate court in 2003, are pertinent to Morgan Stanley's state of mind concerning Strong's conduct in the time period relevant to this litigation. If Morgan Stanley knew of the allegations and chose to ignore them, or investigated the allegations, concluded they were well-founded, and nevertheless continued to entrust Strong with important corporate responsibilities, such circumstances are clearly indicative of a reckless disregard for the interests of third parties relying on Morgan Stanley's corporate integrity.

5. Although documents concerning the foregoing events plainly were called for by CPH's prior document requests to Morgan Stanley, out of an abundance of caution, CPH on February 4, 2005 served an additional document request on Morgan Stanley seeking documents relating to the above events concerning Mr. Strong. *See* Ex. E. Under the applicable Rules, unless the time for responding to these documents request is accelerated by this Court, Morgan Stanley will not be required to provide relevant documents until long after the trial is underway. Consequently, CPH respectfully requests that this Court direct Morgan Stanley to produce documents responsive to CPH's Tenth Request For Production promptly, and overrule any objections to production (other than on the basis of privilege) that Morgan Stanley might wish to interpose.

Dated: February 9, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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#1210833.v1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and hand delivery to all counsel on the attached list on this 9th day of Feb., 2005.

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ATT212871.txt

Italian Judge Orders Salomon Executives to Face Trial (Update1)
1998-11-10 15:29 (New York)

Italian Judge Orders Salomon Executives to Face Trial (Update1)

(Updates with statement from Morgan Stanley Dean Witter & Co. in final paragraph.)

Milan, Nov. 10 (Bloomberg) -- An Italian judge ordered the former head of Salomon Smith Barney's European investment bank and a managing director in equity capital markets to stand trial on corruption-related charges.

Prosecutors alleged William Strong, former head of the European investment bank of Salomon, a unit of Citigroup Inc., and Manilo Marocco, a managing director in equity capital markets, were involved in a corruption scandal in which bribes were paid by insurer Societa Assicuratrice Industriale SpA to secure sales to employees of Eni SpA, Italy's largest energy company.

The investment bank -- which was known as Salomon Brothers in 1992 when the offenses are alleged to have taken place -- had planned to take a stake in a joint-venture company Eni and SAI were to set up. The case will be heard by Milan-based judges next June.

``Independent counsel have advised us that, based on their extensive review of the facts and the law, there is no evidence that Manilo Marocco or any other employee of Salomon Smith Barney committed any violations of Italian or English law,'' Salomon said in a written statement.

The Eni-SAI case was one of the first `Tangentopoli' or `Bribesville' cases to come to trial as investigations by Milan judges unraveled a network of corruption linking businesses and politicians. Former Eni group executives and kickback collectors for political parties have already been tried and sentenced in connection with the Eni-SAI case.

A Salomon spokeswoman said Marocco had taken a leave of absence to prepare for his trial.

Strong is now a managing director at Morgan Stanley Dean Witter & Co. in Chicago, where he has been since 1993. ``Based on the firm's (own) investigation, we have no reason to believe that William Strong engaged in any wrongdoing in connection with this matter,'' said a Morgan Stanley spokeswoman.

--John Glover in the Milan newsroom (3902) 806-44-200 with reporting by Lisa Kassenaar in New York (212) 318-2300
/rbc/lq/daa

Story illustration: CCI US <Equity> GP to graph the recent performance of Citigroup

Company news:
CCI US <Equity> CN Citigroup

Industry news:
NI FIN Finance
NI BNK Banking
NI SCR Securities

Regional news:
NI NY New York
NI US U.S.
NI ITALY Italy

EXHIBIT
A

ATT212871.txt

News by category:
NI WNEWS Personnel stories
NI CRIME Crime

News on people:
For news about any of the people mentioned in the story type WHO followed by the person's name <Go>

For more Citigroup personnel stories: CCI US <Equity> TCNI WNEWS.
-0- (BN) Nov/10/ 98 15:29

National Association of
Securities Dealers
9509 Key West Avenue
Rockville, MD 20850
(800) 289-9999

February 03, 2005

Thalia Myrianthopoulos
One IBM
330 N. Wacker
Chicago, IL 60611

NASD BROKERCHECK
RESPONSE TO REQUEST FOR INFORMATION

The Board of Governors of the National Association of Securities Dealers, Inc. (NASD) has adopted a public disclosure policy which permits certain types of disciplinary information on NASD member firms and their associated persons to be available to the general public. Section 15A(i) of the Securities Exchange Act of 1934, as amended, requires registered securities associations to respond to inquiries regarding disciplinary actions involving its members and their associated persons. NASD believes that the general public should have access to information which will help them in their determination whether to conduct or continue to conduct business with an NASD member or any of the member's associated persons.

In that regard, enclosed please find the information that you have requested.

A list of the terms and conditions of NASD BrokerCheck is as follows:

EXHIBIT B

NASD BrokerCheck
Terms and Conditions

1. NASD collects, compiles, organizes, indexes, digitally converts and maintains regulatory information from registered persons, member firms, government agencies and other sources and maintains information in the proprietary

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Central Registration Depository ("CRD(r)") database and system. NASD releases such information through NASD BrokerCheck, which provides information from CRD system to the investing public. Your access to NASD BrokerCheck information provided through NASD's CRD database and system does not transfer any rights in CRD, NASD BrokerCheck or related technologies to you.

2. Your use of NASD BrokerCheck information is conditioned upon your acceptance, without modification, of all terms and conditions of this Agreement. Any information accessed, requested or provided through NASD BrokerCheck must be accessed, requested and used in accordance with the terms and conditions specified in this Agreement. NASD reserves any rights not expressly granted under these terms and conditions. Additionally, NASD reserves the right, at its sole discretion, to modify the terms and conditions for use of NASD BrokerCheck information at any time by changing this Agreement, and any changes are effective immediately. Such changes will be posted on the NASD BrokerCheck web site.

3. CRD and NASD BrokerCheck are proprietary databases and employ proprietary software, but NASD makes no exclusive proprietary claim to the information in the NASD BrokerCheck system that is not created by NASD. You are neither restricted nor prohibited by NASD from obtaining a copy of any original filing or information from a non-NASD source.

4. The information provided through NASD BrokerCheck shall be used ONLY for your own personal or professional use, and in accordance with all other terms and conditions of this Agreement:
   a. to assist you, your clients or your organization in determining whether to conduct or continue to conduct securities or commodities business with NASD member firms or their associated persons;
   b. to assist you, your clients or your organization in judicial proceedings or arbitration proceedings relating to securities or commodities transactions; or
   c. for non-commercial purposes consistent with the promotion of just and equitable principles of trade and the protection of investors and the public interest.

5. The information provided to you through NASD BrokerCheck is provided to you ONLY for your own personal or professional use. All other uses are prohibited. You agree that you ill not duplicate, download, publish, publicly display, modify or otherwise distribute the information retrieved from NASD BrokerCheck for any purpose other than as expressly permitted by this Agreement. In no event may you offer to others any information retrieved from NASD BrokerCheck for commercial purposes, or as part of a subscription service or similar arrangement. You agree that you will not use the information retrieved from NASD BrokerCheck to develop or create a database of information to be sold, licensed or made otherwise commercially available. You agree that you will not use any process to monitor or copy NASD BrokerCheck information in bulk, or to make volumin us, excessive or repetitive requests for information. You further agree that you will not use any device, software or routine to bypass any software or hardware that prohibits volume requests for information, you will not interfere with or attempt to interfere with the proper working of NASD BrokerCheck, and you will not take any action that imposes an unreasonable or disproportionately large load on NASD BrokerCheck or NASD.

6. All requests for permission to access or use NASD BrokerCheck for uses other

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than those described in Paragraphs 4 or 5 of this Agreement must be made in writing to NASD clearly stating the purpose and manner in which NASD BrokerCheck is proposed to be used. Requests may be submitted to NASD, NASD BrokerCheck, 9509 Key West Avenue, Rockville, Maryland, 20850. NASD, in its sole discretion, may approve or reject any request that is inconsistent with the terms and conditions of use of NASD BrokerCheck.

7. Provision of information by NASD pursuant to NASD BrokerCheck does not constitute a waiver of any of NASD's rights, privileges, or immunities with respect to the furnishing of disciplinary or registration information.

8. NASD does not charge for this service, which is offered pursuant to NASD's responsibilities as a self-regulatory organization, and, in particular, pursuant to Section 15A(i) of the Securities Exchange Act of 1934. In the provision of this service, NASD makes no warranties of any kind, and disclaims liability to any person for any actions taken or omitted in good faith with respect to this NASD BrokerCheck. NASD is not responsible for and cannot verify information from sources other than NASD, and does not warrant or guarantee the accuracy or completeness of the information requested. Neither NASD nor any affiliate or supplier shall be liable for any cause of action in contract, tort, or otherwise, for more than the incremental telecommunications cost incurred to connect to the service. Notwithstanding the above, neither NASD nor any affiliate or supplier shall be liable for any loss of income, trading loss, or consequential, incidental, or indirect damages, regardless of whether NASD has been informed of the possibility of such damages.

9. Member firms, registered persons, government agencies, and other sources file disclosure information with NASD. Consistent with its responsibilities as a self-regulatory organization, NASD performs a regulatory review of the disclosure information filed before it makes the information available through NASD BrokerCheck. Most disclosure information is available through NASD BrokerCheck within two business days of being filed. In certain limited circumstances, disclosure information may not be available through NASD BrokerCheck within the usual timeframe, but will be made available as soon as practicable.

10. Consistent with policies and procedures approved by the Securities and Exchange Commission (SEC), NASD will disclose information on individuals and brokerage firms, through NASD BrokerCheck, for two years after the termination of the individual's or brokerage firm's NASD registration. Disclosure information reported to NASD after an individual or brokerage firm has terminated may not have been reviewed by the brokerage firm or individual; in addition, brokerage firms and individuals who are no longer registered are not required to independently report such information.

11. NASD BrokerCheck includes only information provided to CRD. In substantially all cases, the information provided through NASD BrokerCheck represents the verbatim record as it was reported to NASD. However, in certain limited circumstances, NASD combined information about a single event that was reported by different sources (e.g., a record reporting information on an event that was submitted by a brokerage firm may contain information reported on the same event that was submitted by a regulator). This condition occurred when the data in the Legacy CRD system was converted (i.e., reformatted and transferred) to Web CRD, the Internet-based Central Registration Depository. This condition affects a small percentage of

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records reported to NASD prior to August 1999. These converted records contain information that was reported to NASD in accordance with appropriate reporting protocols applicable to the source filers (e.g., brokerage firms and regulators); however, because of the combination of information from different reporting sources, a record disclosed through NASD BrokerCheck may not reflect the actual filing submitted to NASD.

12. The "Individual Broker comments," "Brokerage Firm comments" and "Regulator comments" appear verbatim as they were provided to CRD via Forms U-4, U-5, and U-6. These comments were not written by NASD and have not been edited by NASD in any way. NASD reserves the right to redact customer names, confidential customer information, or offensive or potentially defamatory language from an NASD BrokerCheck Report consistent with policies and procedures approved by the SEC.

TC 02.1

General Information About this Report

This report has been generated because you have requested information about an Individual Broker through NASD BrokerCheck. The information contained within this report has been provided by the individual broker, an NASD member firm(s), and/or securities regulators as part of the securities industry's registration and licensing process.

An NASD BrokerCheck report for an Individual Broker consists of: 1) a Report Summary; 2) the Individual Broker's Current Employment history;3) the Individual Broker's Approved Registrations; 4) the Individual Broker's Previous Employment history, and 5) the Individual Broker's Disclosure Event information, if any.

NASD BrokerCheck discloses the following information on individual brokers:

* current employing brokerage firm
* all approved registrations
* 10 years of employment history
* disclosure matters involving certain criminal charges and convictions, regulatory actions, civil judicial actions, consumer initiated complaints, terminations, and certain financial actions (e.g., bankruptcies, unsatisfied judgments/liens.)

When evaluating this report, please keep in mind that a number of items may involve pending actions or allegations that may be contested and have not been resolved or proven. The items may, in the end, be withdrawn or dismissed, or resolved in favor of the individual broker, or concluded through a negotiated settlement with no admission or conclusion of wrongdoing.

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Also remember that the information in this report is not the only resource you should consult. It is recommended that you learn as much as possible about the individual broker from other sources. Ask the individual broker for references. Ask family members or friends who already have established investment business relationships. Get in touch with local consumer and investors groups.

Should you have any questions concerning information contained within this report, call (800) 289-9999 - a toll-free NASD BrokerCheck hot-line operated by NASD - or visit NASD Web Site at www.nasd.com. When calling or visiting the NASD Web Site, the information you will need includes:

* The complete name of the individual broker.
* The individual broker's current or previous employing brokerage firm.

For definition of terms contained within this report or answers to Frequently Asked Questions, visit the Glossary or FAQs sections of NASD Broker heck online at www.nasd.com.

NASD BrokerCheck Report Printing Instructions

The report contained below can be printed as is. However, unless the following steps are taken, the report may not print with the headers aligned or the text may run off the page. For the following report to be printed correc ly, the following formatting steps must be completed:

1) Copy the text of the report into a text editor.
2) Delete these instructions down to and including the first dashed line.
3) Set the Font for the entire report to Courier, 8 point.
4) Set the left and right margins to 0.
5) Set the top and bottom margins to 0. Because every printer allows a different number of lines per page, the margins may have to be adjusted differently to get the headers to line up at the top of each page. The document is formatted to print 90 lines per page at the specified font.
6) Print the report.

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REPORT SUMMARY

****

****

Employment History

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Employment History: A ten year employment history is viewable through NASD BrokerCheck. For an individual that is currently registered with an NASD member firm the ten years precedes the current date. For an individual that is no longer registered with an NASD member firm, the ten years precedes the end date of the last employment with an NASD member firm.

Current Employments:	1
Registrations:	4
Previous Employments:	0

****

Disclosure Events: Yes

****

Disclosure Event: Information that is required to be reported to NASD by individual brokers via Form U-4 (Unifo m Application for Securities Industry Registration or Transfer) and brokerage firms via Form BD (Uniform Application for Broker-Dealer Registration). Some disclosure events may have multiple reporting sources. For example, some information required to be reported by an individual broker via Form U-4 may also be reported on the individual broker's record by a brokerage firm via Form U-5 (Uniform Termination Notice for Securities Industry Registration) and/or by a regulator via Form U-6 (Uniform Disciplinary Action Reporting Form). If a disclosure event is reported by multiple sources, all versions of the reported event will be disclosed on the individual broker's NASD BrokerCheck report. Similarly, some information required to be reported by a brokerage firm via Form BD may also be reported on the brokerage firm's record via Form U-6. If a disclosure event is reported by multiple sources, all versions of the reported event will be disclosed on the brokerage firm's NASD BrokerCheck report.

Criminal Actions:	1
Regulatory Actions:	0
Civil Judicial Actions:	0
Terminations:	0
Customer Complaints:	0
Investigations:	0

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Bonds:	0
Bankruptcies:	0
Judgment/Liens:	0

NASD Registered Person: WILLIAM HAROLD STRONG
CRD Number: 1125097

****
CURRENT EMPLOYMENT
****

This section provides all current employments (inves ment-related and non-investment related) as reported on the individual broker's Form U-4. It displays the name of the employing brokerage firm that employs this individual broker, the brokerage firm's CRD number (if applicable), the location of the office where the individual broker is employed, and the individual broker's start date.

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If the individual broker is currently employed with an investment adviser, the investment adviser's name and CRD number will display. However, additional information is not available on investment advisers through NASD BrokerCheck as they are not NASD registered firms.

If the individual broker is currently employed with a brokerage firm registered with any self-regulatory organization other than NASD (e.g., the NYSE), either the brokerage firm's name or "Other Business" will display as the Employing Brokerage Firm. To obtain the brokerage firm's name when "Other Business" displays as the Employing Brokerage Firm, please call the NASD BrokerCheck Call Center Hotline number, 1-800-289-9999.

A Brokerage Firm CRD Number will display for NASD registered firms the individual broker is currently associated with. A Brokerage Firm CRD Number will not display for NASD registered firms the individual broker was formerly associated with.

In addition, a Brokerage Firm CRD Number will not display for employing firms that are not NASD registered firms. Information on these employing brokerage firms is not available through NASD BrokerCheck.

This section also provides the jurisdictions with which the individual broker is currently registered or licensed to do business, the category of each registration, and the date on which the registration approval was granted.

********** CURRENT EMPLOYMENT (1 of 1) **********

Employing Brokerage Firm: MORGAN STANLEY & CO., INCORPORATED

Brokerage Firm CRD Number: 8209
Office of E ployment address: 440 SOUTH LASALLE ST
CHICAGO, IL 60605

Start Date: 01/14/1993 End Date: to present

Registrations:

Jurisdiction/SRO	Category	Status	As Of Date
NASD	General Securities Representative	Approved	01/26/1993
NY	Agent	Approved	01/26/1993
NYSE	General Securities Representative	Approved	01/26/1993
NYSE	Officer	Approved	01/26/1993

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02/09/2005 12:51 FAX

NASD Registered Person: WILLIAM HAROLD STRONG
CRD Number: 1125097

****

CRIMINAL ACTIONS

****

DISCLOSURE INFORMATION

This section contains information regarding criminal events that were reported to CRD. These events are disclosable through NASD BrokerCheck and include formal charges and convictions for all crimes involving felony offenses and for crimes involving certain misdemeanor offenses such as bribery, perjury, forgery, counterfeiting, extortion, fraud, wrongful taking of property, etc.

Some of the fields in this section of the report may be blank if the information was not provided to CRD.

** OCCURRENCE COUNTS ** 1 Record(s)

****

** FIELD DEFINITIONS **

* Reporting Source: The form through which details of the criminal action was reported to CRD.

016/021

16div-010691

* Date Reported:	The date the criminal action was reported to CRD.
* Court Details:	Details regarding the court the charges were brought in (e.g., name and location of court, docket/case number, etc.).
* Charge Date:	Date the criminal charges were filed.
* Charge Details:	Details related to the criminal charge(s) (e.g., number of counts, felony or misdemeanor, plea, etc.).
* Current Status:	The current status of the criminal action (i.e., pending, on appeal or final).
* Status Date:	Date of appeal or final resolution. Will be blank if status is pending.
* Disposition Details:	Details related to the disposition of the action (e.g., convicted, acquitted, dismissed, pre-trial, sentence/penalty, etc.).
* Summary:	A summary of the circumstances related to the criminal action.

****

********* CRIMINAL ACTION (1 of 1) *********

Reporting Source: Individual Broker (Form U-4)

Date Reported: 06/18/2001

Court Details: OFFICE OF MAGISTRATE, CRIMINAL COURT OF MILAN, ITALY 5346/95 R.G.N.R. - NO. 6232/95 G.R.GIP

Charge Date: 10/08/1998

Charge Detail: THE CHARGING DOCUMENT ALLEGES THAT, IN MY CAPACITY AS HEAD OF NON-US INVESTMENT BANKING FOR SALOMON BROTHERS INTERNATIONAL LTD. ("SBIL") IN 1992. I HAD KNOWLEDGE OF AND PARTICIPATED IN MEETINGS CONCERNING A PROPOSED TRANSACTION INVOLVING ENI, SAI AND SBIL. ALTHOUGH THE TRANSACTION WAS NEITHER ENTERED INTO NOR COMPLETED, I HAVE BEEN COMMITTED FOR TRIAL ON A CHARGE OF CONTRIBUTING TOWARD CAUSING THE CARRYING OUT OF THE CRIME OF CORRUPTION.

Current status: Pending

Status Date: 05/18/2001

Summary: THE CHARGES BROUGHT AGAINST ME IN THE COURT OF MILAN WERE TRIED AND THE COURT ISSUED A WRITTEN JUDGMENT ON MAY 18, 2001. THE COURT RULED THAT THE CRIMINAL CHARGES AGAINST ME ARE "EXTINGUISHED BY MEANS OF PRESCRIPTION." THE COURT HELD THAT

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"[N]O EVIDENCE EXISTS THAT SALOMON EXECUTIVES WERE AWARE OF THE CORRUPTIVE AGREEMENT" UNDER INVESTIGATION. THE COURT FOUND, HOWEVER, THAT MY ROLE IN THE TRANSACTION TECHNICALLY FALLS WITHIN THE SCOPE OF SECTION 116 OF THE ITALIAN CRIMINAL CODE. ACCORDINGLY, EVEN THOUGH THE COURT RULED I WILL NOT BE SANCTIONED OR FINED IN CONNECTION WITH THE CRIMINAL CHARGES, I INTEND TO APPEAL THE WRITTEN JUDGMENT TO SECURE A RULING THAT MY CONDUCT WAS IN NO WAY IMPROPER.

NASD Registered Person: WILLIAM HAROLD STRONG
CRD Number: 1125097

CRIMINAL ACTIONS(cont.)

********** END OF REPORT **********

02/03/2005 12:52 FAX 019/021

REPUBBLICA ITALIANA
IN NOME DEL POPOLO ITALIANO

La Corte d'Appello di Milano

Sezione Seconda Penale

Composta dai Signori:

1 Dott. [illegible] Presidente

2 " [illegible] Consigliere

3 " [illegible] "

ha pronunciato la seguente

SENTENZA

nella causa del Pubblico Ministero

contro

STRONG WILLIAM nato a INDIANAPOLIS ( ) il 01-04-1952 - APPELLANTE - LIBERO ELETT DOM C/O AVV. G. DE LUCA DEL FORO DI ROMA

CONTUMACE

Imputato di : ARTT. 110, 112 N.1, 116, 319, 319 BIS, 321 C.P. commesso in LONDRA E MILANO in data 01-07-1992
Difeso da: Avv.AVV. GIUSEPPE DE LUCA Foro di ROMA

Parte Civile : ENI S.P.A. Difensore Avv.AVV. CARLO GILLI Foro di MILANO

PRESENTE

Art. N. [illegible]
Campione Civile

N. 52
della sentenza

N.5103/2001
del Reg. Gen. App.

UDIENZA
del giorno
02/01/03

Depositata
in Cancelleria
il 10/1/03

Il Cancelliere

Estratto esecutivo a
Proc. Generale
Proc. Rep. c/Pret. di
Proc. Rep. c/Trib. di
il
Ufficio Corpi reato
di
Estratto alla Prefettura
il
Estratto Int. 14.06
TRIB. MILANO
il 15.09.2003
RGNR 5346/14
Il Cancelliere

Redatta scheda
il
Il Cancelliere

Art. N. [illegible]
Campione Penale

EXHIBIT
C

TRIBUNALE DI MILANO

-2-

APPELLANTE

SUDDETTO.....

avverso la sentenza del Tribunale di MILANO N. Reg. Gen. 1109/1999 del 12-03-2001

con la quale veniva condannato alla pena di:NON DOVERSI PROCEDERE PER ESSERE IL REATO PRESCRITTO PREVIA
CONCESSIONE DELLE ATTENUANTI GENERICHE DICHIARATE PREVALENTI SULLA CONTESTATA AGGRAVANTE.
IMPUTAZIONE: CORRUZIONE AGGR. IN CONC. AGGR.
IN LONDRA E MILANO FINO ALL'1/7/1992.

per i reati :STRONG WILLIAM ARTT. 110, 112 N.1, 116, 319, 319 BIS, 321 C.P. commesso in LONDRA E MILANO in data 01-07-1992

in esito all'odierno dibattimento/discussione in c.c. celebratosi in contumacia dell'imputato

Sentita la relazione del Sig Consigliere Dott. Roberto Fallini

Sentit... imputat..., la parte civile Avv. Carlo Gilli, Fino Tiziano

...il Pubblico Ministero dott. Simari

il difensore Avv. Giuseppe De Lea, Fino Fiona, di fiducia

i quali concludono come da verbale d'udienza.

altro non era che la società del gruppo ENI la quale sarebbe stata parte, per conto di tale Ente, della "joint venture" in discussione.

Peraltro e per completezza, si osserva che, qualora si potesse superare quanto rilevato circa la mancata partecipazione dello stesso alla condotta corruttiva, lo Strong dovrebbe essere comunque assolto per difetto dell'elemento psicologico.

P. Q. M.

La Corte di Appello di Milano –Sez. 2^ Pen.-;

Visto l'art. 605 CPP;

In riforma della sentenza emessa dal Tribunale di Milano in data 12.3.2001, appellata dall'imputato Strong William, assolve lo stesso dall'imputazione ascrittagli per non aver commesso il fatto.

Milano, 8.1.2003

IL PRESIDENTE EST.

Estratto comunicato notificato
il 26-02-03 a STRONG WILLIAM

Sentenza passata in cose giudicate
del giorno 29-03-2003
Milano 15-05-2003
IL CANCELLIERE

TRANSLATION OF LAST PARAGRAPH OF LAST PAGE

The Court of Appeals of Milan — Section 2; Penal

In accordance with article 605 of the Code of Penal Procedure;

In reformation of the sentence passed by the Tribunal of Milan on March 3, 2001, appealed by defendant William Strong, this Court absolves the same of the crime for which he was charged on the grounds that he did not commit the crime.

Milan, January 8, 2003

#1211354

EXHIBIT

D

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

**COLEMAN (PARENT) HOLDINGS INC.'S
TENTH REQUEST FOR PRODUCTION OF DOCUMENTS
TO MORGAN STANLEY & CO., INC.**

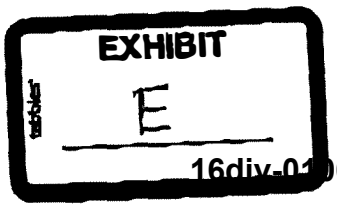
Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys Searcy Denney Scarola Barnhart & Shipley P.A. and Jenner & Block LLP, hereby serves its Tenth Request for Production of Documents upon Morgan Stanley & Co., Inc. ("MS&Co.").

DEFINITIONS

CPH incorporates by reference, in addition to those definitions herein provided, its Definitions and Instructions set forth in Plaintiff's First Request for Production of Documents served in this action. In addition, CPH defines the following terms as follows:

1. "Salomon" means Salomon, Inc., including any of its affiliates, subsidiaries, and divisions, including Salomon Brothers, and any of its predecessors and successors, including Salomon Smith Barney, present and former employees, representatives, agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

2. "SAI" means Societa Assicuratrice Industriale SpA, any of its affiliates, subsidiaries, divisions, predecessors, successors, present and former employees, representatives,



agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

3. "ENI" means ENI SpA, any of its affiliates, subsidiaries, divisions, predecessors, successors, present and former employees, representatives, agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

4. "ENI-SAI Joint Venture" means the any company, or plan, proposal, or negotiation to create a company, jointly owned by Salomon, SAI, and ENI, or any combination thereof.

5. "Indictment" means the order of any Italian court that William Strong stand trial on charges of corruption, bribery, or any other offense, in connection with the ENI-SAI Joint Venture, or for any other criminal or unlawful conduct.

DOCUMENTS REQUESTED

1. All documents involving, relating to, or referring to William Strong's involvement in the ENI-SAI Joint Venture.

2. All documents involving, relating to, or referring to Morgan Stanley's investigation, if any, into or knowledge of William Strong's involvement in the ENI-SAI Joint Venture or any other allegation of criminal or wrongful conduct committed by William Strong.

3. All documents involving, relating to, or referring to any investigation by any agency or entity of any government, including the Italian government, into allegedly criminal or wrongful conduct committed by William Strong, including but not limited to William Strong's involvement with the ENI-SAI Joint Venture.

4. All documents involving, relating to, or referring to any allegation of criminal or wrongful conduct concerning William Strong, including those involving, relating to, or referring, or referring to William Strong's Indictment.

5. All documents involving, relating to, or referring to any trial in which William Strong was a defendant, including the trial arising from William Strong's Indictment.

6. All documents involving, relating to, or referring to any appeal of any action, ruling, or determination against William Strong by any court, including any Italian court.

7. All Form U-4's filed by William Strong.

8. All public statements or disclosures by Morgan Stanley concerning William Strong's involvement in the ENI-SAI Joint Venture.

Dated: February 4, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and hand delivery to counsel listed below on this 4th day of February, 2005:

Thomas A. Clare
KIRKLAND & ELLIS
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr.
CARLTON FIELDS
222 Lakeview Avenue
Suite 1400
West Palm Beach, Florida 33401

Mark C. Hansen
KELLOGG, HUBER, HANSEN, TODD
& EVANS, P .L.L.C.
Sumner Square, 1615 M Street N.W.
Suite 400
Washington, D.C. 20036-3209

By: _____

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

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

CASE NO: 2003 CA 005045 AI

COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO BIFURCATE TRIAL

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") respectfully moves for an Order bifurcating the determination of punitive damages into a separate phase of the trial. In *W.R. Grace & Co.*, 638 So. 2d 502 (Fla. 1994), the Florida Supreme Court set forth "the procedure by which punitive damages in Florida may be sought" (*id.* at 506):

> We hold that henceforth trial courts, when presented with a timely motion, should bifurcate the determination of punitive damages from the remaining issues at trial. At the first stage of a trial in which punitive damages are an issue, the jury should hear evidence regarding liability for actual damages, the amount of actual damages, and liability for punitive damages, and should make determinations on those issues. If, at the first stage, the jury determines that punitive damages are warranted, the same jury should then hear evidence relevant to the amount of punitive damages and should determine the amount for which the defendant is liable.

How Bifurcation Would Work

Bifurcation splits the trial into two stages: in the first, the jury hears evidence relating to compensatory damages and liability for punitive damages; in the second, the jury hears evidence relating to the amount of punitive damages. Consequently, the first stage of the trial will include evidence relating to CPH's claims against Morgan Stanley, including the following general categories:

(1) Whether Morgan Stanley made fraudulent misrepresentations;

(2) Whether Morgan Stanley aided and abetted fraud committed by Sunbeam;

(3) Whether Morgan Stanley conspired with Sunbeam to commit fraud;

(4) Whether Morgan Stanley made negligent misrepresentations;

(5) The amount of compensatory damages to be awarded CPH.

Because *W.R. Grace* requires a determination in the first stage of trial as to whether punitive damages are warranted, first stage evidence also will include all testimony and documents tending to show whether Morgan Stanley's conduct was of a nature to warrant the imposition of punitive damages pursuant to the applicable principles of Florida law.

While Morgan Stanley's potential exposure to a punitive damage verdict is determined in the first stage of a bifurcated trial, the amount is reserved for the second stage of trial. The Florida Standard Civil Jury Instruction PD-1(b)(2003) identifies, in pertinent part, the second stage considerations for the jury as follows:

(1) the nature, extent, and degree of Morgan Stanley's misconduct, and the related circumstances;

(2) Morgan Stanley's financial resources; and

(3) any other circumstance which may affect the amount of punitive damages.

These considerations are based on both first stage evidence and such additional evidence as may be admitted during the second stage. *See W.R. Grace*, 638 So. 2d at 506; Fla. JI PD1(b)(1).

Plaintiff's Right To Bifurcation

Although the underlying facts of *W.R. Grace* involved a defendant's motion to bifurcate, nothing in the opinion suggests that a plaintiff is not entitled to that relief. To the contrary, Florida case law recognizes that the bifurcation process set forth in *W.R. Grace* is equally

available to plaintiffs. *See, e.g., Turner v. Fitzsimmons*, 673 So. 2d 532, 536 (Fla. 1st DCA 1996) (recognizing that "[t]he use of this [*W.R. Grace*] bifurcation process may have been appropriate in the instant case" had plaintiffs requested it). Indeed, as one of the cases relied on in *W.R. Grace* makes clear, the majority view among the jurisdictions adopting a mandatory bifurcation procedure is that the procedure is available to plaintiffs and defendants alike. *See Transportation Ins. Co. v. Moriel*, 879 So. 2d 10, 30 & n. 28 (Tex. 1994) (in surveying the 13 states requiring bifurcation of the trial in cases in which punitive damages are sought, the Texas Supreme Court found that eight of the jurisdictions (Georgia, Kansas, Montana, Nevada, New Jersey, Ohio, Utah, and Wyoming) mandate bifurcation whether or not sought by either party, three jurisdictions (Minnesota, Missouri, and North Dakota) permit either party to demand bifurcation, and only two jurisdictions (California and Tennessee) limit automatic bifurcation to defense motions although even those jurisdictions recognize the discretion of the court to order bifurcation upon plaintiff's motion).

Conclusion

For the foregoing reasons, CPH respectfully requests that this Court bifurcate the determination of the amount of punitive damages from the remaining issues at trial, in accordance with the procedures established in *W.R. Grace & Co.*

Dated: February 8, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
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West Palm Beach, Florida 33402-3626
(561) 686-6300

#1207983v2

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 8th day of February, 2005.

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Florida Bar No.: 169440
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Kellogg, Huber, Hansen,
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c/o Kirkland & Ellis
222 Lakeview Avenue
Suite 260
West Palm Beach, FL 33401

#1211258

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

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

CASE NO: 2003 CA 005045 AI

COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO DEEM CERTAIN THIRD-PARTY DOCUMENTS ADMISSIBLE AT TRIAL

Coleman (Parent) Holdings Inc. ("CPH") by its attorneys, respectfully requests that this Court enter a Order deeming certain documents of third-parties Arthur Andersen LLP ("Andersen") and Sunbeam Corporation (n/k/a American Household, Inc.) ("Sunbeam") admissible at trial. In support of this motion, CPH states as follows:

1. This motion arises because of Morgan Stanley's latest attempts to interfere with CPH's efforts to establish the admissibility of certain documents of Andersen and Sunbeam. CPH, as this Court is aware, has been attempting to establish the admissibility of these documents for months: On October 22, 2004, CPH served deposition notices on Andersen and Sunbeam, seeking depositions to address the authenticity and admissibility of various Andersen and Sunbeam documents. *See* Exs. A, B. Subsequently, after Andersen and Sunbeam objected that CPH should work with Morgan Stanley in an effort to stipulate to the authenticity and admissibility of the documents in question, CPH on November 22, 2004 sent a letter to Morgan Stanley asking it to stipulate concerning the Andersen and Sunbeam documents. *See* Ex. C. Morgan Stanley never responded to CPH's letter.

2. As a result, CPH requested that Andersen and Sunbeam provide written certifications concerning certain specified documents pursuant to Fla. Stat. § 90.902(11), which provides that:

> [Extrinsic evidence of authenticity of the document is not a condition of admissibility with respect to] [a]n original or a duplicate of evidence that would be admissible under § 90.803(6), which is maintained in a foreign country or domestic location and is a accompanied by a certification or declaration from the custodian of the records or another qualified person certifying or declaring that the record: (a) Was made at or near the time of the occurrence of the matter set forth by, or from information transmitted by, a person having knowledge of those matters; (b) Was kept in the course of the regularly conducted activity; and (c) Was made as a regular practice in the course of the regularly conducted activity, provided that falsely making such a certification or declaration would subject the maker to criminal penalty under the laws of the foreign or domestic location in which the certification or declaration was signed.

Anderson provided a § 90.902(11) certification with respect to certain specified documents on January 20, 2005 and Sunbeam provided a certification with respect to certain specified documents on January 25, 2005. *See* Exs. D, E.

3. Promptly thereafter, on January 28, 2005, CPH provided the certifications to Morgan Stanley along with written notice of CPH's intention to use the documents to which the certifications pertain at trial. *See* Ex. F. CPH provided that notice in accordance with Fla. Stat. § 90.803(6)(c), which provides in pertinent part that:

> A party intending to offer evidence under paragraph (6)(a) [concerning documents kept in the course of regularly conducted business activity] by means of a certification or declaration shall serve a reasonable written notice of that intention upon every other party and shall make the evidence available for inspection sufficiently in advance of its offer in evidence to provide to any other party a fair opportunity to challenge the admissibility of the evidence . . . .

More than a week later, on February 6, 2005, Morgan Stanley wrote objecting to CPH's use of the Andersen and Sunbeam documents at trial on the ground that the "alleged certification . . . is procedurally defective and untimely." *See* Ex. G.

4. Morgan Stanley's objection, in addition to being unexplained, is baseless. There is nothing "procedurally defective" about the certifications: Both certifications are in full accordance with the requirements of § 90.902(11). Nor is there any question about the timeliness of the certifications: CPH provided the certifications to Morgan Stanley almost a month before trial and Morgan Stanley has known of CPH's intention to rely on the Andersen and Sunbeam documents for months.

WHEREFORE, because the certifications provided by Andersen and Sunbeam are procedurally proper and timely, CPH respectfully requests that this Court enter an Order ruling that the documents listed in the certifications attached hereto as Exhibits D and E are admissible at trial subject only to possible objections for relevance.

Dated: February 8, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
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(312) 222-9350

John Scarola
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West Palm Beach, Florida 33402-3626
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#1210229.v1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 8th day of February, 2005.

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Kellogg, Huber, Hansen,
Todd, Evans & Figel, P.L.L.C.
c/o Kirkland & Ellis
222 Lakeview Avenue
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West Palm Beach, FL 33401

#1211258

#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiffs,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

CASE NO.: 2003 CA 005045 AI

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: February 14, 2005

TIME: 9:30 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

Coleman (Parent) Holdings Inc.'s Motion to Deem Certain Third-Party Documents Admissible at Trial

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Co., Inc.
Case No.: 2003 CA 005045 AI
Notice of Hearing

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all Counsel on the attached list, this 8th day of Feb., 2005.

JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 478-0754
Attorney for Plaintiff

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Co., Inc.
Case No.: 2003 CA 005045 AI
Notice of Hearing

COUNSEL LIST

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Chicago, IL 60611

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Kellogg, Huber, Hansen, Todd, Evans &
Figel, P.L.L.C.
c/o Kirkland and Ellis
222 Lakeview Avenue, Suite 260
West Palm Beach, FL 33401

#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiffs,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

CASE NO.: 2003 CA 005045 AI

/

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: February 14, 2005

TIME: 9:30 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

Coleman (Parent) Holdings Inc.'s Motion to Bifurcate

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Co., Inc.
Case No.: 2003 CA 005045 AI
Notice of Hearing

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all Counsel on the attached list, this 8th day of Feb., 2005.

JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
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West Palm Beach, FL 33409
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Attorney for Plaintiff

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Co., Inc.
Case No.: 2003 CA 005045 AI
Notice of Hearing

COUNSEL LIST

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Mark C. Hansen, Esq.
Kellogg, Huber, Hansen, Todd, Evans &
Figel, P.L.L.C.
c/o Kirkland and Ellis
222 Lakeview Avenue, Suite 260
West Palm Beach, FL 33401

FAX TRANSMITTAL

JENNER&BLOCK

Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611
Tel 312 222-9350
www.jenner.com

Chicago
Dallas
Washington, DC

Date: February 9, 2005

TO:			
	Zhonette Brown, Esq.	Fax:	(561) 651-1127 AND (202) 879-5200
		Voice:	
	Joseph Ianno, Jr., Esq.	Fax:	(561) 659-7368
		Voice:	(561) 659-7070
	John Scarola, Esq.	Fax:	(561) 684-5816 (before 5 PM)
		Voice:	(561) 686-6350, Ext. 140
	Mark C. Hansen, Esq.	Fax:	(202) 326-7999 AND (561) 651-1127
		Voice:	(202) 326-7900

From: Michael T. Brody
(561) 352-2300

Employee Number: Client Number: 41198-10003

Important: This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is attorney work product, privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via postal service. Thank you.

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Secretary: Caryn Jo Geisler

Extension: 6490

JENNER&BLOCK

February 9, 2005

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By Facsimile and Hand Delivery

Zhonette Brown, Esq.
KIRKLAND & ELLIS LLP
222 Lakeview Avenue, Suite 260
West Palm Beach, Fl. 33401

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Zhonette:

Attached please find an Amended Deposition Notice for the February 11, 2005 Rule 1.310 deposition. We do not intend to videotape the deposition.

Sincerely,

Joanne H. Sweeney

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.

CASE NO. CA 03-5045 AI

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

AMENDED NOTICE OF TAKING DEPOSITION

To: Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
222 Lakeview Avenue
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West Palm Beach, Fl 33401

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lakeview Avenue
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Palm Beach, FL 33401

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
c/o Kirkland & Ellis LLP
222 Lakeview Avenue, Suite 260
West Palm Beach, FL 33401

PLEASE TAKE NOTICE that Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following party pursuant to Florida Rule of Civil Procedure 1.310, and the Court's order of February 3, 2005:

DEPONENT	DATE AND TIME
Morgan Stanley & Co., Inc. on topics identified on Exhibit A.	February 11, 2005 at 9:30 a.m.

The deposition will be conducted at the office of John Scarola, 2139 Palm Beach Lakes, Blvd., West Palm Beach, Florida. The deposition will be recorded by stenographic means. The deposition will be taken before a person authorized to administer oaths and will continue day to day until completed.

With respect to the deposition identified above, please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and hand delivery to all counsel on the attached Service List this 9th day of February 2005.

Dated: February 9, 2005

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
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Chicago, Illinois 60611
(312) 222-9350

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SERVICE LIST

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Exhibit A

CORPORATE DEPOSITION TOPICS

Per the Court's Order of February 3, 2005, the Rule 1.310 deposition will relate to all of the information ordered to be included in Morgan Stanley & Co.'s February 7, 2005 sworn statement concerning CPH 9, CPH 75, CPH 130, CPH 170, CPH 182, CPH 217, CPH 264, and CPH 265.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.'S VERIFIED
MOTION TO PERMIT FOREIGN ATTORNEY TO APPEAR

Plaintiff Coleman (Parent) Holdings Inc. ("CPH"), joined by its Florida counsel, Jack Scarola, moves this Court pursuant to Rule 2.061(b) of the Florida Rules of Judicial Administration, for an Agreed Order permitting Sam Hirsch to appear *pro hac vice* in this action on its behalf. Counsel for Defendant Morgan Stanley consents to this Motion. In support of the motion, CPH states:

1. CPH has retained attorney Jack Scarola and the firm of Searcy Denney Scarola Barnhart & Shipley, P.A., 2139 Palm Beach Lakes Boulevard, West Palm Beach, Florida, as Florida counsel to assist in this matter.

2. CPH and its Florida counsel seek the assistance of Sam Hirsch of Jenner & Block LLP, One IBM Plaza, Chicago, Illinois, in this matter. CPH has previously retained the above-mentioned law firm to provide legal representation in connection with this matter.

3. Sam Hirsch is a member in good standing of the following bars: U.S. Supreme Court; U.S. Court of Appeals for the District of Columbia Circuit; U.S. Court of Appeals for the Fourth Circuit; U.S. Court of Appeals for the Sixth Circuit; U.S. District Court for the District of Maryland; U.S. District Court for the District of the District of Columbia; D.C. Court of

16div-010725

Appeals; and Maryland Court of Appeals. Outside of this case, Mr. Hirsch has not filed an application in any Florida state court to appear as counsel under Florida Rule of Judicial Administration 2.061 in the last five years. Mr. Hirsch has never been disciplined, suspended, or disbarred by any court.

4. Mr. Hirsch has read all applicable provisions of the Florida Rules of Judicial Administration and the Rules Regulating the Florida Bar, and this motion complies with those rules.

5. Jack Scarola has been a member of the Florida Bar since 1973, Florida Bar No. 169440, and consents to act as co-counsel with the foreign attorney in this action.

WHEREFORE, CPH moves this Court for an Agreed Order permitting Sam Hirsch to appear on its behalf in this action.

Under penalty of perjury, I declare that I have read the foregoing motion and with respect to my credentials the facts stated in it are true.

Sam Hirsch

Respectfully submitted,

By:

Jack Scarola
Fla. Bar No. 169440

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a copy of the foregoing has been furnished by U.S. Mail and facsimile to the following counsel for Plaintiff on this 9th day of February, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

AGREED ORDER GRANTING VERIFIED MOTION TO PERMIT FOREIGN ATTORNEY TO APPEAR

THIS CAUSE having come before the Court upon Plaintiff Coleman (Parent) Holdings Inc.'s ("CPH") Verified Motion to Permit Foreign Attorney Sam Hirsch to Appear *pro hac vice*, and the Court having been advised in the premises, it is hereby

ORDERED AND ADJUDGED that:

CPH's Verified Motion to Permit Foreign Attorney Sam Hirsch to Appear *pro hac vice* is GRANTED.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this ___ day of February, 2005.

_____
ELIZABETH T. MAASS
Circuit Court Judge

Copies furnished to:

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16div-010729

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

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

CASE NO: 2003 CA 005045 AI

COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS RELATING TO WILLIAM STRONG

Pursuant to Fla. R. Civ. P. 1.380(a)(1), Coleman (Parent) Holdings Inc. ("CPH") respectfully requests that the Court (1) direct Morgan Stanley to produce documents requested in CPH's First Request for Production of Documents — specifically, those documents containing references to Italian criminal proceedings against William Strong brought in 1998; and (2) grant any additional relief the Court deems appropriate as a result of Morgan Stanley's violation of a prior Order of this Court. In support of this motion, CPH states as follows:

1. This motion arises because CPH recently obtained information suggesting that Morgan Stanley has improperly withheld documents responsive to document requests made on May 9, 2003, and which this Court ordered Morgan Stanley to produce on or before April 2, 2004. Specifically, on January 25, 2005, counsel for CPH obtained a copy of a November 10, 1998 Bloomberg article that describes William Strong's involvement in a corruption scandal in Italy while he was the head of Salomon Brothers International ("Salomon"). *See* Ex. A. The central scandal involved a joint venture that Eni SpA ("ENI"), Italy's largest energy company, wanted to commence to enter the insurance business. ENI was to be a 40% participant in the

venture, with an insurer, Societa Assicuratrice Industriale SpA ("SAI"), being a 40% participant as well. Salomon held the remaining 20% share. But, unbeknownst to ENI, while simultaneously negotiating the terms of the venture, SAF was also negotiating a "put and call" arrangement with Salomon that permitted SAI to buy out Salomon and thereby seize control of the venture from ENI. During the course of the scandal, bribes were paid at various levels of the Italian government, all the way up to the President.

2. According to the Bloomberg article, Strong was indicted in 1998 while employed by Morgan Stanley, on charges that he played a role at Salomon in the ENI-SAI corruption scandal in 1992, the year before he left Salomon and joined Morgan Stanley. *Id.* Upon obtaining a copy of the Bloomberg article, counsel for CPH immediately began to search for additional information.

3. Through further investigation CPH obtained a copy of a National Association of Securities Dealers ("NASD") BrokerCheck report that summarizes information reported by William Strong on a June 2001 Form U-4, a form every broker must file with the NASD. *See* Ex. B. The BrokerCheck report reveals Strong's own admission that on October 8, 1998 an Italian Magistrate Judge in Milan charged Strong with "contributing toward causing the carrying out of the crime of corruption." *Id.* Strong was tried on the charges, and although the charge was eventually "extinguished by means of prescription" (a judicial determination that the statute of limitations precluded criminal sanctions), Strong was not acquitted. *Id.* According to Strong's Form U-4, the Court entered a finding that Strong's "role in the transaction technically falls within the scope of Section 116 of the Italian Criminal Code." *Id.* At the time of his Form U-4 filing in June 2001, Strong indicated his intent to appeal from this adverse judgment to "secure a ruling that [his] conduct was in no way improper." *Id.*

4. CPH has since obtained a copy of the last page of the appellate ruling, which is dated January 8, 2003. See Ex. C. Although the ruling is written in Italian, based on CPH's translation of the ruling, the appellate court absolved Strong on the ground that he did not commit the crime for which he was charged. *Id.*; *see also* Ex. D (translation of last page). However, during the 1998 time period relevant to this lawsuit, Strong was under indictment for the crime and was found in October 1998 by the Milan Judge to have engaged in conduct that violated the Italian Criminal Code. Morgan Stanley's knowledge of and response to those 1998 circumstances, regardless of the exoneration by the appellate court in 2003, are pertinent to Morgan Stanley's state of mind concerning Strong's conduct in the time period relevant to this litigation. If Morgan Stanley knew of the allegations and chose to ignore them, or investigated the allegations, concluded they were well-founded, and nevertheless continued to entrust Strong with important corporate responsibilities, such circumstances are clearly indicative of a reckless disregard for the interests of third parties relying on Morgan Stanley's corporate integrity.

5. The corruption charges and findings against Strong, although only recently discovered by CPH, have been known to Morgan Stanley since the time of Strong's indictment in 1998. The November 10, 1998 Bloomberg article quotes a Morgan Stanley spokeswoman, who states that Morgan Stanley conducted its own investigation into the charges against Strong. *See* Ex. A.

6. Documents relating to Strong's indictment plainly were called for by the very first set of CPH's Requests for Production of Documents, served in May 2003. Specifically, Request No. 44 sought "[a]ll documents concerning . . . personnel files (including without limitation any documents that describe or discuss the training, experience, competence, and accomplishments) of all Morgan Stanley personnel who performed services for or on behalf of Sunbeam in 1997 or

1998." *See* Ex. E. It is undisputed that Strong was employed by Morgan Stanley and performed services for or on behalf of Sunbeam during the relevant time period.

7. In response to a prior motion to compel, on March 15, 2004, this Court ordered Morgan Stanley to produce, on or before April 2, 2004, copies of documents responsive to CPH's Request to Produce No. 44. Among other things, the Court ordered Morgan Stanley to produce from the files of the Morgan Stanley employees who worked on Sunbeam related engagements in 1997 and 1998: "[a]ll references (positive or negative) to the employee's truthfulness, veracity, or moral turpitude." *See* Ex. F.

8. Documents generated and obtained by Morgan Stanley in the process of its investigation of the criminal charges brought against Strong in 1998 would no doubt reflect on Morgan Stanley's state of mind concerning Strong's "truthfulness, veracity, or moral turpitude" and would have been maintained by Morgan Stanley in Strong's "personnel files." Those documents should have been produced by Morgan Stanley, pursuant to this Court's March 15, 2004 Order, on or before April 2, 2004. Similarly, any amended Form U-4s Strong filed with the NASD reflecting the criminal charges facing him should have been produced. Nevertheless, to date, Morgan Stanley has not produced any such documents.

9. Morgan Stanley has no basis for withholding any of the documents that are responsive to Request No. 44 as modified by this Court's March 15, 2004 Order. Morgan Stanley knew that CPH's discovery requests sought documents which reflected on Strong's "truthfulness, veracity, or moral turpitude," but nonetheless withheld responsive documents. As a result, CPH has been prejudiced, including during the depositions CPH took of Morgan Stanley senior executives. Had Morgan Stanley produced relevant documents, CPH could have explored

the executives' knowledge of and reaction to Strong's alleged involvement in the Italian corruption scandal.

WHEREFORE, CPH respectfully requests that this Court (1) direct Morgan Stanley to promptly produce documents responsive to Request No. 44 of CPH's First Request for Production of Documents, including documents containing references (positive or negative) to William Strong's truthfulness, veracity, or moral turpitude, such as documents related to the criminal charges made against William Strong in 1998; and (2) grant any additional relief the Court deems appropriate as a result of Morgan Stanley's violation of the Court's March 15, 2004 Order.

Dated: February 9, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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CHICAGO_1210018_3

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and hand delivery to all counsel on the attached list on this 9th day of Feb., 2005.

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ATT212871.txt

Italian Judge Orders Salomon Executives to Face Trial (Update1)
1998-11-10 15:29 (New York)

Italian Judge Orders Salomon Executives to Face Trial (Update1)

(Updates with statement from Morgan Stanley Dean Witter & Co. in final paragraph.)

Milan, Nov. 10 (Bloomberg) -- An Italian judge ordered the former head of Salomon Smith Barney's European investment bank and a managing director in equity capital markets to stand trial on corruption-related charges.

Prosecutors alleged William Strong, former head of the European investment bank of Salomon, a unit of Citigroup Inc., and Manilo Marocco, a managing director in equity capital markets, were involved in a corruption scandal in which bribes were paid by insurer Societa Assicuratrice Industriale SpA to secure sales to employees of Eni SpA, Italy's largest energy company.

The investment bank -- which was known as Salomon Brothers in 1992 when the offenses are alleged to have taken place -- had planned to take a stake in a joint-venture company Eni and SAI were to set up. The case will be heard by Milan-based judges next June.

`Independent counsel have advised us that, based on their extensive review of the facts and the law, there is no evidence that Manilo Marocco or any other employee of Salomon Smith Barney committed any violations of Italian or English law,'' Salomon said in a written statement.

The Eni-SAI case was one of the first `Tangentopoli' or `Bribesville' cases to come to trial as investigations by Milan judges unraveled a network of corruption linking businesses and politicians. Former Eni group executives and kickback collectors for political parties have already been tried and sentenced in connection with the Eni-SAI case.

A Salomon spokeswoman said Marocco had taken a leave of absence to prepare for his trial.

Strong is now a managing director at Morgan Stanley Dean Witter & Co. in Chicago, where he has been since 1993. `Based on the firm's (own) investigation, we have no reason to believe that William Strong engaged in any wrongdoing in connection with this matter,'' said a Morgan Stanley spokeswoman.

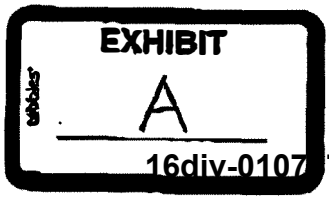
--John Glover in the Milan newsroom (3902) 806-44-200 with reporting by Lisa Kassenaar in New York (212) 318-2300
/rbc/lq/daa

Story illustration: CCI US <Equity> GP to graph the recent performance of Citigroup

Company news:
CCI US <Equity> CN Citigroup

Industry news:
NI FIN Finance
NI BNK Banking
NI SCR Securities

Regional news:
NI NY New York
NI US U.S.
NI ITALY Italy



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News by category:
NI WNEWS Personnel stories
NI CRIME Crime

News on people:
For news about any of the people mentioned in the story type WHO followed by the person's name <Go>

For more Citigroup personnel stories: CCI US <Equity> TCNI WNEWS.
-0- (BN) Nov/10/ 98 15:29

National Association of
Securities Dealers
9509 Key West Avenue
Rockville, MD 20850
(800) 289-9999

February 03, 2005

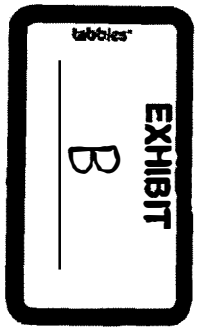
Thalia Myrianthopoulos
One IBM
330 N. Wacker
Chicago, IL 60611

NASD BROKERCHECK
RESPONSE TO REQUEST FOR INFORMATION

The Board of Governors of the National Association of Securities Dealers, Inc. (NASD) has adopted a public disclosure policy which permits certain types of disciplinary information on NASD member firms and their associated persons to be available to the general public. Section 15A(i) of the Securities Exchange Act of 1934, as amended, requires registered securities associations to respond to inquiries regarding disciplinary actions involving its members and their associated persons. NASD believes that the general public should have access to information which will help them in their determination whether to conduct or continue to conduct business with an NASD member or any of the member's associated persons.

In that regard, enclosed please find the information that you have requested.

A list of the terms and conditions of NASD BrokerCheck is as follows:



NASD BrokerCheck
Terms and Conditions

1. NASD collects, compiles, organizes, indexes, digitally converts and maintains regulatory information from registered persons, member firms, government agencies and other sources and maintains information in the proprietary

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Central Registration Depository ("CRD(r)") database and system. NASD releases such information through NASD BrokerCheck, which provides information from CRD system to the investing public. Your access to NASD BrokerCheck information provided through NASD's CRD database and system does not transfer any rights in CRD, NASD BrokerCheck or related technologies to you.

2. Your use of NASD BrokerCheck information is conditioned upon your acceptance, without modification, of all terms and conditions of this Agreement. Any information accessed, requested or provided through NASD BrokerCheck must be accessed, requested and used in accordance with the terms and conditions specified in this Agreement. NASD reserves any rights not expressly granted under these terms and conditions. Additionally, NASD reserves the right, at its sole discretion, to modify the terms and conditions for use of NASD BrokerCheck information at any time by changing this Agreement, and any changes are effective immediately. Such changes will be posted on the NASD BrokerCheck web site.

3. CRD and NASD BrokerCheck are proprietary databases and employ proprietary software, but NASD makes no exclusive proprietary claim to the information in the NASD BrokerCheck system that is not created by NASD. You are neither restricted nor prohibited by NASD from obtaining a copy of any original filing or information from a non-NASD source.

4. The information provided through NASD BrokerCheck shall be used ONLY for your own personal or professional use, and in accordance with all other terms and conditions of this Agreement:
   a. to assist you, your clients or your organization in determining whether to conduct or continue to conduct securities or commodities business with NASD member firms or their associated persons;
   b. to assist you, your clients or your organization in judicial proceedings or arbitration proceedings relating to securities or commodities transactions; or
   c. for non-commercial purposes consistent with the promotion of just and equitable principles of trade and the protection of investors and the public interest.

5. The information provided to you through NASD BrokerCheck is provided to you ONLY for your own personal or professional use. All other uses are prohibited. You agree that you will not duplicate, download, publish, publicly display, modify or otherwise distribute the information retrieved from NASD BrokerCheck for any purpose other than as expressly permitted by this Agreement. In no event may you offer to others any information retrieved from NASD BrokerCheck for commercial purposes, or as part of a subscription service or similar arrangement. You agree that you will not use the information retrieved from NASD BrokerCheck to develop or create a database of information to be sold, licensed or made otherwise commercially available. You agree that you will not use any process to monitor or copy NASD BrokerCheck information in bulk, or to make voluminous, excessive or repetitive requests for information. You further agree that you will not use any device, software or routine to bypass any software or hardware that prohibits volume requests for information, you will not interfere with or attempt to interfere with the proper working of NASD BrokerCheck, and you will not take any action that imposes an unreasonable or disproportionately large load on NASD BrokerCheck or NASD.

6. All requests for permission to access or use NASD BrokerCheck for uses other

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than those described in Paragraphs 4 or 5 of this Agreement must be made in writing to NASD clearly stating the purpose and manner in which NASD BrokerCheck is proposed to be used. Requests may be submitted to NASD, NASD BrokerCheck, 9509 Key West Avenue, Rockville, Maryland, 20850. NASD, in its sole discretion, may approve or reject any request that is inconsistent with the terms and conditions of use of NASD BrokerCheck.

7. Provision of information by NASD pursuant to NASD BrokerCheck does not constitute a waiver of any of NASD's rights, privileges, or immunities with respect to the furnishing of disciplinary or registration information.

8. NASD does not charge for this service, which is offered pursuant to NASD's responsibilities as a self-regulatory organization, and, in particular, pursuant to Section 15A(i) of the Securities Exchange Act of 1934. In the provision of this service, NASD makes no warranties of any kind, and disclaims liability to any person for any actions taken or omitted in good faith with respect to this NASD BrokerCheck. NASD is not responsible for and cannot verify information from sources other than NASD, and does not warrant or guarantee the accuracy or completeness of the information requested. Neither NASD nor any affiliate or supplier shall be liable for any cause of action in contract, tort, or otherwise, for more than the incremental telecommunications cost incurred to connect to the service. Notwithstanding the above, neither NASD nor any affiliate or supplier shall be liable for any loss of income, trading loss, or consequential, incidental, or indirect damages, regardless of whether NASD has been informed of the possibility of such damages.

9. Member firms, registered persons, government agencies, and other sources file disclosure information with NASD. Consistent with its responsibilities as a self-regulatory organization, NASD performs a regulatory review of the disclosure information filed before it makes the information available through NASD BrokerCheck. Most disclosure information is available through NASD BrokerCheck within two business days of being filed. In certain limited circumstances, disclosure information may not be available through NASD BrokerCheck within the usual timeframe, but will be made available as soon as practicable.

10. Consistent with policies and procedures approved by the Securities and Exchange Commission (SEC), NASD will disclose information on individuals and brokerage firms, through NASD BrokerCheck, for two years after the termination of the individual's or brokerage firm's NASD registration. Disclosure information reported to NASD after an individual or brokerage firm has terminated may not have been reviewed by the brokerage firm or individual; in addition, brokerage firms and individuals who are no longer registered are not required to independently report such information.

11. NASD BrokerCheck includes only information provided to CRD. In substantially all cases, the information provided through NASD BrokerCheck represents the verbatim record as it was reported to NASD. However, in certain limited circumstances, NASD combined information about a single event that was reported by different sources (e.g., a record reporting information on an event that was submitted by a brokerage firm may contain information reported on the same event that was submitted by a regulator). This condition occurred when the data in the Legacy CRD system was converted (i.e., reformatted and transferred) to Web CRD, the Internet-based Central Registration Depository. This condition affects a small percentage of

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records reported to NASD prior to August 1999. These converted records contain information that was reported to NASD in accordance with appropriate reporting protocols applicable to the source filers (e.g., brokerage firms and regulators); however, because of the combination of information from different reporting sources, a record disclosed through NASD BrokerCheck may not reflect the actual filing submitted to NASD.

12. The "Individual Broker comments," "Brokerage Firm comments" and "Regulator comments" appear verbatim as they were provided to CRD via Forms U-4, U-5, and U-6. These comments were not written by NASD and have not been edited by NASD in any way. NASD reserves the right to redact customer names, confidential customer information, or offensive or potentially defamatory language from an NASD BrokerCheck Report consistent with policies and procedures approved by the SEC.

TC 02.1

General Information About this Report

This report has been generated because you have requested information about an Individual Broker through NASD BrokerCheck. The information contained within this report has been provided by the individual broker, an NASD member firm(s), and/or securities regulators as part of the securities industry's registration and licensing process.

An NASD BrokerCheck report for an Individual Broker consists of: 1) a Report Summary; 2) the Individual Broker's Current Employment history;3) the Individual Broker's Approved Registrations; 4) the Individual Broker's Previous Employment history, and 5) the Individual Broker's Disclosure Event information, if any.

NASD BrokerCheck discloses the following information on individual brokers:

* current employing brokerage firm
* all approved registrations
* 10 years of employment history
* disclosure matters involving certain criminal charges and convictions, regulatory actions, civil judicial actions, consumer initiated complaints, terminations, and certain financial actions (e.g., bankruptcies, unsatisfied judgments/liens.)

When evaluating this report, please keep in mind that a number of items may involve pending actions or allegations that may be contested and have not been resolved or proven. The items may, in the end, be withdrawn or dismissed, or resolved in favor of the individual broker, or concluded through a negotiated settlement with no admission or conclusion of wrongdoing.

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Also remember that the information in this report is not the only resource you should consult. It is recommended that you learn as much as possible about the individual broker from other sources. Ask the individual broker for references. Ask family members or friends who already have established investment business relationships. Get in touch with local consumer and investors groups.

Should you have any questions concerning information contained within this report, call (800) 289-9999 - a toll-free NASD BrokerCheck hot-line operated by NASD - or visit NASD Web Site at www.nasd.com. When calling or visiting the NASD Web Site, the information you will need includes:

* The complete name of the individual broker.
* The individual broker's current or previous employing brokerage firm.

For definition of terms contained within this report or answers to Frequently Asked Questions, visit the Glossary or FAQs sections of NASD BrokerCheck online at www.nasd.com.

NASD BrokerCheck Report Printing Instructions

The report contained below can be printed as is. However, unless the following steps are taken, the report may not print with the headers aligned or the text may run off the page. For the following report to be printed correctly, the following formatting steps must be completed:

1) Copy the text of the report into a text editor.
2) Delete these instructions down to and including the first dashed line.
3) Set the Font for the entire report to Courier, 8 point.
4) Set the left and right margins to 0.
5) Set the top and bottom margins to 0. Because every printer allows a different number of lines per page, the margins may have to be adjusted differently to get the headers to line up at the top of each page. The document is formatted to print 90 lines per page at the specified font.
6) Print the report.

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REPORT SUMMARY

****

****

Employment History

****

Employment History: A ten year employment history is viewable through NASD BrokerCheck. For an individual that is currently registered with an NASD member firm the ten years precedes the current date. For an individual that is no longer registered with an NASD member firm, the ten years precedes the end date of the last employment with an NASD member firm.

Current Employments:	1
Registrations:	4
Previous Employments:	0

****

Disclosure Events: Yes

****

Disclosure Event: Information that is required to be reported to NASD by individual brokers via Form U-4 (Uniform Application for Securities Industry Registration or Transfer) and brokerage firms via Form BD (Uniform Application for Broker-Dealer Registration). Some disclosure events may have multiple reporting sources. For example, some information required to be reported by an individual broker via Form U-4 may also be reported on the individual broker's record by a brokerage firm via Form U-5 (Uniform Termination Notice for Securities Industry Registration) and/or by a regulator via Form U-6 (Uniform Disciplinary Action Reporting Form). If a disclosure event is reported by multiple sources, all versions of the reported event will be disclosed on the individual broker's NASD BrokerCheck report. Similarly, some information required to be reported by a brokerage firm via Form BD may also be reported on the brokerage firm's record via Form U-6. If a disclosure event is reported by multiple sources, all versions of the reported event will be disclosed on the brokerage firm's NASD BrokerCheck report.

Criminal Actions:	1
Regulatory Actions:	0
Civil Judicial Actions:	0
Terminations:	0
Customer Complaints:	0
Investigations:	0

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Bonds:	0
Bankruptcies:	0
Judgment/Liens:	0

This information is current as of: 02/03/2005

NASD Registered Person: WILLIAM HAROLD STRONG
CRD Number: 1125097

****
CURRENT EMPLOYMENT
****

This section provides all current employments (investment-related and non-investment related) as reported on the individual broker's Form U-4. It displays the name of the employing brokerage firm that employs this individual broker, the brokerage firm's CRD number (if applicable), the location of the office where the individual broker is employed, and the individual broker's start date.

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If the individual broker is currently employed with an investment adviser, the investment adviser's name and CRD number will display. However, additional information is not available on investment advisers through NASD BrokerCheck as they are not NASD registered firms.

If the individual broker is currently employed with a brokerage firm registered with any self-regulatory organization other than NASD (e.g., the NYSE), either the brokerage firm's name or "Other Business" will display as the Employing Brokerage Firm. To obtain the brokerage firm's name when "Other Business" displays as the Employing Brokerage Firm, please call the NASD BrokerCheck Call Center Hotline number, 1-800-289-9999.

A Brokerage Firm CRD Number will display for NASD registered firms the individual broker is currently associated with. A Brokerage Firm CRD Number will not display for NASD registered firms the individual broker was formerly associated with.

In addition, a Brokerage Firm CRD Number will not display for employing firms that are not NASD registered firms. Information on these employing brokerage firms is not available through NASD BrokerCheck.

This section also provides the jurisdictions with which the individual broker is currently registered or licensed to do business, the category of each registration, and the date on which the registration approval was granted.

********** CURRENT EMPLOYMENT (1 of 1) **********

Employing Brokerage Firm: MORGAN STANLEY & CO., INCORPORATED

Brokerage Firm CRD Number: 8209
Office of Employment address: 440 SOUTH LASALLE ST
CHICAGO, IL 60605

Start Date: 01/14/1993 End Date: to present

Registrations:

Jurisdiction/SRO	Category	Status	As Of Date
NASD	General Securities Representative	Approved	01/26/1993
NY	Agent	Approved	01/26/1993
NYSE	General Securities Representative	Approved	01/26/1993
NYSE	Officer	Approved	01/26/1993

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NASD Registered Person: WILLIAM HAROLD STRONG
CRD Number: 1125097

****

CRIMINAL ACTIONS

****

DISCLOSURE INFORMATION

This section contains information regarding criminal events that were reported to CRD. These events are disclosable through NASD BrokerCheck and include formal charges and convictions for all crimes involving felony offenses and for crimes involving certain misdemeanor offenses such as bribery, perjury, forgery, counterfeiting, extortion, fraud, wrongful taking of property, etc.

Some of the fields in this section of the report may be blank if the information was not provided to CRD.

** OCCURRENCE COUNTS ** 1 Record(s)

****

** FIELD DEFINITIONS **

* Reporting Source: The form through which details of the criminal action was reported to CRD.

018/039

16div-010747

* Date Reported:	The date the criminal action was reported to CRD.
* Court Details:	Details regarding the court the charges were brought in (e.g., name and location of court, docket/case number, etc.).
* Charge Date:	Date the criminal charges were filed.
* Charge Details:	Details related to the criminal charge(s) (e.g., number of counts, felony or misdemeanor, plea, etc.).
* Current Status:	The current status of the criminal action (i.e., pending, on appeal or final).
* Status Date:	Date of appeal or final resolution. Will be blank if status is pending.
* Disposition Details:	Details related to the disposition of the action (e.g., convicted, acquitted, dismissed, pre-trial, sentence/penalty, etc.).
* Summary:	A summary of the circumstances related to the criminal action.

****

********* CRIMINAL ACTION (1 of 1) *********

Reporting Source: Individual Broker (Form U-4)

Date Reported: 06/18/2001

Court Details: OFFICE OF MAGISTRATE, CRIMINAL COURT OF MILAN, ITALY 5346/95 R.G.N.R. - NO. 6232/95 G.R.GIP

Charge Date: 10/08/1998

Charge Detail: THE CHARGING DOCUMENT ALLEGES THAT, IN MY CAPACITY AS HEAD OF NON-US INVESTMENT BANKING FOR SALOMON BROTHERS INTERNATIONAL LTD. ("SBIL") IN 1992. I HAD KNOWLEDGE OF AND PARTICIPATED IN MEETINGS CONCERNING A PROPOSED TRANSACTION INVOLVING ENI, SAI AND SBIL. ALTHOUGH THE TRANSACTION WAS NEITHER ENTERED INTO NOR COMPLETED, I HAVE BEEN COMMITTED FOR TRIAL ON A CHARGE OF CONTRIBUTING TOWARD CAUSING THE CARRYING OUT OF THE CRIME OF CORRUPTION.

Current status: Pending

Status Date: 05/18/2001

Summary: THE CHARGES BROUGHT AGAINST ME IN THE COURT OF MILAN WERE TRIED AND THE COURT ISSUED A WRITTEN JUDGMENT ON MAY 18, 2001. THE COURT RULED THAT THE CRIMINAL CHARGES AGAINST ME ARE "EXTINGUISHED BY MEANS OF PRESCRIPTION." THE COURT HELD THAT

02/09/2005 13:17 FAX 019/039

"[N]O EVIDENCE EXISTS THAT SALOMON EXECUTIVES WERE AWARE OF THE CORRUPTIVE AGREEMENT" UNDER INVESTIGATION. THE COURT FOUND, HOWEVER, THAT MY ROLE IN THE TRANSACTION TECHNICALLY FALLS WITHIN THE SCOPE OF SECTION 116 OF THE ITALIAN CRIMINAL CODE. ACCORDINGLY, EVEN THOUGH THE COURT RULED I WILL NOT BE SANCTIONED OR FINED IN CONNECTION WITH THE CRIMINAL CHARGES, I INTEND TO APPEAL THE WRITTEN JUDGMENT TO SECURE A RULING THAT MY CONDUCT WAS IN NO WAY IMPROPER.

NASD Registered Person: WILLIAM HAROLD STRONG
CRD Number: 1125097

CRIMINAL ACTIONS(cont.)

********** END OF REPORT **********

02/09/2005 13:17 FAX

16div-010749

REPUBBLICA ITALIANA
IN NOME DEL POPOLO ITALIANO

La Corte d'Appello di Milano
Sezione Seconda Penale

Composta dai Signori:

1 Dott. [redacted] Presidente

2 " [redacted] Consigliere

3 " [redacted] "

ha pronunciato la seguente

SENTENZA

nella causa del Pubblico Ministero

contro

STRONG WILLIAM nato a INDIANAPOLIS ( ) il 01-04-1952 - APPELLANTE - LIBERO ELETT DOM C/O AVV G. DE LUCA DEL FORO DI ROMA
CONTUMACE

Imputato di : ARTT. 110, 112 N.1, 116, 319, 319 BIS, 321 C.P. commesso in LONDRA E MILANO in data 01-07-1992
Difeso da: Avv.AVV. GIUSEPPE DE LUCA Foro di ROMA

Parte Civile : ENI S.P.A. Difensore Avv.AVV. CARLO GILLI Foro di MILANO
PRESENTE

Art N [redacted]
Campione Civile

N 52
della sentenza

N.5103/2001
del Reg Gen App

UDIENZA
del giorno
08/01/03

Depositata
in Cancelleria
il 10.1.03

Il Cancelliere

Estratto esecutivo a
Proc Generale
Proc Rep. c/Pret. di
Proc Rep. c/Trib di
il
Ufficio Corpi reato
di
Estratto alla Prefettura
il
Estratto SET. 14.06
TRIB. MILANO
il 15.09.2003
RGNR 5346/15
Il Cancelliere

Redatta scheda
il

EXHIBIT
C

Art
Campione Penale

16div-010750

-2-

APPELLANTE

SUDDETTO.....

avverso la sentenza del Tribunale di MILANO N. Reg..Gen. 1109/1999 del 12-03-2001

con la quale veniva condannato alla pena di:NON DOVERSI PROCEDERE PER ESSERE IL REATO PRESCRITTO PREVIA
CONCESSIONE DELLE ATTENUANTI GENERICHE DICHIARATE PREVALENTI SULLA CONTESTATA AGGRAVANTE.
IMPUTAZIONE: CORRUZIONE AGGR. IN CONC. AGGR.
IN LONDRA E MILANO FINO ALL'1/7/1992.

per i reati :STRONG WILLIAM ARTT. 110, 112 N.1, 116, 319, 319 BIS, 321 C.P. commesso in LONDRA E MILANO in data 01-07-1992

in esito all'odierno dibattimento/discussione in c.c. celebrazione in contumacia dell'imputato

Sentita la relazione del Sig. Consigliere Dott. Roberto Pallini

Sentit.....imputat....., la parte civile Avv. Carlo Ogilvie, Foro Milano

.....il Pubblico Ministero dott. Simeone

il difensore Avv. Giuseppe De Cesa, Foro Roma, di fiducia

i quali concludono come da verbale d'udienza.

altro non era che la società del gruppo ENI la quale sarebbe stata parte, per conto di tale Ente, della "joint venture" in discussione.

Peraltro e per completezza, si osserva che, qualora si potesse superare quanto rilevato circa la mancata partecipazione dello stesso alla condotta corruttiva, lo Strong dovrebbe essere comunque assolto per difetto dell'elemento psicologico.

P. Q. M.

La Corte di Appello di Milano –Sez. 2^ Pen.-;

Visto l'art. 605 CPP;

In riforma della sentenza emessa dal Tribunale di Milano in data 12.3.2001, appellata dall'imputato Strong William, assolve lo stesso dall'imputazione ascrittagli per non aver commesso il fatto.

Milano, 8.1.2003

IL PRESIDENTE EST.

Estratto comunicato notificato
il 26-02-03 a STRONG WILLIAM

Sentenza passata in cosa giudicata
del giorno 29-03-2003
Milano 15-05-2003
IL CANCELLIERE

TRANSLATION OF LAST PARAGRAPH OF LAST PAGE

The Court of Appeals of Milan — Section 2; Penal

In accordance with article 605 of the Code of Penal Procedure;

In reformation of the sentence passed by the Tribunal of Milan on March 3, 2001, appealed by defendant William Strong, this Court absolves the same of the crime for which he was charged on the grounds that he did not commit the crime.

Milan, January 8, 2003

#1211354

EXHIBIT

D

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

Case No. CA 005045 AI

DOROTHY H. WILKEN
CLERK OF CIRCUIT COURT
CIRCUIT CIVIL DIVISION

MAY 09 2003

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PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Plaintiff Coleman (Parent) Holdings, Inc. ("CPH" or "Plaintiff"), by its attorneys Searcy Denney Scarola Barnhart & Shipley P.A. and Jenner & Block, LLC, hereby serves its First Request for Production of Documents upon Defendant Morgan Stanley & Co., Inc. ("Morgan Stanley" or "Defendant"), and requests responses and the production of documents at the office of Searcy Denney Scarola Barnhart & Shipley P.A., 2139 Palm Beach Lakes Blvd., West Palm Beach, Florida, within the time provided by Florida Rule of Civil Procedure 1.350(b).

DEFINITIONS

1. "Arbitrations" means Albert J. Dunlap and Sunbeam Corporation, No. 32 160 00088 99 (AAA); and Russell A. Kersh and Sunbeam Corporation, No. 32 160 00091 99 (AAA).

2. "Coleman" means the Coleman Company, Inc. or any of its present and former officers, directors, employees, representatives, agents, and all other persons acting or purporting to act on its behalf.

EXHIBIT
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16div-010754

3. "CPH" means Coleman (Parent) Holdings Inc., Coleman Worldwide Corporation, CLN Holdings, Co. Inc., or any of their present and former officers, directors, employees, representatives, agents, and all other persons acting or purporting to act on their behalf.

4. "Coleman Transaction" means the transaction contemplated by the February 27, 1998 Agreements.

5. "Communication" means the transmittal of information by letter, memorandum, facsimile, orally, or otherwise.

6. "Concerning" means reflecting, relating to, referring to, describing, evidencing, or constituting.

7. "Documents" means documents whether fixed in tangible medium or electronically stored. The word "documents" shall include, by way of example and not by way of limitation, all of the following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, notes, messages, reports, studies, press releases, comparisons, books, accounts, checks, audio and video recordings and transcriptions thereof, pleadings, testimony, articles, bulletins, pamphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk calendars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, minutes for meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements, memoranda of understanding, letters of intent, computer tapes, computer drives or memories, computer diskettes or disks, e-mail, CD-ROMs, or any other tangible thing on which any handwriting, typing, printing, photostatic, electronic, or other form of communication or information is recorded or reproduced, together with all notations on any of the foregoing, all

originals, file copies, or other unique copies of the foregoing, and all versions or drafts thereof, whether used or not.

8. "February 27, 1998 Agreements" means (a) the Agreement and Plan of Merger dated as of February 27, 1998 among Sunbeam Corp., Laser Acquisition Corp., CLN Holdings, Inc. and Coleman (Parent) Holdings Inc. and (b) the Agreement and Plan of Merger dated as of February 27, 1998 among Sunbeam Corp., Camper Acquisition Corp., and The Coleman Company, Inc.

9. "Financial Statements" means, without limitation, balance sheets, statements of income, earnings, retained earnings, sources and applications of funds, cash flow projections, notes to each such statements, or any other notes which pertain to the past or present financial condition of Sunbeam, whether any of the foregoing is audited or unaudited, whether final, interim or pro forma, complete or partial, consolidated, yearly, monthly, or otherwise.

10. "Litigations" means In Re Sunbeam Securities Litigation, 98-8258-Civ.-Middlebrooks (S.D. Fla.); Camden Asset Management L.P., et al. v. Sunbeam Corporation, et al., 98-8773-Civ.-Middlebrooks and 98-8275-Civ.-Middlebrooks (S.D. Fla.); Krim v. Dunlap, et al., No. CL983168AD (15th Jud. Cir., Fla.); Stapleton v. Sunbeam Corp., et al., No. 98-1676-Civ.-King (S.D. Fla.); Sunbeam Corp. v. PricewaterhouseCoopers LLP, No. CL005444AN (15th Jud. Cir., Fla.); In re Sunbeam Corp., Inc., No. 01-40291 (AJG) (Bankr. S.D.N.Y.) and any adversary proceedings therein; SEC v. Dunlap, et al., No. 01-8437-Civ.-Middlebrooks (S.D. Fla.); Oakree Capital Management LLC v. Arthur Andersen LLP, No. BC257177 (L.A. Cty., CA); and Coleman (Parent) Holdings Inc. v. Arthur Andersen LLP, et al., No. CA 01-06062AN (15th Jud. Cir., Fla).

11. "Morgan Stanley" means Morgan Stanley & Co., Inc. or any of its subsidiaries, divisions, predecessors, successors, present and former employees, representatives, agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

12. "SEC Administrative Proceedings" means In the Matter of Sunbeam Corp., SEC Administrative Proceeding File No. 3-10481, and In the Matter of David C. Fannin, SEC Administrative Proceeding File No. 3-10482.

13. "SEC" means the Securities and Exchange Commission.

14. "Subordinated Debentures" means Sunbeam's Zero Coupon Convertible Senior Subordinated Debentures Due 2018.

15. "Subordinated Debenture Offering" means the offering of Sunbeam's Subordinated Debentures.

16. "Sunbeam" means Sunbeam Corporation, or any of its subsidiaries, divisions, affiliates, predecessors, successors, present and former employees, representatives, agents, and all other persons acting or purporting to act on its behalf.

17. "You" or "Your" means Morgan Stanley & Co., Inc. and/or any of its subsidiaries, divisions, predecessors, successors, present or former employees, representatives, agents, attorneys, accountants, advisors, or anyone acting or purporting to act on its behalf.

INSTRUCTIONS

1. Documents shall be produced as they are kept in the usual course of business, or organized and labeled to correspond to the categories in this Request. Documents attached to each other should not be separated. Documents consisting of items previously produced in the Litigations, Arbitrations, and/or SEC Administrative Proceedings with Bates numbering shall be produced in Bates number order.

2. All documents shall be produced in the file folder, envelope or other container in which the documents are kept or maintained by you. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks.

3. The relevant period, unless otherwise indicated, shall be from January 1, 1997 through the date of trial of this matter, and shall include all documents and information which relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received prior or subsequent to that period. Please supplement or correct your responses to these requests if, at any time, you become aware that your responses are incomplete or incorrect in any respect.

4. If you claim the attorney-client privilege, or any other privilege or work-product protection for all or any portion of a document, you shall provide a privilege log that describes the withheld material sufficiently to allow CPH to test the privilege or protection asserted.

5. The following rules of construction apply:

a) The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be outside of their scope;

b) The term "including" shall be construed to mean "without limitation"; and

c) The use of the singular form of any word includes the plural and vice versa.

DOCUMENTS REQUESTED

1. All documents concerning your efforts to have Sunbeam retain or maintain your investment banking and/or securities underwriting services.

2. All documents reflecting all fees and expenses paid by Sunbeam to you, including without limitation all billing statements, invoices, time detail records, individual calendars,

daily diaries (including electronic calender programs), or other documents that describe or record the time spent, or expenses incurred (including back-up for any out-of-pocket expenses), by any Morgan Stanley personnel, or that describe or record any aspect of their activities concerning any services performed on behalf of, or concerning, Sunbeam.

3. All documents concerning any investigation, analysis, or due diligence of Sunbeam conducted by you or on your behalf in 1997 or 1998.

4. All documents concerning any investigation, analysis, or due diligence of Coleman or CPH conducted by you or on your behalf in 1997 or 1998.

5. All documents concerning your attempts in 1997 or 1998 to locate someone to purchase or otherwise acquire Sunbeam, whether through merger, purchase, transfer of assets or securities, or otherwise.

6. All documents concerning your attempts in 1997 or 1998 to locate companies for Sunbeam to purchase or otherwise acquire, whether through merger, purchase, transfer of assets or securities, or otherwise.

7. All documents concerning the negotiation and signing of the February 27, 1998 Agreements.

8. All documents concerning the closing of the Coleman Transaction, including without limitation all documents concerning the decision to close the Coleman Transaction.

9. All documents concerning the meetings of Sunbeam's Board of Directors in 1997 and 1998.

10. All documents concerning any discussion, promise, agreement, or plan to have research analysis, whether or not at Morgan Stanley, provide coverage for Sunbeam or any of its debt or equity securities.

11. All documents used, analyzed, consulted, or prepared by any Morgan Stanley research analyst, including without limitation Andrew Conway, James Dormer, Jake Foley, and Karen Elrich, concerning Sunbeam.

12. All documents concerning communications between or among you, Sunbeam, and Wall Street analysts concerning Sunbeam or the Coleman Transaction.

13. All documents concerning any valuation of Sunbeam or Sunbeam securities.

14. All documents concerning the stock market's valuation of Sunbeam securities, including without limitation documents describing or analyzing the increase or decline in the market price of Sunbeam stock in the period from and including July 1, 1996 through and including December 31, 1998.

15. All documents concerning any valuation of Coleman or Coleman securities.

16. All documents concerning synergies that might be achieved from a business combination of Sunbeam and Coleman.

17. All documents concerning Sunbeam's financial statements and/or restated financial statements.

18. All documents concerning the increase in the size of the Subordinated Debenture Offering from $500 million to $750 million.

19. All documents concerning any draft or executed "comfort letters" requested by you or provided to you in connection with the Subordinated Debenture Offering.

20. All documents concerning the sale of, or your attempts to sell, Subordinated Debentures, including without limitation documents concerning road shows, communications with potential investors, or communications with or among Morgan Stanley's sales personnel.

21. All documents concerning the pricing of the Subordinated Debentures.

22. All documents concerning the conversion features of the Subordinated Debentures.

23. All documents concerning the "book of demand" for the Subordinated Debentures.

24. All documents concerning the events that took place on March 19, 1998 at Global Financial Press, including without limitation documents concerning Lawrence Bornstein and/or John Tyree.

25. All documents concerning your communications with Sunbeam on March 18, 1998.

26. All documents concerning the "bring-down" due diligence for the Subordinated Debenture Offering.

27. All documents concerning your communications with Sunbeam on March 24, 1998.

28. All documents concerning Sunbeam's first quarter 1998 sales and/or earnings.

29. All documents concerning the closing of the Subordinated Debenture Offering including without limitation all documents concerning the decision to close the Subordinated Debenture Offering.

30. All documents concerning the Subordinated Debenture Offering.

31. All documents concerning any work or services you performed for or on behalf of Sunbeam in 1997 or 1998, regardless of whether you were compensated for that work.

32. All documents concerning press releases issued by Sunbeam on October 23, 1997, March 19, 1998, April 3, 1998, May 9, 1998, June 15, 1998, June 25, 1998, June 30, 1998, October 20, 1998, and November 12, 1998.

33. All documents concerning the statements contained in the press releases issued by Sunbeam on October 23, 1997, March 19, 1998, April 3, 1998, May 9, 1998, June 15, 1998, June 25, 1998, June 30, 1998, October 20, 1998, and November 12, 1998.

34. All documents concerning communications relating to Sunbeam, Coleman, or CPH, including without limitation internal communications within Morgan Stanley or communications between or among Morgan Stanley and Sunbeam; Skadden, Arps, Slate, Meagher & Flom LLP; Coopers & Lybrand LLP; Llama Company; Arthur Andersen LLP; Sard Verbinnen & Co., Inc.; Hill & Knowlton, Inc.; The Coleman Company, Inc.; Credit Suisse First Boston; Coleman (Parent) Holdings Inc.; MacAndrews & Forbes Holdings, Inc.; Wachtell Lipton, Rosen & Katz; Davis Polk & Wardwell; or any other person or company, and/or any of their respective employees, agents, or representatives.

35. All documents concerning the Coleman Transaction.

36. All documents concerning the Subordinated Debenture Offering.

37. All documents concerning Albert Dunlap and/or Russell Kersh.

38. All documents concerning the Scott Paper Company.

39. All documents concerning Coleman or CPH.

40. All documents concerning MacAndrews & Forbes Holdings, Inc. with respect to Sunbeam, Coleman, or CPH.

41. All documents concerning the events and matters that are the subject of the Complaint filed this action.

42. Organizational charts, memoranda, or similar documents that describe the business organizational structure and the administrative, management, and reporting structure of Morgan Stanley from and including January 1, 1997 through and including December 31, 1998.

43. All documents concerning Morgan Stanley's policies, procedures, manuals, guidelines, reference materials, or checklists that were in effect from and including January 1, 1997 through and including December 31, 1998 for the performance of due diligence, including without limitation due diligence performed in connection with underwriting the sale of equity or debt securities.

44. All documents concerning employment contracts, performance evaluations, and/or personnel files (including without limitation any documents that describe or discuss the training, experience, competence, and accomplishments) of all Morgan Stanley personnel who performed services for or on behalf of Sunbeam in 1997 or 1998.

45. All documents concerning Morgan Stanley's performance evaluation criteria or guidelines in effect from and including January 1, 1997 through and including December 31, 1998.

46. All documents concerning Morgan Stanley's compensation criteria or guidelines in effect from and including January 1, 1997 through and including December 31, 1998.

47. All marketing or other promotional material prepared or used by, or on behalf of, Morgan Stanley concerning investment banking or securities underwriting services that were created or used at anytime from and including January 1, 1997 through and including December 31, 1998.

48. All of your document retention or document destruction policies or procedures or similar procedures for the back-up or deletion of electronic or hard copy documents of any kind for any time during 1997 through the present, including without limitation any amendments to any such policies or procedures, schedules or related documents, and any memoranda or other instructions communicated to your employees concerning the obligation and procedures to be

utilized to preserve all relevant documents, including without limitation evidence concerning the Litigations, the Arbitrations, and the SEC Administrative Proceedings.

49. All documents you have provided or produced to any party (whether voluntarily or in response to a document request, subpoena duces tecum, or other process served on you) in any of the Litigations, the Arbitrations, or the SEC Administrative Proceedings (including without limitation any reports, communications, filings, testimony, legal memoranda, statements, or other documents submitted to the Securities & Exchange Commission or any other party).

50. All documents you have provided to the SEC, the Attorney General of New York, or any other governmental or regulatory body concerning Sunbeam.

51. All documents you have received from the SEC, the Attorney General of New York, or any other governmental or regulatory body concerning Sunbeam.

52. All discovery requests or subpoenas served on you in any of the Litigations, the Arbitrations, or the SEC Administrative Proceedings.

53. All responses and/or objections that you provided or produced in response to a discovery request or subpoena served on you in any of the Litigations, the Arbitrations, or the SEC Administrative Proceedings.

54. All communications concerning any discovery request or subpoena served on you in any of the Litigations, the Arbitrations, or the SEC Administrative Proceedings.

55. All motions, memoranda, briefs, rulings, orders, or transcripts of proceedings concerning any discovery request, subpoena, or other process in any of the Litigations, the Arbitrations, or the SEC Administrative Proceedings.

56. All privilege logs you prepared in any of the Litigations, the Arbitrations, or the SEC Administrative Proceedings with respect to documents that you withheld from production in response to any document requests, subpoenas duces tecum, or other process.

57. All transcripts of and exhibits to any depositions, recorded statements, or affidavits in connection with any of the Litigations, the Arbitrations, or the SEC Administrative Proceedings.

58. All documents obtained by you or produced to you by other parties, third parties, or non-parties (whether voluntarily or in response to any document requests, subpoenas duces tecum, or other process served by you or any other party) concerning Sunbeam.

59. All document requests, subpoenas duces tecum, interrogatories, requests for admission, responses, or objections that you served on, or received from, any party, third party or non-party in In re Sunbeam Corp., Inc., No. 01-40291 (AJG) (Bankr. S.D.N.Y.) and any adversary proceedings therein.

60. All transcripts of any hearings held in connection with the Litigations, the Arbitrations, or the SEC Administrative Proceedings.

61. All affidavits, declarations, or other testimonial statements filed or submitted in connection with any of the Litigations, the Arbitrations, or the SEC Administrative Proceedings.

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
Robert T. Markowski
Deirdre E. Connell
JENNER & BLOCK, LLC
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AJ

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

v. CASE NO: CA 03-5165 AJ

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.
_____/

MODIFIED ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF COLEMAN (PARENT) HOLDINGS INC.'S, MOTION TO COMPEL PRODUCTION OF DOCUMENTS RELATING TO EMPLOYEE PERFORMANCE

THIS CAUSE having come before the Court on its Order entered March 3, 2004 on Plaintiff Coleman (Parent) Holdings Inc.'s Motion to Compel Production of Documents Relating To Employee Performance, and the Court having reviewed the pleadings on file, being advised of the parties agreement to the modification, and otherwise being fully advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

1. The Motion is Granted In Part, and Denied, In Part.

EXHIBIT
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2. Defendant shall produce, on or before April 2, 2004, copies of documents responsive to Plaintiff's May 9, 2003 Request to Produce number 44 for the Morgan Stanley employees who worked on the 1997-98 Sunbeam-related engagements. Specifically, Morgan Stanley shall produce, for those employees and for the time period from 1992 through and including 1998:

(a) All references (positive or negative) to work performed by the employee on Sunbeam-related engagements.

(b) All references (positive or negative) to the employee's performance in fee generation.

(c) All references (positive or negative) to the employee's performance of due diligence activities, regardless of whether designated specifically as such.

(d) All references (positive or negative) to the employee's truthfulness, veracity, or moral turpitude.

Privileged information only may be redacted.

3. Defendant shall produce, on or before April 2, 2004, additional documents (if any) responsive to Plaintiff's May 9, 2003 Request to Produce numbers 45 and 46.

4. This ruling is without prejudice to Plaintiff's ability to request additional employee performance-related discovery based upon the content of the production requested pursuant to this Order.

5. This order supersedes the Order Granting In Part and Denying In Part Plaintiff's Motion to Compel Production of Documents Relating to Employee Performance entered by this Court on March 3, 2004.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this ____ day of March 2004.

ELIZABETH T. MAASS
Circuit Court Judge

Copies furnished:

Joseph Ianno, Jr. Esq.
CARLTON FIELDS, P.A.
222 Lakeview Avenue – Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci, Esq.
KIRKLAND & ELLIS LLP
655 15th Street, N.W. – Suite 1200
Washington, D.C. 20005

John Scarola, Esq.
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409

Jerold S. Solovy, Esq.
JENNER & BLOCK LLP
One IBM Plaza – Suite 4400
Chicago, IL 60611

FAX TRANSMITTAL

JENNER&BLOCK

Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611
Tel 312 222-9350
www.jenner.com

Chicago
Dallas
Washington, DC

Date:	February 8, 2005		
To:	Thomas A. Clare, Esq.	Fax:	(561) 651-1127 AND (202) 879-5200
		Voice:	
	Joseph Ianno, Jr., Esq.	Fax:	(561) 659-7368
		Voice:	(561) 659-7070
	John Scarola, Esq.	Fax:	(561) 684-5816 (before 5 PM)
		Voice:	(561) 686-6350, Ext. 140
	Mark C. Hansen, Esq.	Fax:	(202) 326-7999 AND (561) 651-1127
		Voice:	(202) 326-7900
From:	Michael T. Brody (561) 352-2300		
Employee Number:		Client Number:	41198-10003

Important: This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is attorney work product, privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via postal service. Thank you.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

NOTICE OF TAKING DEPOSITIONS

To: Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
222 Lakeview Avenue
Suite 260
West Palm Beach, FL 33401

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lakeview Avenue
Suite 1400
West Palm Beach, FL 33401

Mark C. Hansen, Esq.
Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C.
c/o Kirkland & Ellis
222 Lakeview Avenue
Suite 260
West Palm Beach, FL 33401

PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates, times, and locations set forth below:

DEPONENT	DATE AND TIME
Glenn Seickel	February 9, 2005, at 9:00 a.m.
Allison Gorman Nachtigal	February 9, 2005, at 1:00 p.m.
Robert Saunders	February 10, 2005, at 9:00 a.m.

All of the depositions will be conducted at Searcy Denney Scarola Barnhart & Shipley, P.A., 2139 West Palm Beach Lakes Boulevard, West Palm Beach, Florida. The depositions will be recorded by stenographic means. The depositions will be taken before a person authorized to administer oaths and will continue day to day until completed.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and hand delivery to all counsel on the attached Service List this 8th day of February 2005.

Dated: February 8, 2005

COLEMAN (PARENT) HOLDINGS INC.

By:
One of Its Attorneys

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One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART
& SHIPLEY P.A.
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West Palm Beach, Florida 33409
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FAX TRANSMITTAL

JENNER & BLOCK

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Date:	February 8, 2005		
To:	Thomas A. Clare, Esq.	Fax:	(561) 651-1127 AND (202) 879-5200
		Voice:	
	Joseph Ianno, Jr., Esq.	Fax:	(561) 659-7368
		Voice:	(561) 659-7070
	John Scarola, Esq.	Fax:	(561) 684-5816 (before 5 PM)
		Voice:	(561) 686-6350, Ext. 140
	Mark C. Hansen, Esq.	Fax:	(202) 326-7999 AND (561) 651-1127
		Voice:	(202) 326-7900
From:	Michael T. Brody (561) 352-2300		
Employee Number:		Client Number:	41198-10003

Important: This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is attorney work product, privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via postal service. Thank you.

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Secretary: Caryn Jo Geisler	Extension: 6490

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

NOTICE OF TAKING VIDEOTAPED DEPOSITION

To:

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
222 Lakeview Avenue
Suite 260
West Palm Beach, Fl 33401

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lakeview Avenue
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Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
c/o Kirkland & Ellis LLP
222 Lakeview Avenue, Suite 260
West Palm Beach, FL 33401

PLEASE TAKE NOTICE that Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following party pursuant to Florida Rule of Civil Procedure 1.310, and the Court's order of February 3, 2005:

DEPONENT	DATE AND TIME
Morgan Stanley & Co., Inc. on topics identified on Exhibit A.	February 11, 2005 at 9:30 a.m.

The deposition will be conducted at the office of John Scarola, 2139 Palm Beach Lakes, Blvd., West Palm Beach, Florida. The deposition will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The deposition will be taken before a person authorized to administer oaths and will continue day to day until completed.

With respect to the deposition identified above, please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and hand delivery to all counsel on the attached Service List this 8th day of February 2005.

Dated: February 8, 2005

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
JENNER & BLOCK LLP
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Exhibit A

CORPORATE DEPOSITION TOPICS

Per the Court's Order of February 3, 2005, the Rule 1.310 deposition will relate to all of the information ordered to be included in Morgan Stanley & Co.'s February 7, 2005 sworn statement concerning CPH 9, CPH 75, CPH 130, CPH 170, CPH 182, CPH 217, CPH 264, and CPH 265.

#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiffs,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

CASE NO.: 2003 CA 005045 AI

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: February 14, 2005

TIME: 9:30 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

Coleman (Parent) Holdings Inc.'s Motion to Advance Morgan Stanley's Time for Answering CPH's Tenth Request for Production

Coleman Holdings, Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Hand Delivery to all Counsel on the attached list, this 9th day of Feb., 2005.

JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
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Attorney for Plaintiffs

Coleman Holdings, Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

COUNSEL LIST

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#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiffs,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

CASE NO.: 2003 CA 005045 AI

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: February 14, 2005

TIME: 9:30 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

Coleman (Parent) Holdings Inc.'s Motion to Compel Production of Documents Relating to William Strong

Coleman Holdings, Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Hand Delivery to all Counsel on the attached list, this 9th day of Feb, 2005.

JACK SCAROLA
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Coleman Holdings, Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

CPH'S RESPONSE TO MORGAN STANLEY'S MOTION IN LIMINE NO. 13 TO STRIKE THE EXPERT OPINION OF DR. SAMUEL J. KURSH AS UNTIMELY AND CUMULATIVE

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") respectfully submits this response opposing Morgan Stanley's Motion in Limine No. 13 to Strike the Expert Opinion of Dr. Samuel J. Kursh as Untimely and Cumulative. Morgan Stanley accuses CPH of an "ongoing expert 'shellgame'" and "gamesmanship" based on what Morgan Stanley characterizes as the "untimely" submission of Dr. Samuel J. Kursh's rebuttal expert report. Morgan Stanley's accusations are unfounded. CPH timely submitted Dr. Kursh's rebuttal report on January 24, 2005, in full compliance with this Court's Order. CPH was unable to submit that rebuttal report until then due to Dr. Kursh's serious heart condition, which necessitated major heart surgery on December 21, 2004. CPH and its counsel were unaware of Dr. Kursh's need for such surgery until December 9 (as was Dr. Kursh until the day before). CPH's counsel immediately advised counsel for Morgan Stanley of Dr. Kursh's condition. There is no basis for Morgan Stanley's claim of "gamesmanship."

Moreover, there has been no prejudice to Morgan Stanley. Trying to fabricate some prejudice where none exists, Morgan Stanley relies exclusively on a mechanical recitation of previously set deadlines — with no showing that the adjustment to those deadlines as they relate

to Dr. Kursh has harmed Morgan Stanley in any way. CPH has made full disclosure of Dr. Kursh's opinions and has offered Dr. Kursh for a deposition as early as February 11, 2005. In sum, Morgan Stanley will not be prejudiced by Dr. Kursh's continued participation in this case.

I. CPH Timely Submitted Dr. Kursh's Rebuttal Report on January 24, 2005.

Dr. Kursh has submitted a declaration, attached hereto as Exhibit A, describing his medical condition and his surgery. As set forth in that declaration, Dr. Kursh suffered from a condition known as "constrictive pericarditis." *See* Ex. A, Kursh Decl. at ¶ 2. At the time he submitted his original report, on December 7, 2004, his condition was being treated medicinally. Dr. Kursh was aware that surgery was a future possibility, but had been advised by his physician to "wait and see" if the medical regimen showed any results. *Id.*

Dr. Kursh's health deteriorated in November 2004, and Dr. Kursh made an appointment to discuss his condition with a physician, Dr. Acker, on December 8, 2004. *Id.* ¶ 3. At that time, Dr. Acker advised Dr. Kursh that he would need a radical pericardiectomy, and that the surgery should be performed sooner rather than later. *Id.* ¶ 4. After consulting with his family, Dr. Kursh advised Dr. Acker that he would have the surgery, which was then scheduled for December 16. *Id.* ¶ 5.

Dr. Kursh advised counsel for CPH on December 9 that he would be undergoing surgery. The same day, CPH's counsel advised Morgan Stanley's counsel of Dr. Kursh's condition. *See* Ex. B, Ltr. M. Brody to T. Clare (12/9/04).

Dr. Kursh underwent major heart surgery on December 21, 2004. (The December 16 surgery was postponed by Dr. Acker.) Ex. A, ¶¶ 7-8. Dr. Kursh was discharged from the hospital on December 27, 2004, and has continued his recuperation at home. *Id.* ¶ 9.

CPH timely advised counsel for Morgan Stanley of these developments. In so doing, CPH requested Morgan Stanley's agreement to extend the time to file Dr. Kursh's rebuttal

report. Morgan Stanley agreed to an extension only to January 4, 2005.[1] *See* Ex. C, Ltr. T. Clare to M. Brody (1/4/05). Because Morgan Stanley would not agree to a further extension, CPH filed a motion with this Court requesting additional time for Dr. Kursh to submit his rebuttal report. By Order dated January 10, 2005, the Court permitted CPH to serve Dr. Kursh's rebuttal report by January 24, 2005, at 5:00 p.m. EST. The Court stated that this extension was "without prejudice to Defendant's right to seek to exclude all or a portion of Mr. Kursh's testimony if it is unduly prejudiced by the delay." *See* Ex. D, Order (1/10/05).

CPH served Dr. Kursh's report in compliance with this Court's January 10 Order. Morgan Stanley admits at page 6 of its motion that Morgan Stanley received Dr. Kursh's rebuttal report before 5:00 p.m. on January 24, 2005.[2] CPH served the report by e-mail, telecopy, and Federal Express. Following clearance by Dr. Kursh's doctor, CPH informed Morgan Stanley that Dr. Kursh would be available for his deposition as early as February 11. See Ex. A, Kursh Decl. at ¶ 10; Ex. G, Ltr. M. Brody to T. Clare (2/4/05).

II. Morgan Stanley Was Not Prejudiced by the Submission of Dr. Kursh's Rebuttal Report on January 24, 2005.

Although Morgan Stanley argues that it was harmed by the timing of Dr. Kursh's report, Morgan Stanley identifies no real prejudice. Morgan Stanley can cite no way in which the

---

[1] Morgan Stanley requested that CPH agree that one of Morgan Stanley's experts — Mr. Fritz — could submit a late rebuttal report. Morgan Stanley represented that Mr. Fritz needed additional time to accommodate a "family emergency." CPH agreed to this accommodation. Mr. Fritz testified in his deposition that he requested additional time so that he could spend the Christmas holiday with his children, a far different reason for an extension than Dr. Kursh's open-heart surgery. *See* Ex. E, Fritz Dep. at 208.

[2] At page 5 of its motion, Morgan Stanley states "CPH served by email attachment two Kursh reports of 97 pages at 4:53 p.m. EST on January **25**, 2005" (emphasis added). As Morgan Stanley's motion indicates on the following page, this statement is incorrect. Dr. Kursh's report was timely served on January 24 at 3:54 p.m. CST. A copy of the e-mail transmitting Dr. Kursh's report is attached hereto as Exhibit F (E-mail M. Brody to T. Clare, J. Ianno, M. Hansen (1/24/05)). CPH served the report by e-mail because its attempts to serve the report by fax were unsuccessful. For some reason, faxes directed to Mr. Clare's fax number did not go through.

submission of Dr. Kursh's report on January 24, rather than January 4, the date to which Morgan Stanley agreed, has affected the preparation of its case. Morgan Stanley's assertion of prejudice rings particularly hollow in light of its simultaneous (but erroneous) complaint that the report is cumulative of other evidence.

Morgan Stanley complains that the Kursh rebuttal report is 97 pages long, suggesting that it has been prejudiced by CPH somehow engaging in tactics to burden Morgan Stanley. In fact, the report is 18 pages long, including a cover page and the statement of Dr. Kursh's qualifications (which also is included in his initial report). The remainder consists of copies of academic articles on which Dr. Kursh relied. The inclusion of this material has only saved Morgan Stanley the trouble of tracking these articles down. Thus, Morgan Stanley has not been prejudiced by the volume of Dr. Kursh's rebuttal report.

Without a showing of prejudice, Morgan Stanley is not entitled to relief under the Court's Order.

III. Dr. Kursh's Testimony Will Not Be Cumulative of That of Other Witnesses.

Morgan Stanley's remaining argument is that Dr. Kursh's testimony will be cumulative of other damages witnesses CPH has listed. That is incorrect as well.

CPH does not intend to present cumulative proof. As set forth in CPH's Motion in Limine No. 19 relating to the testimony of Professor Grinblatt, CPH has elected to pursue damages under a benefit-of-the-bargain theory. CPH's witness applying that methodology is Dr. Nye. Thus, if the Court agrees with CPH that proof of damages should be limited to the benefit-of-the-bargain theory, as we believe the law compels, CPH will not call Dr. Kursh or Mr. Wagner.

If the Court were to allow use of out-of-pocket loss as an alternative theory of damages, CPH would be using two damages experts as to that issue. But as Morgan Stanley recognizes,

the number of witnesses is left to the trial court's discretion, and in a case of this magnitude, permitting two or more witnesses to present testimony on an important question, such as damages, would be fully appropriate. Indeed, even the very cases that Morgan Stanley cites make clear that permitting two expert witnesses on the same topic is proper. *Dones v. Moss*, 884 So. 2d 230, 232 (Fla. 2d DCA 2004) (allowing plaintiff to present two standard-of-care experts in internal or family practice medicine and one standard-of-care expert in cardiology); *Stager v. Florida E. Coast Ry. Co.*, 163 So. 2d 15, 17 (Fla. 3d DCA 1964) (refusing to allow a third doctor to testify when his proffered testimony was deemed identical to the two already testifying). Morgan Stanley offers no support for its argument that two experts addressing related issues is unreasonable, and in fact courts consistently find the opposite: "Clearly a party is not necessarily guilty of calling duplicative witnesses simply because she calls two witnesses of the same . . . specialty." *Delgardo v. Allstate Ins. Co.*, 731 So. 2d 11, 16 (Fla. 4th DCA 1999).

Moreover, although Dr. Kursh and Mr. Wagner both analyzed CPH's damages assuming the applicability of an out-of-pocket loss theory, they did so utilizing two different methodologies. Mr. Wagner followed essentially the same approach that Morgan Stanley followed in 1998 when it valued The Coleman Company for the Sunbeam Board of Directors. Mr. Wagner's conclusions and methods are very similar to, but more conservative than, the conclusions and methods that Morgan Stanley used when it advised the Sunbeam Board in 1998 that the price Sunbeam was paying for Coleman was fair. Although Mr. Wagner uses the methods Morgan Stanley employed in 1998, Morgan Stanley now denigrates those methods as unreliable "practitioner" methods. Mot. at 3. That argument can hardly be made in good faith.

Dr. Kursh has calculated the value of CPH's Coleman shares using a different approach, which he describes fully in his expert report. Dr. Kursh relies on market indicators of Coleman's

value, cross-checking his analysis by analyzing the fairness opinions produced by Morgan Stanley and Credit Suisse First Boston at the time of the transaction. In separate proceedings, the Delaware Chancery Court credited Dr. Kursh's testimony in its judgment in a Delaware appraisal action. In that case, shareholders of Coleman sued Sunbeam, challenging the value they received in the second stage of the 1998 merger. In rendering its opinion, the Delaware court concluded that Coleman was worth over $32.00 per share on March 30, 1998. *Prescott Group Small Cap L.P. v. The Coleman Company*, No. Civ. A 17802, 2004 WL 2059515, at *32 (Del. Ch. Sept. 8. 2004). Dr. Kursh testified in that case, and the court relied on Dr. Kursh's testimony in reaching that value. It is no surprise that Morgan Stanley wishes to exclude Dr. Kursh's testimony in this case and instead will ask the jury to find that Coleman was worth only $15.00 per share at the time of the transaction.

Dr. Kursh also will address different topics than those addressed by Mr. Wagner. For example, in his rebuttal to Professor Grinblatt's academic analysis, Dr. Kursh explains that Professor Grinblatt used an unreliable model, misapplied the academic literature, and ignored reliable measures of Coleman's value. For this reason alone, Dr. Kursh's testimony is not cumulative of Mr. Wagner's.

This is a case of some magnitude. Each party should be accorded latitude to select the witnesses that best present its case. *Lion Plumbing Supply, Inc. v. Suarez*, 844 So. 2d 768, 770 (Fla. 3d DCA 2003) ("The application of a restriction [on the number of expert witnesses] must take into account the circumstances of the case."); *C.E. Huffman Trucking, Inc. v. Red Cedar Corp.*, 723 So. 2d 296, 298 (Fla. 2d DCA 1998) (recognizing a party's interest in selecting its own witnesses).

CONCLUSION

For the foregoing reasons, this Court should deny Morgan Stanley's Motion in Limine No. 13.

Dated: February 9, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and hand delivery to all counsel on the attached list on this 9th day of Feb, 2005.

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EXHIBIT A

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

DECLARATION OF SAMUEL J. KURSH, D.B.A.

1. I am Samuel J. Kursh, D.B.A. I have been requested by counsel for Coleman (Parent) Holdings Inc. to provide a time line of my recent surgery and ongoing recovery.

2. On December 7, 2004 I submitted my report in this matter. As of that date, I had been diagnosed with constrictive pericarditis and was treating the condition medicinally. I was aware that surgery was a potential option but had been advised by my cardiologist to wait and see if the treatment regimen showed any results.

3. Unfortunately, my health deteriorated rapidly during the month of November. Through my cardiologist and pulmonologist, I was able to make an appointment with Dr. Michael Acker, Chief, Division of Cardiothoracic Surgery at the University of Pennsylvania Hospital. The appointment was made for December 8, 2004.

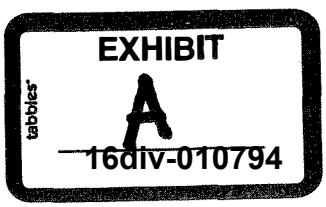
4. At this appointment, Dr. Acker advised me that a radical pericardiectomy was necessary and that sooner was better than later. He further advised me that the recovery period was 8 to 10 weeks.

5. After discussions with my family I notified Dr. Acker on December 9, 2004 that I wished to proceed with surgery at his earliest scheduled opening. The procedure was scheduled for December 16, 2004.

6. On December 9, 2004, I notified counsel for CPH of the scheduled procedure and recovery time. Based on Dr. Acker's estimate, I expected to be ready for trial.

7. Dr. Acker was required to perform emergency surgery on December 16 and postponed my procedure to December 21, 2004.

8. The surgery was performed on December 21, 2004. Dr. Acker successfully removed the pericardium. Dr. John Kucharczuk, Chief of General Thoracic Surgery was called in on an emergency basis to perform a decortation of the left lung which had collapsed due to a thickened pleural liner.



9. I was discharged from the hospital on December 27, 2004. Since that date I have been recuperating at home. My physicians have advised me to limit automobile travel and generally remain at rest. I have not returned to work.

10. On this past Wednesday, February 2, 2005, Dr. Acker gave me his approval to begin traveling and working on a limited basis. Accordingly, I have made myself available for deposition as early as February 11, 2005, and I intend to meet the trial schedule set for this case.

11. I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 7, 2005

Samuel J. Kursh, D.B.A.

EXHIBIT B

JENNER&BLOCK

December 9, 2004

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One IBM Plaza
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Thomas A. Clare, Esq.
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Washington, D.C. 20005

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Tom:

We received word today that Dr. Sam Kursh, an expert whose report we provided on Tuesday, is expected to undergo heart surgery next week. We will keep you informed concerning how this development affects the schedule for his expert deposition as we learn additional details of Dr. Kursh's condition.

Very truly yours,

Michael T. Brody

MTB:cjg
cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

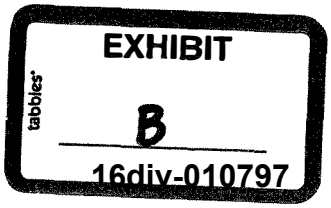

EXHIBIT C

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

655 Fifteenth Street, N.W.
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Thomas A. Clare
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January 4, 2005

BY FACSIMILE

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: ***Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.***

Dear Mike:

I write in response to your January 3, 2005 letter regarding Mr. Kursh.

Morgan Stanley has already made reasonable accommodations for Mr. Kursh regarding his recent heart surgery by agreeing to extend the deadlines for his rebuttal report and deposition to January 4, 2005 and January 21, 2005 respectively. As I informed you in my December 22 letter, we are unable, given the highly compressed pretrial schedule and the limited time available to complete the expert disclosures, expert depositions, and expert designations before the trial, to agree to any further extensions of those deadlines. Once again, I note that CPH has at least two other experts who address precisely the same subject matter as Mr. Kursh.

Sincerely,

Thomas A. Clare

Thomas A. Clare

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark C. Hansen, Esq. (by facsimile)

EXHIBIT
tabbies
C
16div-010799

EXHIBIT D

#230580/mep

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

Case No. CA 03-5045 AI

ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO EXTEND TIME FOR SUBMISSION OF THE REBUTTAL EXPERT REPORT OF SAMUEL KURSH

THIS CAUSE having come to be considered upon Coleman (Parent) Holdings Inc.'s Motion to Extend Time for Submission of the Rebuttal Expert Report of Samuel Kursh, and the Court having reviewed the file and being fully advised in the premises, it is hereby,

ORDERED and ADJUDGED: The Motion is granted. Plaintiff shall have until 5:00p - Jan. 24, 2005 to provide the rebuttal report to Defendant, absent prejudice to Defendant's right to seek to exclude all or a portion of Mr. Kursh's testimony if it is unduly prejudiced by the delay.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this 19 day of Jan., 2005.

ELIZABETH T. MAASS
CIRCUIT COURT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

EXHIBIT
tabbies
D
16div-010801

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EXHIBIT E

CIRCUIT COURT, FIFTEENTH JUDICIAL DISTRICT

IN AND FOR PALM BEACH COUNTY, FLORIDA

- - - - - - - - - - - - - - - X

COLEMAN (PARENT) HOLDINGS, :

Plaintiff, : Case No. 2003 CA

v. : 005045 AI

MORGAN STANLEY & CO., INC., :

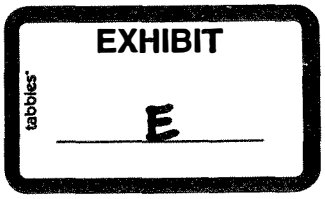
Defendant. :

- - - - - - - - - - - - - - - X Pages 1-266

VIDEOTAPE DEPOSITION OF GEORGE P. FRITZ
District of Columbia
Wednesday, January 19, 2005

Reported by: Marijane Simon, RDR

Job No. 165113



Page 206

that we've marked as CPH 17, that's financial information, at least some of which Morgan Stanley had; correct?
A. Morgan Stanley had what was in the comfort letter.
Q. Correct.
So in addition to whatever avenues you describe here, another avenue for that information being -- being disclosed to Coleman (Parent) Holdings is that Sunbeam simply could have disclosed it; they could have provided it?
A. They could have.
Q. And an additional avenue for this information being provided to Coleman (Parent) Holdings would be that Morgan Stanley could have provided it, what they received?
A. The Sunbeam controller could have done it. I mean, you know, there are any number of people that could have.
Q. Okay. Sir, I'd like to direct our attention now to your rebuttal report.
A. Can you give me just a moment to get these papers back?
Q. Of course. It's Exhibit 411 if you want to look for the number.

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A. I have it.
Q. You ready?
A. Yes, sir.
Q. What do you understand this report to be a rebuttal to?
A. This was a rebuttal to the report written in response to my report by Mr. Horton.
Q. Do you know Mr. Horton professionally?
A. I do not.
Q. Personally?
A. No.
Q. You've never met him?
A. Never met him.
Q. As I recall, your report was submitted to us on the 4th of January; is that correct? Or it's dated the 4th of January, sir.
A. Dated the 4th of January.
Q. And -- and you're aware that our side agreed to give you that additional time to the 4th of January. Can you state why you needed that additional time?
A. I was not aware that it was you that granted it. I thought -- I wasn't sure whether it was the Court or who, but --
Q. They asked if we would object, and we

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told them we wouldn't.
A. I'm grateful. Thank you.
Q. No problem.
A. The reason that I -- I requested was because it was -- it was Christmas week, and it was the only time of the year that my five sons were going to be home, including my son from Japan and Kansas City, and I didn't want to spend what little, tiny bit of time I was going to have with my family and my sons who were coming from around the world -- I would have preferred to spend it with them rather than responding to Mr. Horton.
Q. Fair enough.
I understand your position.
Now --
A. I'm grateful for your granting it.
Q. We -- we try to do those sorts of things when we can.
In your report, on page 2, you indicate that you considered, at Items 3 and 4, the Horton responsive report and the Horton rebuttal report; is that correct?
A. The -- the -- the -- Yeah, his -- his responsive report which was to my report, and the -- the Rosenbloom rebuttal report. Is that

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what you mean?
Q. No. Item 4 is an additional report of Mr. Horton.
A. Oh, in response to the -- to the Rosenbloom report.
Q. You considered that as well?
A. Let's go back. The first one is Horton's initial report. The second one was Rosenbloom's response to him. The third was Horton's responsive report to my report. Then there was Horton's rebuttal of Rosenbloom.
Yes, I -- I had -- I had all those documents.
Q. Okay.
A. It's hard to keep -- to keep track of.
Q. I -- I understand.
Do you know Mr. Rosenbloom, Arthur Rosenbloom?
A. No, I do not.
Q. Have you discussed this case with him or anyone on his staff?
A. No, I have not. Never met him. Don't know anything about him -- him or his staff, other than what I read in his report.
Q. Okay.

EXHIBIT F

Brody, Michael T

From: Brody, Michael T

Sent: Monday, January 24, 2005 3:54 PM

To: tclare@kirkland.com; Joseph Ianno (jianno@carltonfields.com); Mark Hansen (mhansen@khhte.com)

Subject: rebuttal report

I attach the Kursh rebuttal report. Copies are also being served by fax and by federal express.

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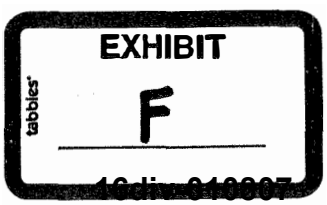

EXHIBIT G

JENNER&BLOCK

February 4, 2005

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By Telecopy

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222 Lakeview Avenue
Suite 260
West Palm Beach, FL 33401

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Tom:

I write concerning the health of Dr. Samuel Kursh.

Dr. Kursh has been advised by his doctor that he may resume an abbreviated work schedule. Dr. Kursh has advised us that he is available for a deposition on February 11. Due to his recent heart surgery, Dr. Kursh requests that the deposition be limited to four hours per day. If you need additional time to conclude the deposition of Dr. Kursh, he can make himself available for a second session on either February 14, 15, or 16. Dr. Kursh requests that the deposition take place in Wilmington, Delaware. If this is not convenient to you, Dr. Kursh could make himself available in Philadelphia.

Please advise me whether Morgan Stanley wishes to go forward with Dr. Kursh's deposition on the days we have offered.

Very truly yours,

Michael T. Brody

Michael T. Brody

MTB:cjg
cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

EXHIBIT
tabbies
6
16div-010809

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

CPH'S RESPONSE TO MORGAN STANLEY'S MOTION IN LIMINE NO. 14 TO EXCLUDE CPH EXPERT'S RELIANCE ON THE DELAWARE CHANCERY COURT OPINION IN *PRESCOTT GROUP SMALL CAP L.P. V. COLEMAN COMPANY*

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") respectfully submits this response opposing Morgan Stanley's Motion In Limine No. 14 to Exclude CPH Expert's Reliance on the Delaware Chancery Court Opinion in *Prescott Group Small Cap L.P. v. The Coleman Company, Inc.*, No. Civ. A. 17802, 2004 WL 2059515 (Del. Ch. Sept. 8, 2004).

CPH has retained Dr. Samuel J. Kursh to give his expert opinion as to the value of Coleman stock on March 30, 1998, to show the damage suffered by CPH as a result of selling its 82% interest in Coleman to Sunbeam.[1] Dr. Kursh's report consists of his independent expert analysis concerning the proper valuation of Coleman's stock as of March 30, 1998. As part of this analysis, Dr. Kursh has compared his results to calculations of Coleman's value contained in other sources, including the Delaware Chancery Court's opinion, which valued Coleman stock at $32.35 per share as of March 30, 1998. *See* Kursh Rep. (12/7/04) at 11-15, *attached as* Ex. 2 to Mot. Dr. Kursh has referenced the Chancery Court's determination because valuation experts typically cross-check their conclusions with other available information, and because the

[1] Morgan Stanley's Motion has no bearing on the benefit-of-the-bargain theory of damages that CPH has elected to pursue. If the Court agrees with CPH that evidence concerning an out-of-pocket loss measure of damages is not relevant, CPH does not intend to offer testimony from Dr. Kursh, and the Court need not resolve this Motion.

Chancery Court's opinion — among other things — is one of the "facts or data upon which [Dr. Kursh] bases [his] opinion." FLA. STAT. ANN. § 90.704 (West 2004).

According to Morgan Stanley, Dr. Kursh's references to the Chancery Court's March 30, 1998 valuation of Coleman stock must be excluded, because they improperly bolster Dr. Kursh's expert valuation with irrelevant and inadmissible hearsay. Morgan Stanley's arguments for exclusion fall flat. Dr. Kursh is expressly authorized by the Florida Evidence Code to rely for his expert opinion, at least in part, on facts or data that might otherwise constitute inadmissible hearsay, because valuation experts reasonably rely upon such resources. *See* FLA. STAT. ANN. § 90.704 (West 2004). Moreover, the Chancery Court's valuation opinion was plainly relevant to Dr. Kursh's present analysis: As a vital part of its decision, the court expressly approved of Dr. Kursh's methodology, as well as his valuation of Coleman stock as of March 30, 1998. CPH does not seek, as Morgan Stanley claims, to have the Chancery Court's opinion serve as conclusive proof of Coleman's value. Rather, Dr. Kursh's reference to that decision merely embodies reasonable expert practice. Because Dr. Kursh's reference to the Chancery Court opinion is authorized by Florida law and does not render his report a mere conduit for inadmissible hearsay, *see Kloster Cruise, Ltd. v. Rentz*, 733 So. 2d 1102, 1103 (Fla. 3d DCA 1999), Morgan Stanley's motion should be denied.

I. The Delaware Court's Valuation of Coleman Stock Is Plainly Relevant to Dr. Kursh's Valuation Opinion.

Morgan Stanley first argues that Dr. Kursh's reference to the Chancery Court's opinion must be excluded as irrelevant. That argument is meritless. The Chancery Court's valuation of Coleman as of March 30, 1998 is plainly relevant here. Indeed, it addresses the precise subject of Dr. Kursh's report, and provides support for Dr. Kursh's valuation. *See* FLA. STAT. ANN.

§ 90.401 (West 2004) ("Relevant evidence is evidence tending to prove or disprove a material fact.").

Seeking a way to undermine the obvious relevance of the Court's finding, Morgan Stanley points out that the ultimate purpose of the Chancery Court's opinion was to value Coleman stock as of January 6, 2000 (the date of the "back-end" merger in which Coleman's minority shareholders exchanged their Coleman stock for cash and Sunbeam stock), and attempts to fend off the Chancery Court's determination about March 30, 1998, by labeling it as mere passing dicta. Morgan Stanley cites several cases for the uncontroversial proposition that dicta is not binding. Mot. at 1, 4. But these cases are beside the point, because the Chancery Court's March 30, 1998 valuation of Coleman stock was not dicta. Under Florida law, dicta includes only those statements "not essential to the decision," which are "without force as precedent." *State ex rel. Biscayne Kennel Club v. Board of Bus. Reg.*, 276 So. 2d 823, 826 (Fla. 1973).

Under that standard, the Chancery Court's determination of Coleman's value as of March 30, 1998 was not dicta because it was a necessary precursor to its determination of Coleman's value in January 2000. The Chancery Court first determined the price of Coleman's stock as of March 30, 1998, relying on Dr. Kursh's valuation. *See Prescott Group*, 2004 WL 2059515, at *32. Using the March 30, 1998 value as a baseline, the court attempted to determine the value as of January 2000 by inquiring "whether Coleman's March 1998 fair value increased during the 18-month interval between the front-end and back-end mergers." *Id.* Finding insufficient evidence of a change in price since March 30, 1998, the Court ruled that the March 30, 1998 value per share was determinative of its January 2000 value. *See id.* at *33. Because the Chancery Court's March 30, 1998 valuation was essential to its decision, Morgan Stanley's

characterization of that valuation as dicta is just wrong. The Chancery Court's valuation determination is plainly relevant here.

II. Dr. Kursh Is Entitled to Rely upon Other Valuations to Verify the Accuracy of His Calculations.

Morgan Stanley next argues that Dr. Kursh should be prohibited from referencing the Chancery Court's ruling because that ruling is inadmissible hearsay. Mot. at 4. This argument completely misses the point for two reasons.

First, under the Florida Evidence Code, the "facts or data" upon which an expert relies "need not be admissible in evidence," so long as they "are of a type reasonably relied upon by experts in the subject to support the opinion expressed." FLA. STAT. ANN. § 90.704 (West 2004). In its motion, Morgan Stanley has not disputed that valuation experts such as Dr. Kursh "reasonably rely" upon other authoritative valuations, such as the Chancery Court's opinion, as a basis for their expert opinion.

Moreover, under Florida law, experts not only may rely on otherwise inadmissible evidence in reaching their expert opinions but also may disclose that underlying evidence to the finder of fact, so long as their testimony is not a "mere conduit" for hearsay. *Kloster Cruise, Ltd. v. Rentz*, 733 So. 2d 1102, 1103 (Fla. 3d DCA 1999) (holding that because otherwise inadmissible data formed part of the expert's analysis, the data could be presented because the expert was not acting as a "mere conduit for inadmissible hearsay"); *see, e.g.*, Philip J. Padovano, 5 FLORIDA PRACTICE § 19.10 (explaining that under Section 90.704, an "expert witness may refer to inadmissible evidence in the course of explaining an opinion"); *Flores v. Miami-Dade County*, 787 So. 2d 955, 959 (Fla. 3d DCA 2001) (permitting an expert witness "to testify regarding the contents" of medical records that were themselves inadmissible hearsay); *Houghton v. Bond*, 680 So. 2d 514, 521-22 (Fla. 1st DCA 1996) (permitting expert to discuss

contents of government study relied upon in forming opinion); *Barber v. State*, 576 So. 2d 825, 831-32 (Fla. 1st DCA 1991) (holding that it was error for the trial court to prevent an expert from relating hearsay in explaining the basis of his expert opinion); *Bender v. State*, 472 So. 2d 1370, 1372 (Fla. 3d DCA 1985) (explaining that "while the reports and tests if offered alone may be inadmissible, testimony regarding diagnoses and opinions formulated in part through reliance upon this data is to be admitted"); *see also Debra P. v. Turlington*, 564 F. Supp. 177, 182 n.7 (M.D. Fla. 1983) (permitting the use of survey responses that might otherwise constitute hearsay because they were the basis of expert opinion).

Second, Morgan Stanley's attack on Dr. Kursh's reliance on the Chancery Court decision as a cross-check for his calculation does not withstand scrutiny because Morgan Stanley's own expert damages witness, Professor Mark Grinblatt, cross-checked his valuation calculation just as Dr. Kursh did. After determining what Professor Grinblatt claims is the fair value of Coleman stock on March 30, 1998, he proceeded to compare his valuation to that of the investment banks advising Coleman on the fairness of the proposed merger with Sunbeam: "I note that this $19.63 price is within the ranges estimated for Coleman by both CSFB and Morgan Stanley." Ex. A, Grinblatt Rep. at 37.[2]

More to the point, Professor Grinblatt's analysis expressly cites the Chancery Court ruling that Morgan Stanley now claims to be inadmissible hearsay. *Id.* at 96 ("Indeed, the Delaware Court of Chancery explicitly rejected hindsight-based valuation in litigation

[2] Courts similarly ensure the accuracy of their valuation analyses by reviewing other valuations, including those of other courts. For example, in *Cede & Co. v. Technicolor, Inc.*, No. Civ. A. 7129, 2003 WL 23700218 (Del. Ch. Dec. 31, 2003), the Chancery Court first calculated the stock value itself, but went on to verify its valuation through a series of checks, including the price that had been previously calculated by the Delaware Supreme Court. *Id.* at *44. Such use of judicial opinions as a cross-check is analogous to the settled principle that "judicial opinions" can support the general acceptance of the underlying scientific principles and methodology. *Castillo v. E.I. Du Pont De Nemours & Co.*, 854 So. 2d 1264, 1268 (Fla. 2003).

concerning this very merger, and concluded that Sunbeam's bankruptcy was not foreseeable as late as January 6, 2000 (let alone on March 30, 1998.)"). Thus, Morgan Stanley cannot credibly dispute that valuation experts "reasonably rely" upon judicial rulings, such as the Chancery Court's *Prescott Group* opinion, in performing their expert analyses. *See* FLA. STAT. ANN. § 90.704 (West 2004).

In sum, Dr. Kursh is not a "mere conduit" for hearsay. Where, as here, an expert's reliance on and reference to alleged hearsay is minimal and completely consistent with standard professional practice, it is authorized under Section 90.704. *See, e.g.*, *Hungerford v. Mathews*, 511 So. 2d 1127, 1129 (Fla. 4th DCA 1987) (explaining that "an expert can testify about information offered by a third party," so long as the expert "was not called merely for the purpose of disclosing" otherwise inadmissible hearsay).

III. Dr. Kursh Will Be Subject to Full and Vigorous Cross-Examination on the *Prescott Group* Opinion and All Other Aspects of His Analysis.

Morgan Stanley claims that Dr. Kursh's reference to the Chancery Court's March 30, 1998 valuation is impermissible bolstering of his expert opinion and will unduly prejudice Morgan Stanley. Morgan Stanley's argument cannot be correct because, as noted above, its own expert, Professor Grinblatt, cites to the Chancery Court's ruling in support of the methodology he employs. (*See* pg. 5 above.) Moreover, Morgan Stanley's argument is flawed because Dr. Kursh's reliance on the *Prescott Group* opinion can be put to the test on cross-examination. Indeed, both Dr. Kursh and Professor Grinblatt will be examined on all the bases of their opinions, including their reliance on the *Prescott Group* opinion.

It is settled law that a testifying expert is entitled to explain the bases of his opinion to the jury, including the expert's consultation of other authorities, so long as the expert does not simply regurgitate the conclusions of other experts. *See, e.g.*, *Flores*, 787 So. 2d at 959

(permitting an expert to testify about another expert's records in reaching his expert opinion); *Houghton*, 680 So. 2d at 522 (permitting an expert to testify about a government study as a basis for his expert opinion); WEINSTEIN'S FEDERAL EVIDENCE § 703.04[3], at 703-19-20 & n.26 (2004) (discussing "opinions of other experts as reasonable source" of expert testimony, and citing cases from various federal appellate courts).

Further, Morgan Stanley's chief authority, *Schwarz v. State*, 695 So. 2d 452 (Fla. 4th DCA 1997), does not apply here. That case held only that a forensic pathologist, testifying as an expert, should not have been allowed to "bolster or corroborate [his] opinions with the opinions of other experts who do not testify," reasoning that otherwise the testifying expert would "become a conduit for the opinion of another expert who is not subject to cross-examination." *Id.* at 455 (emphasis added). That is not the situation here, and Dr. Kursh will be subject to full and vigorous cross-examination on his opinion and all aspects of his analysis at trial.

Morgan Stanley has failed to make the showing required under Section 90.403 for the exclusion of Dr. Kursh's reference to the Chancery Court decision on the ground that it will cause undue prejudice. There is no reason to believe — and Morgan Stanley has offered none — that the jury will mistakenly conclude that Coleman's value has already been determined merely by reference to the Chancery Court's opinion. Rather, Morgan Stanley will have its day in court, when it may present its own evidence of the value of Coleman stock as of March 30, 1998, and may dispute the conclusions reached by Dr. Kursh. Thus, Morgan Stanley's argument of prejudice — which it has the burden of establishing — completely misses the mark.

CONCLUSION

For the foregoing reasons, this Court should deny Morgan Stanley's Motion in Limine No. 14.

Dated: February 9, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and hand delivery to all counsel on the attached list on this 9th day of Feb, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

CPH'S RESPONSE TO MORGAN STANLEY'S MOTION IN LIMINE NO. 15 TO PRECLUDE TESTIMONY OF MICHAEL WAGNER

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") respectfully submits this response opposing Morgan Stanley's Motion in Limine No. 15 to Preclude Exclude Testimony of Michael Wagner. Morgan Stanley seeks an Order barring Wagner from offering testimony at trial "beyond that disclosed in his December 7, 2004 expert report." Mot. at 1. As shown in this response, Morgan Stanley's motion does not concern undisclosed expert testimony. There is no dispute as to the completeness and adequacy of CPH's disclosure of Mr. Wagner's opinion regarding the value of Coleman. Instead, Morgan Stanley seeks to preclude Mr. Wagner from using a calculator to perform arithmetic calculations using values provided by others. Morgan Stanley's motion should be denied.

I. Mr. Wagner's Testimony Is Relevant Only to an Out-Of-Pocket Loss Theory of Damage, Which CPH Has Not Elected.

CPH has elected to pursue damages under a benefit-of-the-bargain theory of damages. Morgan Stanley has taken the position that a different measure is appropriate. If the Court agrees with CPH that only evidence relevant to CPH's elected theory of damage may be presented, CPH will not call Mr. Wagner to testify as an expert.[1] Only if the Court permits both

[1] CPH plans to call Mr. Wagner during the punitive damages phase of the proceedings.

theories of damages to go forward will any evidence regarding out-of-pocket loss be relevant. Thus, resolution of this motion may be entirely unnecessary.

II. Mr. Wagner Does Not Seek to Introduce Expert Testimony Beyond That Described in His Report.

In his opening report, Mr. Wagner calculated the value of Coleman at the time of the March 30, 1998 transaction. *See* Wagner Rep. (12/7/04), *attached as* Ex. 1 to Mot. Under an out-of-pocket-loss measure of damage, CPH's damage is the difference between the value of what CPH gave up and the value CPH obtained from the exchange. In addition to considering the value of the Coleman shares that CPH gave up, the jury will need to determine the value of stock, debt, and cash that CPH received in exchange. Morgan Stanley does not dispute that at trial, Mr. Wagner may present his fully disclosed opinions as to the value of the Coleman shares. CPH expects that other witnesses will present testimony as to the value of consideration that CPH received. Mr. Wagner was not asked separately to calculate these values.

Morgan Stanley's expert, Professor Grinblatt, criticized Mr. Wagner for calculating the value of Coleman, but not calculating a complete damage number. *See* Grinblatt Rep. at 99, *attached as* Ex. 2 to Mot. In his rebuttal report, and in his deposition, Mr. Wagner explained that one could use his calculation of the value of Coleman, on which his expertise was necessary, and the value of Sunbeam shares and Coleman Holdings debt calculated by others, to derive the total amount of damages suffered by Coleman under the out-of-pocket-loss theory. As Mr. Wagner explained in his report, this calculation simply would require an elementary mathematical calculation. *See* Wagner Rep. (12/28/04) at 1, *attached as* Ex. 3 to Mot.

Should Mr. Wagner be called upon to perform an arithmetic comparison between the value of Coleman stock given up by CPH and the value of the various forms of consideration received by CPH, that testimony is hardly the "scientific, technical, or other specialized

knowledge" on which expert disclosure is necessary. FLA. STAT. ANN. § 90.702 (West 2004) (defining expert testimony). Indeed, it is not an "opinion" at all. *Id.* While not expert opinions themselves, such elementary calculations are perfectly acceptable in the course of an expert's testimony. *See* CHARLES W. EHRHARDT, FLORIDA EVIDENCE § 702.1, at 615 (2004 ed.) ("When the witness is testifying to facts, it is immaterial whether the witness has been qualified as an expert."). Morgan Stanley's motion does not assert that performing this mathematical calculation will be a matter of expert testimony. Instead, Morgan Stanley contends that Mr. Wagner may not testify as to the value of the debt or stock which, as shown above, he will not do. Moreover, permitting Mr. Wagner to perform arithmetic using numbers provided by others will not be a surprise. Other witnesses have disclosed their calculation of the inputs. Morgan Stanley's damages expert performs a similar methodology. *See* Grinblatt Rep. at 19, *attached as* Ex. 2 to Mot. If called upon, Mr. Wagner simply will supply the arithmetic.

CONCLUSION

For the foregoing reasons, this Court should deny Morgan Stanley's Motion in Limine No. 15.

Dated: February 9, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and hand delivery to all counsel on the attached list on this 9th day of Feb, 2005.

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IN THE FIFTEENTH JUDICIAL CIRCUIT
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Defendant.
_____/

CASE NO. CA 03-5045 AI

CPH'S RESPONSE TO MORGAN STANLEY'S MOTION IN LIMINE NO. 16 TO STRIKE THE EXPERT OPINION OF CPH EXPERT BLAINE NYE

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") respectfully submits this response opposing Morgan Stanley's Motion in Limine No.16 to Strike the Expert Opinion of CPH Expert Blaine Nye. Morgan Stanley contends that the appropriate measure of damages in this case is "out-of-pocket loss." Mot. at 1. Florida law, which applies here, is clear that a plaintiff may elect the "benefit-of-the-bargain" as the measure of damages in a fraud case.

Morgan Stanley then contends that Dr. Nye's benefit-of-the-bargain measure is misapplied because he does not attempt to calculate the actual value of Sunbeam stock as of March 1998. But the Sunbeam stock CPH received in the deal was restricted from resale and, due to a host of reasons, including the fact that Sunbeam's auditor withdrew its consent for use of the audited financial statements, was incapable of being registered and sold. The "actual value" of CPH's Sunbeam stock cannot be evaluated without considering these circumstances. Not only is it properly within a trial court's discretion to calculate the actual value of the property based on events subsequent to the date of purchase, to do otherwise here would be expressly contrary to Florida's policy of "flexibility" towards measuring damages, so that courts

can "do justice as the circumstances demand." *Martin v. Brown*, 566 So. 2d 890, 891 (Fla. 4th DCA 1990).

ARGUMENT

I. The Correct Legal Measure of Damages Is the Benefit-of-the-Bargain Standard.

A. Florida Law Governs the Determination of Damages.

Morgan Stanley's discussion of the standard for measuring damages under New York law (Mot. at 5-6) is irrelevant, as Florida law governs the determination of damages in this case. Morgan Stanley has never argued that the proper measure of damages under New York law is materially different from the proper measure of damages under Florida law. But Morgan Stanley bore the burden during the choice-of-law briefing (1) to identify, on an issue-by-issue basis, any aspects of this case as to which Morgan Stanley contended that New York law and Florida law differ, and (2) to demonstrate why New York law applies to those issues. *See, e.g., Collins v. Collins*, 36 So. 2d 417, 417 (Fla. 1948) ("when the contrary [law] has not been alleged, we have assumed the law of the other state to be the same as our own"); *Gustafson v. Jensen*, 515 So. 2d 1298, 1300 (Fla. 3d. DCA 1987) ("where a party seeking to rely upon foreign law fails to demonstrate that the foreign law is different from the law of Florida, the law is the same as Florida"); *Aetna Cas. & Sur. Co. v. Ciarrochi*, 573 So. 2d 990, 990 (Fla. 3d DCA 1991) (same); *Watson v. First Nat'l Bank of Chicago*, 367 So. 2d 732, 733 (Fla. 4th DCA 1979) ("Upon the failure to plead any applicable foreign law, it is presumed that any such law is the same as Florida law"); *Owens-Corning Fiberglas Corp. v. Engler*, 704 So. 2d 594, 594 (Fla. 4th DCA 1997) ("Where the law of a foreign forum is claimed to be dispositional, yet no foreign law is pleaded to the trial court, the matter is to be determined by the law of this forum").

In response to this Court's schedule for addressing choice-of-law issues, Morgan Stanley identified two issues — and only two issues — for which Morgan Stanley contended that New

York law was different than Florida law. Those two issues are reflected in this Court's choice-of-law order, which held that New York law applies to those two aspects of CPH's claims. *See* Ex. A, Order (8/12/04) at 12:

> As to Counts I and IV of CPH's Complaint . . . , the Court determines that New York substantive law applies (i) to engraft a requirement that the recipient of a negligent misrepresentation be in a special relationship to its publisher for the misrepresentation to be actionable, and (ii) to engraft a requirement that a party perform reasonable due diligence as to available information in order to prove that its reliance on a misrepresentation was reasonable.

Those two issues were the only issues identified in Morgan Stanley's choice-of-law motion. Morgan Stanley never argued that the measure of damages in this case is different under New York law. Accordingly, Morgan Stanley has waived any contention that Florida law does not apply to the measure of damages for all four counts of CPH's complaint. In any event, as it is clear that New York law does not control CPH's aiding-and-abetting and conspiracy claims, Dr. Nye's testimony is relevant to the determination of damages for those claims.

B. Under Florida Law, CPH May Elect Benefit-of-the-Bargain Damages Despite Its Lack of a Contractual Relationship with Morgan Stanley.

1. Florida Law Does Not Require a Contractual Relationship Between the Parties.

Florida law is clear that a plaintiff may elect the "benefit-of-the-bargain" as the measure of damages in a fraudulent misrepresentation case. Florida follows the *Restatement (Second) of Torts* regarding the measure of damages for fraudulent misrepresentation. *Nordyne, Inc. v. Florida Mobile Home Supply, Inc.*, 625 So. 2d 1283, 1286-87 (Fla. 1st DCA 1993) (permitting the use of "either the 'out-of-pocket' or the 'benefit-of-the-bargain' rule, depending upon which is more likely to fully compensate the injured party," and stressing that "[t]his view is consistent with the Restatement approach") (citing *Restatement (Second) of Torts* § 549). That section of

the Restatement provides that the "recipient of a fraudulent misrepresentation in a business transaction" is "entitled to recover" under either theory.[1]

The *Restatement* makes clear that a plaintiff may "elect" which of the two measures to pursue. According to the comments, the "normal measure of recovery" in fraud actions is the "benefit of the bargain" rule: "The frequency of these situations has led the great majority of the American courts to adopt a broad general rule giving the plaintiff, in an action of deceit, the benefit of his bargain with the defendant in all cases, and making that the normal measure of recovery in actions of deceit." *Restatement (Second) of Torts* § 549 cmt. g. However, the *Restatement* recognizes that "in occasional cases the out-of-pocket measure of damages will actually be more profitable and satisfactory from the point of view of the plaintiff than the benefit-of-the-bargain rule." *Id.*

Accordingly, the *Restatement* adopts the rule that the plaintiff may "elect" which of the two measures to pursue, depending upon which measure maximizes the plaintiff's recovery (*id.* Comment h):

> This Section therefore follows a compromise position adopted by some jurisdictions, giving the plaintiff the option of either the out-of-pocket or the

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[1] *Restatement (Second) of Torts* § 549 provides:

> **Measure Of Damages For Fraudulent Misrepresentation**
>
> (1) The recipient of a fraudulent misrepresentation is entitled to recover as damages in an action of deceit against the maker the pecuniary loss to him of which the misrepresentation is a legal cause, including
>
> (a) the difference between the value of what he has received in the transaction and its purchase price or other value given for it; and
>
> (b) pecuniary loss suffered otherwise as a consequence of the recipient's reliance upon the misrepresentation.
>
> (2) The recipient of a fraudulent misrepresentation in a business transaction is also entitled to recover additional damages sufficient to give him the benefit of his contract with the maker, if these damages are proved with reasonable certainty.

> benefit-of-the-bargain rule in any case in which the latter measure can be established by proof in accordance with the usual rules of certainty in damages. The comments and illustrations that follow deal with the more common situations in which the plaintiff may wish to elect to receive the benefit of his bargain.

As support for that rule of law, the *Restatement* cites *DuPuis v. 79th Street Hotel, Inc.*, 231 So. 2d 532 (Fla. 3d DCA 1970) (cited in *Restatement (Second) of Torts* § 549, Reporter's Note ¶ 1). In *DuPuis*, the court accepted the "flexibility" approach regarding the measure of damages for misrepresentation. Under that approach, a plaintiff who "is content" with an out-of-pocket measure may have that measure, but otherwise may have the "benefit of the bargain" measure (*DuPuis*, 321 So. 2d at 536):

> [I]f the defrauded party is content with the recovery of only the amount that he actually lost, his damages will be measured under that rule; . . . where the damages under the "benefit of the bargain" rule are proved with sufficient certainty, that rule will be employed.

Accord Stickland v. Muir, 198 So. 2d 49, 51 (Fla. 4th DCA 1967) ("The prevailing view is the 'benefit of the bargain' rule which would award as damages the difference between the actual value of the stocks and notes purchased as of the time of purchase and their value had the facts been as represented. . . . [But] if the defrauded party is content with the recovery of only the amount he has actually lost, his damages will be measured by the out-of-pocket rule"); *Totale, Inc. v. Smith*, 877 So. 2d 813, 815 (Fla. 4th DCA 2004) ("The 'flexibility theory' permits the court to use either the 'out-of-pocket' or the 'benefit-of-the-bargain' rule, depending upon which is more likely [to fully] compensate the injured party. The trial court may instruct the jury on the 'out of pocket' rule *or* the 'benefit of the bargain' rule as justice demands") (emphasis and bracketed material in original; internal citations and quotation marks omitted).

Morgan Stanley argues that the benefit-of-the-bargain rule cannot apply unless the litigants were in a contractual relationship with one another. But Florida courts have never held that a contract is necessary before a court can apply the benefit-of-the-bargain measure of

damages. Rather, Florida courts have consistently stressed that flexibility is needed when applying the measure of damages in a fraud case, so that courts can "do justice as the circumstances demand." *Martin v. Brown*, 566 So. 2d 890, 891 (Fla. 4th DCA 1990); *see also Nordyne*, 625 So. 2d at 1286 (noting that the "flexibility theory" of damages in fraudulent misrepresentation cases permits courts to choose the rule that is "more likely to fully compensate the injured party").

Morgan Stanley cites only two cases to support its argument that there must be a contract between the parties before the benefit-of-the-bargain measure of damages can be applied. *See* Mot. at 6 (citing *Sprayberry v. Sheffield Auto & Truck Serv., Inc.*, 422 So. 2d 1073, 1075 (Fla. 1st DCA 1982); *Greater Coral Springs Realty Inc. v. Century 21 Real Estate of S. Fla., Inc.*, 412 So. 2d 940, 941 (Fla. 3d DCA 1982)). But both of these cases have since been expressly limited to their specific facts. *See Nordyne*, 625 So. 2d at 1287 ("limit[ing] the holding[s] to the specific facts of each case"). Moreover, the cases Morgan Stanley cites are inapposite here. In both *Sprayberry* and *Greater Coral Springs Realty*, the courts concluded that it was inappropriate to look to the benefit of the bargain because there was insufficient proof that a bargain had been reached. *See Sprayberry*, 422 So. 2d at 1075 (plaintiff "simply failed to allege any breach of contract"); *Greater Coral Springs Realty*, 412 So. 2d at 941 ("the parties never reached an agreement"). Because the plaintiffs never reached a specific bargain, it would have been difficult, if not impossible, to assess with any degree of certainty the benefit of that bargain — that is, the value of the property that they would have purchased if the deal had closed and the representations had been true. By contrast, CPH does not claim to have engaged in failed contractual negotiations. Rather, CPH claims that Morgan Stanley made fraudulent misrepresentations that induced CPH into entering into a contract with Sunbeam. Moreover,

Morgan Stanley conspired with and aided and abetted Sunbeam in perpetrating the fraud that resulted in CPH closing that contract. Unlike in *Sprayberry* and *Greater Coral Springs Realty*, here the bargain was formed and thus the "benefit-of-the-bargain" can be measured.

Further, courts consistently have applied benefit-of-the-bargain damages in cases brought by investors against securities brokers, despite the fact that there was no contractual relationship between the investor and the broker. In *Silverberg v. Paine, Webber, Jackson, & Curtis, Inc.*, 710 F.2d 678 (11th Cir. 1983), an investor brought an action against a broker alleging that the broker made fraudulent misrepresentations that induced him to purchase stock that subsequently plummeted in value. *Id.* at 681-82. The Eleventh Circuit discussed the availability under Florida law of either out-of-pocket or benefit-of-the-bargain damages:

> [I]t was well within the trial court's discretion to instruct the jury to calculate [the plaintiff's] damages on the common law fraud claim based on the total decline in the value of the stock [the benefit-of-the-bargain measure of damages]. . . .
>
> Though we recognize the harshness of this result given that the defendants were not the actual sellers of the stock and therefore must 'rescind' by paying an amount they in fact never received, the substantial role played by the defendants in the transaction provides adequate justification for the award.

Id. at 687 (emphasis added); *see Laney v. American Equity Inv. Life Ins. Co.*, 243 F. Supp. 2d 1347, 1355-56 (M.D. Fla. 2003) (applying Florida law, and upholding benefit-of-the-bargain damages in a fraud action brought by investors against a broker with whom they had no contractual relations); *cf. Totale*, 877 So. 2d at 816 (discussing the availability of benefit-of-the-bargain damages in an action brought by an investor against a corporation with whom the investor had no contractual relationship, though ultimately concluding that the plaintiff was not entitled to such damages because it had not offered sufficient evidence of its losses). Morgan Stanley made fraudulent misrepresentations which induced CPH, like the plaintiffs in *Silverberg*, *Laney*, and *Totale*, to lose the benefit of the bargain in the stock transaction into which it entered.

It is clear that benefit-of-the-bargain damages apply in this situation regardless of the lack of contract between Morgan Stanley and CPH.[2]

2. CPH Can Pursue Benefit-of-the-Bargain Damages Against Morgan Stanley Because Morgan Stanley Was Sunbeam's Agent.

Morgan Stanley is further precluded from arguing that the absence of a contractual relationship between it and CPH shields Morgan Stanley from application of benefit-of-the-bargain damages for purposes of the fraudulent misrepresentation claim because Morgan Stanley was Sunbeam's agent during the Coleman-Sunbeam transaction and Sunbeam indisputably had a contractual relationship with CPH. Indeed, Morgan Stanley's own expert has conceded the existence of this agency relationship. *See* Ex. B, Rosenbloom Rep. at 12, 14 ("Morgan Stanley was Sunbeam's agent"). It is well established that "[a]n agent who assists another agent or the principal to commit a tort is normally himself liable for the entire damage." RESTATEMENT (SECOND) OF AGENCY § 343 cmt. d (1958); *see also Mannish v. Lacayo*, 496 So. 2d 242, 243 (Fla. 3d DCA 1986) (*per curiam*) ("[A]n agent, as well as his principal, is liable for fraud perpetrated by the agent within the course and scope of his agency."). The existence of this agency relationship entitles CPH to use the same measure of damages against Morgan Stanley that CPH would have been able to use against Morgan Stanley's principal, Sunbeam. *See* RESTATEMENT (SECOND) OF AGENCY § 359C(1) (1958) ("Principal and agent can be joined in an action for a wrong resulting from the tortious conduct of an agent or that of agent and principal,

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[2] Morgan Stanley also cites comment g to Section 549 of the *Restatement (Second) of Torts*, for the proposition that a plaintiff may not rely on the benefit-of-the-bargain theory where it has not entered into "any transaction" with the defendant. Mot. at 7. In this case, however, Morgan Stanley was the go-between that put the transaction together. It was hardly a stranger to the transaction, as the *Restatement* comment contemplates. Moreover, as we show in the following section, Morgan Stanley was the agent of a contracting party, and thus was a participant in this contractual relationship.

and a judgment can be rendered against each."). Thus, CPH is entitled to benefit-of-the-bargain damages against Sunbeam's agent, Morgan Stanley.

3. In Any Event, CPH Can Pursue Benefit-of-the-Bargain Damages Against Morgan Stanley on Its Claims that Morgan Stanley Aided, Abetted, and Conspired with Sunbeam.

As to the aiding-and-abetting and conspiracy claims, it is hornbook law that under these derivative theories of liability all co-conspirators and aiders-and-abettors are liable to the same extent as their principals or co-conspirators would be liable. "Each act done in pursuance of the conspiracy by one of several conspirators is an act for which each is jointly and severally liable." 10 FLA. JUR. 2D, *Conspiracy — Civil Aspects* § 5 (2d ed. 2004); *see Nicholson v. Kellin*, 481 So. 2d 931, 935 (Fla. 5th DCA 1986). In jurisdictions where benefit-of-the-bargain damages are available to plaintiffs in fraud cases, courts routinely uphold the imposition of benefit-of-the-bargain damages against co-conspirators. *See, e.g., Ameristar Jet Charter, Inc. v. Signal Composites, Inc.*, No. 02-10977, 2004 WL 578395, at *1 (5th Cir. Mar. 24, 2004) (*per curiam*) (upholding imposition of benefit-of-the-bargain damages against defendant who was a co-conspirator to fraud); *see also Worldwide Forest Prods., Inc. v. Winston Holding Co.*, No. A.1:96CV178-A, 1999 WL 33537093, at *9 (N.D. Miss. Jan. 13, 1999) ("[C]oconspirators are liable for all damages flowing from the conspiracy, and Mississippi law is in accordance with the majority of jurisdictions in holding that the 'benefit-of-the-bargain' is the correct measure of damages in cases of fraud."). The law is similar for aiders-and-abettors. "Persons who aid and abet another in the commission of a fraud may be liable for that fraud." 37 AM. JUR. 2D, *Fraud and Deceit* § 302 (2d ed. 2001). Because it is clear that CPH would have been entitled to benefit-of-the-bargain damages against Sunbeam, which Morgan Stanley aided and abetted and conspired with in perpetrating this fraud, CPH is equally entitled to pursue benefit-of-the-bargain

damages against Morgan Stanley. Dr. Nye's expert testimony thus should be deemed admissible at trial.

II. Dr. Nye's Opinions Are Admissible Because He Correctly Applies the Benefit-of-the-Bargain Standard.

Morgan Stanley argues that Dr. Nye's expert opinion is inadmissible because he "misapplied" the benefit-of-the-bargain standard by not calculating the value of the Sunbeam stock CPH received as of March 30, 1998, the date of the closing. Morgan Stanley contends that benefit-of-the-bargain damages are properly calculated using the actual value of the stock at the time of purchase. It is Morgan Stanley, however, that has misapplied the law.

Under Florida law, the proper method of calculating benefit-of-the-bargain damages is the "difference between the actual value of the property and its value had the alleged facts regarding it been true." *Totale,* 877 So. 2d at 815. Contrary to Morgan Stanley's contention, it is properly within a trial court's discretion to calculate the actual value of the property based on events subsequent to the date of purchase. *See Silverberg v. Paine, Webber, Jackson & Curtis, Inc.*, 710 F.2d at 687 (holding that under Florida law it was well within the trial court's discretion to instruct the jury to calculate benefit-of-the-bargain damages "based on the total decline in the stock") (emphasis added); *see also Hotaling v. A.B. Leach & Co.*, 214 N.Y.S. 452, 460 (N.Y. Mun. Ct. 1926) (holding that "events subsequent are of some account in determining the value of a bond at the time of its fraudulent sale").

Here, the "actual value" of the stock cannot be evaluated without considering the surrounding circumstances. Under the merger agreement, the Sunbeam stock that CPH received in exchange for its Coleman stock was subject to restrictions on its resale. The first time even a portion of that stock could be sold was 90 days after the deal closed, or on about June 30, 1998. Yet on June 25, 1998, Sunbeam's auditor withdrew its consent for use of the audited financial

statements in any public filing — rendering CPH's stock incapable of being registered for public sale. By the time the financial statements were restated later in the year, Sunbeam was under investigation by the SEC and CPH's affiliate had supplied management to Sunbeam at the request of the Sunbeam Board of Directors, making it impossible for CPH to find a willing buyer for 14 million shares of Sunbeam stock.[3]

Courts that apply the rule Morgan Stanley advocates do so in circumstances in which the investor was able to decide whether to retain its investment in the security after the fraud is revealed. *See*, *e.g.*, *Totale,* 877 So. 2d at 815. In this case, CPH did not choose to retain its Sunbeam investment after the fraud began to be revealed. To the contrary, as shown above, CPH was neither permitted nor able to sell its shares due to the fraud. The decrease in the value of Sunbeam stock after the initial revelation of the fraud is relevant to the calculation of compensatory damages, as CPH did not make a conscious investment decision to hold onto the stock until it became worthless. *See Silverberg*, 710 F.2d at 688-89; *see also IDS Bond Fund, Inc. v. Gleacher NatWest Inc.*, No. CIV. 99-116 (MJDJGL), 2002 WL 373455, at *9 (D. Minn. Mar. 6, 2002) (holding there was an issue of material fact whether plaintiff's losses could be attributed to defendant's misrepresentations after date of stock purchase where securities at issue were not publicly traded and there was no market in which to sell the security once the fraud was

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[3] The cases Morgan Stanley cites are not to the contrary, as none of them involves a situation analogous to this case. In *Totale, Inc. v. Smith*, the court declined to apply the benefit-of-the-bargain standard because the subsequent appreciation of the purchased stock was "so vague as to cast virtually no light upon the value of the property had it conformed to the representations." 877 So. 2d at 815. Here, the depreciation of Sunbeam stock to zero is in no way vague or uncertain. *Howard v. Metcalf*, 487 So. 2d 43 (Fla. 2d DCA 1986), and *Kind v. Gittman*, No. 4D03-1447, 2004 WL 2534230 (Fla. 4th DCA Nov. 10, 2004), are also inapposite. The language Morgan Stanley quotes from *Howard* is dicta, since the complaint, for breach of contract, "neither [sought] nor specifically [referred] to damages measured by the benefit of, the bargain. *Id.* at 46. Moreover, both cases involved fraudulent sales of real property, so the property at issue in those cases could have been resold on discovery of the fraud (unlike CPH's unregistered Sunbeam stock).

uncovered); *Dean Witter Reynolds Inc. v. Bork*, Misc. No. 91-0392, 1991 WL 164465, at *6 (E.D. Pa. Aug. 21, 1991) (holding that where investments did not contain a "high degree of liquidity" and party "had virtually no choice" but to retain these investments for some period of time after closing of account, it was proper for panel to calculate diminution in value beyond date of termination of account).

Morgan Stanley's objection is also expressly contrary to Florida's "flexible" approach towards measuring damages in a fraud case. Florida courts have consistently emphasized that flexibility is needed when applying the measure of damages in a fraud case, so that courts can "do justice as the circumstances demand." *Totale*, 877 So. 2d at 815; *see also Duffy v. Speroni*, 580 So. 2d 862, 863 (Fla. 3d DCA 1991) (noting that Florida courts have authorized several approaches to the proof of damages in a fraud case, "depending on the particular circumstances presented"); *Nordyne*, 625 So. 2d at 1286 (noting that the "flexibility theory" of damages in fraudulent misrepresentation cases permits courts to choose the rule that is "more likely fully to compensate the injured party"). To preclude CPH from recovering its damages resulting from the decline in the value of the Sunbeam stock after the fraud began to be revealed would violate this principle of Florida law. Under Morgan Stanley's view, even though CPH was powerless to sell its stock, its damages should nevertheless be measured as if it could have sold its stock — hardly doing justice as the circumstances demand.

Moreover, to the extent that Morgan Stanley is asserting that CPH is not entitled to benefit-of-the-bargain damages because of a failure to mitigate, that too is incorrect. CPH was not required to engage in complex "hedging" transactions to protect itself from the effects of the fraud. Hedging transactions have costs, either in terms of out-of-pocket outlays (such as buying a "put" option) or incurring added risk (such as eliminating a plaintiff's upside potential). A

defrauded plaintiff has no duty to assume those costs. *See, e.g., American Gen. Corp. v. Continental Airlines Corp.*, 622 A.2d 1, 11 (Del. Ch.) ("While there is a general duty to mitigate damages if it is feasible to do so, a plaintiff need not take unreasonably speculative steps to meet that duty. . . . [Plaintiff] was therefore not under a duty to engage in the put and call option scenarios set forth by the defendants."), *aff'd*, 620 A.2d 856 (Del. 1992); *cf. Bass v. Janney Montgomery Scott, Inc.*, 210 F.3d 577, 589 (6th Cir. 2000) (holding that plaintiff did not have a duty to mitigate his damages by exercising stock warrants obtained in the transaction: "Warrants for the purchase of unregistered stock cannot be exercised on a moment's notice," and as an insider, plaintiff "was prevented by the securities laws from selling Technigen stock" without full disclosure; "Finally, even if he was not absolutely barred from selling the stock, the mitigation rule does not require parties to unload junk stock on unwilling investors"); *Kers & Co. v. ATC Communications Group*, 9 F. Supp. 2d 1267, 1273 (D. Kan. 1998) (rejecting argument that "Kers failed to mitigate its damages by short-selling or engaging in 'put' and 'call' options trading," because the duty to mitigate is limited to reasonable efforts, and "[s]uch reasonable efforts at mitigation do not require a party to subject [itself] to the risk of incurring additional losses.").

There were numerous questions regarding whether CPH could have legally and practically hedged its substantial block of Sunbeam stock, worth hundreds of millions of dollars. These questions included: whether CPH would be deemed an "affiliate" of Sunbeam and subject to restrictions on sale that would affect the ability to hedge; whether CPH could hedge its position without violating the lockup provisions imposed under the terms of the merger agreement; whether a hedging transaction would trigger a "constructive sale" for tax purposes, triggering an obligation to pay capital gains tax; how the SEC would view the transaction, in

light of statements by the SEC staff that questioned whether restricted stock could lawfully be hedged; and the cost — both in terms of cash outlay and the loss of potential appreciation in the stock. Ex. C, Dickes Dep. at 63-83, 123-25. Despite these issues, and others, CPH investigated the possibility of hedging its investment in Sunbeam stock, retained counsel to assist it in addressing these issues, and received proposals from various investment banks as to how a portion of the stock could be hedged. Before CPH could resolve these issues, however, the price of Sunbeam stock had declined so precipitously that the hedge was not economically feasible for CPH and the investment banks. *Id.* at 83. As Howard Gittis, Vice Chairman of MacAndrews & Forbes Holdings Inc. testified, CPH saw the possible hedge transaction as a "risky position" and "questionable" under SEC rules, which caused CPH not to go forward with a transaction. Ex. D, Gittis Dep. at 173.

Thus, Morgan Stanley's objections to Dr. Nye's testimony ignore the flexible approach to damages authorized by Florida law. Dr. Nye's application of the benefit of the bargain measure of damages fully comports with the law of Florida and is admissible at trial.

CONCLUSION

For the foregoing reasons, this Court should deny Morgan Stanley's Motion in Limine No. 16.

Dated: February 9, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and hand delivery to all counsel on the attached list on this 9th day of Feb., 2005.

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EXHIBIT A

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

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

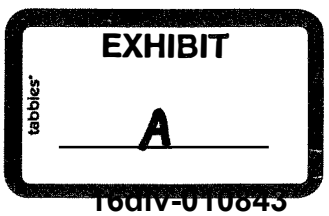
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

ORDER ON MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY SENIOR FUNDING, INC.'S MOTION FOR APPLICATION OF NEW YORK LAW

THIS CAUSE came before the Court June 28, 2004 on Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc.'s Motion for Application of New York Law, with all parties well represented by counsel.

I. Introduction

This case arises out of an acquisition transaction that was negotiated and consummated in late 1997 and early 1998, in which Coleman (Parent) Holdings, Inc. ("CPH"), sold its 82% interest in the Coleman Company, Inc. ("Coleman"), to Sunbeam Corporation ("Sunbeam"). Morgan Stanley & Co., Inc. ("MS & Co."), served as financial advisor to Sunbeam for parts of the acquisition transaction and served as the lead underwriter for a $750,000,000 debenture offering that Sunbeam used to finance the acquisition.



16dIV-010843

In 1998, Morgan Stanley Senior Funding, Inc. ("MSSF"), and other lenders entered into a credit agreement with Sunbeam under which MSSF agreed to provide senior secured financing to Sunbeam in connection with Sunbeam's acquisition of Coleman and two smaller companies.

CPH's Complaint alleges claims against MS & Co. arising from this transaction for fraudulent misrepresentation, negligent misrepresentation, aiding and abetting fraud, and conspiracy, and seeks damages of at least $485 million.

MSSF's Complaint alleges that, in the course of Sunbeam's acquisition of Coleman, Defendants MacAndrews & Forbes Holdings, Inc. ("MAFCO"), CPH's parent company, and CPH provided false information to MSSF about the "synergies" that Sunbeam would achieve from the combination of Sunbeam and Coleman. MSSF alleges that MAFCO and CPH's inflated synergy projections caused Sunbeam to pay a higher price to acquire Coleman and consequently caused Sunbeam's lenders, including MSSF, to make larger loans to finance the acquisition. MSSF's Complaint asserts claims for fraud and negligent misrepresentation and alleges that MSSF suffered hundreds of millions of dollars in damages when Sunbeam declared bankruptcy in February 2001 and defaulted on acquisition-related loans.

II. Analysis

A. An overview

MS & Co. and MSSF (together "Morgan Stanley"), filed their Motion for Application of New York Law ("Motion"). The Motion seeks a determination that New York substantive law controls all claims in these consolidated cases.

Florida's choice of law rules govern the conflict of laws analysis. Hoffman v. Ouellette, 798 So. 2d 42 (Fla. 4th DCA 2001). A conflict of laws analysis involves a three step process. First, the court must consider whether there are potentially outcome determinative differences between the substantive laws alleged to apply. See Tune v. Philip Morris, Inc., 766 So. 2d 350 (Fla. 2d DCA 2000), rev. den. 786 So. 2d 1188 (Fla. 2001). If there are, the Court must next determine the choice of law rule to be applied for the type of

claim alleged. Finally, the court must apply the appropriate choice of law rule. Hoffman.

The parties agree that Florida applies the "significant relationship" test in tort cases. The parties disagree on whether there are potentially outcome determinative differences in New York and Florida substantive law and, if there are, which state's law prevails on application of the conflicts principles. Choice of law is made on an issue by issue basis. Crowell v. Clay Hayden Trucking Lines, Inc., 700 So. 2d 120 (Fla. 2d DCA 1997), rev. den. 705 So. 2d 569 (Fla. 1998). To resolve the dispute, then, the Court must determine whether there are material differences between New York and Florida law on each issue and, if there are, apply the appropriate conflicts principles to determine the controlling substantive law on each contested issue.

B. Step One - New York v. Florida Law

(i) Negligent Misrepresentation

Morgan Stanley contends that New York law requires Coleman to prove that it had a "special relationship" with Coleman before it can bring a claim for negligent misrepresentation. Coleman contends that the "special relationship" requirement in the New York case law is merely a term of art that designates the same group of potential recipients of misrepresentations who have a cause of action as in Florida.

Florida has adopted §552 of the Restatement (Second) of Torts as a statement of the elements for a negligent misrepresentation claim:

> Information Negligently Supplied for the Guidance of Others.
>
> (1) One who, in the course of his business, profession or employment, or in any other transaction is which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.
>
> (2) Except as stated in Subsection (3), the liability stated in Subsection (1) is limited to loss suffered

> (a) by the person or one of a limited group of persons for whose benefit and guidance he intends to supply the information or knows that the recipient intends to supply it; and
>
> (b) through reliance upon it in a transaction that he intends the information to influence or knows that the recipient so intends or in a substantially similar transaction.
>
> (3) The liability of one who is under a public duty to give the information extends to loss suffered by any of the class of persons for whose benefit the duty is created, in any of the transactions in which it is intended to protect them.

See Gilchrist Timber Co. v. ITT Rayonier, Inc., 696 So. 2d 334, 337 (Fla. 1997). Thus, in Florida, one who has a pecuniary interest in a transaction is liable if he negligently supplies incorrect information for the benefit or guidance of another who justifiably relies on it.

New York, however, circumscribes a tighter circle of potential claimants, engrafting a requirement that the information's recipient be in a position of trust or confidence to its publisher. See American Protein Corp. v. AB Volvo, 844 F. 2d 56 (2d Cir. 1988), cert. den. 488 U.S. 852 (1988); DynCorp v. GTE Corporation, 215 F. Supp. 2d 308 (S.D.N.Y. 2002); Citibank, N.A. v. Itochu International, Inc., 2003 WL 1797847 (S.D.N.Y. 2003); Fleet Bank v. Pine Knoll Corp., 736 N.Y.S. 2d 737 (A.D. 3 Dept. 2002); St. Paul Fire and Marine Insurance Co. v. Health Fielding Insurance Brokerage, Ltd., 976 F. Supp. 198 (S.D.N.Y. 1996). The difference between Florida and New York law is material, and may be outcome determinative: the parties dispute whether MS & Co. held or acquired a position of trust or confidence over CPH, and whether MAFCO and CPH held or acquired a position of trust or confidence over MSSF.

(ii) Fraudulent Misrepresentation

Morgan Stanley contends that New York law prevents a recipient of a fraudulent misrepresentation from bringing a claim if it is a "sophisticated party" with access to information which, if checked, would have allowed it to determine the representation was inaccurate. CPH maintains that New York law is merely a specific application of the

general rule that a misrepresentation is not actionable unless reliance on it was reasonable, and that it is unreasonable for a sophisticated party in an arms' length commercial transaction to rely on information provided by its opponent that could have been verified.

Under New York law, reliance on a fraudulent misrepresentation is not reasonable if the recipient "has the means available to him of knowing, by the exercise of ordinary intelligence, the truth . . ." See Schumaker v. Mather, 133 N.Y. 590; 30 N.E. 755, 757 (1892). Thus, a sophisticated investor may not claim it was fraudulently induced to enter into a transaction if it failed to use the means available to test the representations. UST Private Equity Investors Fund v. Salomon Smith Barney, 733 N.Y.S. 2d 385, 288 A.D. 2d 87 (N.Y. App. Div. 2001).

In contrast, in Florida a recipient of a fraudulent misrepresentation may rely on it unless he knows it is false or its falsity is obvious, even if it had the means to verify the representation's accuracy. See Besett v. Basnett, 389 So. 2d 995 (Fla. 1980); M/I Schottenstein Homes, Inc. v. Azam, 813 So. 2d 91 (Fla. 2002); Sheer v. Jenkins, 629 So. 2d 1033 (Fla. 4th DCA 1993).

Clearly, there is a fundamental distinction on this point between New York and Florida which could be outcome determinative. MS & Co. claims CPH had access to information which would have allowed it to test the allegedly false representations but CPH failed to do its due diligence. MAFCO and CPH claim that MSSF had access to information that would have allowed MSSF to test the synergy representations, but MSSF failed to do its due diligence. If true, a jury could find reliance that is reasonable under Florida law to be unreasonable under New York law.

C. Step Two - Choice of Law Rule

(i) Applicable Rule

Florida has adopted the Restatement (Second) of Conflict of Laws' significant relationships test. See Bishop v. Florida Specialty Paint Company, 389 So. 2d 999 (Fla. 1980). Section 145 states the general principles with respect to tort. Section 148 states the choice of law principles for fraud and misrepresentation. Counsel agree section 148 applies.

See Trumpet Vine Investments, N.V. v. Union Capital Partners I, Inc., 92 F. 3d 1110 (11th Cir. 1996).

(ii) Procedure

The Court was unable to find any cases specifically delineating the procedure to be used for a judicial choice of law determination prior to trial. However, because application of the significant relationships test is fact-dependent, the Court concludes that a pre-trial determination is controlled by the summary judgment rule, Rule 1.510, Fla. R. Civ. P. First, the Court is unaware of any other procedural vehicle that would permit a pre-trial determination of facts. Second, it appears that when summary judgment has been used by the trial courts, the appellate courts have reviewed the orders without comment on the procedure employed. See, e.g., Rush v. Joyner, 540 So. 2d 266 (Fla. 4th DCA 1989); Bishop.

(iii) The Undisputed Facts

The following facts are undisputed:

1. CPH is a wholly owned subsidiary of MAFCO. Before the transaction with Sunbeam in March 1998, CPH was a holding company with an 82% interest in Coleman. CPH is a Delaware corporation with its principal place of business in New York City, New York.

2. MS & Co. is an investment banking firm providing financial and securities services. MS & Co. is a Delaware corporation with its principal place of business in New York City, New York.

3. CPH retained the investment bank of Credit Suisse First Boston ("CSFB") to serve as its financial advisor on the Sunbeam transaction. CSFB is a global investment bank with offices in New York. CPH worked with CSFB personnel in the New York office on the Sunbeam deal.

4. MS & Co. served as Sunbeam's financial advisor during the negotiations that led to the Coleman acquisition. MS & Co.'s contract with Sunbeam was governed by New York law.

5. New York counsel represented CPH, MS & Co., and MSSF during the course of the negotiations and closing of the Sunbeam transaction.

6. CPH retained the accounting firm of Ernst & Young, a national accounting firm with offices in New York. CPH worked with accountants in the New York office on the Coleman deal.

7. MSSF is a financial services company that provides credit services to its clients. MSSF is a Delaware corporation with its principal place of business in New York .

8. MAFCO relied on New York-based personnel at CSFB for financial services; on Wachtell, Lipton Rosen & Katz, a New York based law firm, for legal advice; and on Ernst & Young for accounting services.

9. There were numerous telephone calls between MS & Co. personnel and Sunbeam personnel in Florida concerning MS & Co.'s retention; its work for Sunbeam; and the Coleman transaction.

10. MS & Co. personnel met with Sunbeam personnel in Florida several times to discuss MS & Co.'s retention as Sunbeam's financial advisor, strategy, potential acquisition candidates, and merger issues.

11. On or about September 23 and 24, 1997; October 29, 1997; and March 4 and 5, 1998, MS & Co. personnel conducted due diligence at Sunbeam's Florida offices.

12. MS & Co. corresponded with Sunbeam at its Florida offices on a variety of issues dealing with its representation of Sunbeam and the merger.

13. On or about December 18, 1997, representatives of Sunbeam and MAFCO met in Florida to discuss a potential transaction involving Sunbeam and Coleman.

14. On or about February 3, 1998, Sunbeam personnel met with an Arthur Andersen representative at Sunbeam's Florida offices in connection with the Coleman transaction.

15. On March 5, 1998, MS & Co. personnel attended a drafting session in Florida in connection with the subordinated debenture offering.

16. On or about March 12, 1998, MS & Co. personnel conducted an accounting due diligence conference call with Arthur Andersen personnel in Florida regarding Sunbeam's financial circumstances.

17. The March 19, 1998 press release was publicly issued from Sunbeam's headquarters

in Delray Beach, Florida; was drafted by Sunbeam's lawyers at the New York offices of Skadden Arps; was reviewed by MS & Co. in New York; and was received by CPH in New York.

18. The statements by Lawrence Bornstein of Arthur Andersen concerning Sunbeam's earnings shortfalls took place at the offices of Global Financial Press in New York.

19. Any representations that MAFCO and CPH made to MSSF at the December 12, 1997 and January 29, 1998 meetings were made and received in New York.

20. On February 4, 1998, Coleman sent Sunbeam a proposed Confidentiality Agreement in connection with the proposed merger. Sunbeam executed the Confidentiality Agreement. The Confidentiality Agreement provided that New York law applies to it.

21. On February 27, 1998, Sunbeam and CPH's boards of directors met in New York and approved the merger agreement. MS & Co. made a presentation to Sunbeam's Board of Directors at the meeting in New York and provided a "fairness opinion" prior to the Board's approval of the transaction.

22. Sunbeam and CPH signed the merger agreement later that day in New York.

23. The merger agreement specified that the acquisition would close in New York and that all share certificates and other consideration would be exchanged by the parties at the closing in New York.

24. Written notice of changes in circumstances having a material adverse effect was to be delivered to CPH's wholly owned subsidiary in Fort Lauderdale, Florida. No notice was received.

25. On March 29, 1998, Sunbeam and CPH entered into a Registration Rights Agreement which provided for the registration by Sunbeam of 14,099,749 shares of Sunbeam common stock that were issued to a wholly owned subsidiary of CPH. The Registration Rights Agreement provided that it was governed by New York law without regard to New York conflicts of law principles.

26. The Sunbeam transaction closed on March 30, 1998 in New York.

27. CPH tendered its shares of Coleman to Sunbeam in New York. At the time of the transaction, Coleman was a public company traded on the New York Stock Exchange.

28. CPH accepted shares of Sunbeam stock in New York. At the time of the transaction, Sunbeam was a public company traded on the New York Stock Exchange.

29. The Sunbeam financing transactions were closed in New York on March 31, 1998.

30. MSSF loaned Sunbeam $680 million in New York in part to be used for the Coleman deal.

D. *Step Three - Application of the Law to the Facts*

(i) Negligent Misrepresentation - CPH v. MS & Co.

Restatement (Second) of Conflict of Laws §148 (1971) provides:

> §148. Fraud and Misrepresentation
>
> (1) When the plaintiff has suffered pecuniary harm on account of his reliance on the defendant's false representations and when the plaintiff's action in reliance took place in the state where the false representations were made and received, the local law of this state determines the rights and liabilities of the parties unless, with respect to the particular issue, some other state has a more significant relationship under the principles stated in §6 to the occurrence and the parties, in which event the local law of the other state will be applied.
>
> (2) When the plaintiff's action in reliance took place in whole or in part in a state other than that where the false representations were made, the forum will consider such of the following contacts, among others, as may be present in the particular case in determining the state which, with respect to the particular issue, has the most significant relationship to the occurrence and the parties:
>
> (a) the place, or places, where the plaintiff acted in reliance upon the defendant's representations,
>
> (b) the place where the plaintiff received the representation,
>
> (c) the place where the defendant made the representations,
>
> (d) the domicil, residence, nationality, place of incorporation and place of business of the parties,

(e) the place where a tangible thing which is the subject of the transaction between the parties was situated at the time, and

(f) the place where the plaintiff is to render performance under a contract which he has been induced to enter by the false representations of the defendant.

MS & Co. argues that subsection (1) applies; CPH argues that subsection (2) applies. The correct answer is unclear, since subsection (1) applies only if the false statements were both made and received in the same state, and subsection (2) applies if reliance occurs in whole or in part in a different state that where the representation was made. §148 does not state a rule where the place of reliance and representation are the same, but different from the place where the representation was received.

The representations were received in New York. The actionable part of CPH's reliance occurred in New York, where the contract was entered into and closed. Finally, it is undisputed that the representations relied on in Count I of CPH's Complaint were made in New York. Consequently, New York law controls unless Florida has a more significant relationship under the principles stated in section 6 of the Restatement. It does not. While Florida's public policy provides broader protection for the recipients of false information in commercial transactions, which creates greater incentives for parties to take reasonable care that their representations are correct, that interest is not paramount to New York's, under the principles outlined in section 6. Instead, certainty and predictability in commercial transactions require that New York law apply.

Even if the choice of laws was not dictated by subsection (1), application of subsection (2) would lead to the same result: CPH relied on the statements in New York; it received the representations in New York; the representations were made in New York; the parties are domiciled in New York; and CPH was required to perform in New York.

(ii) Negligent Misrepresentation: MSSF v. MAFCO and CPH

MSSF's claims against MAFCO and CPH are centered on two meetings where MSSF alleges MAFCO and CPH gave inflated synergy projections, on December 12, 1997, and

January 29, 1998. Both were face to face meetings in New York. Consequently, the allegedly false synergy projections were made, received, and relied on in New York. Florida does not have a more significant relationship to the particular issue--the group of people to which MSSF owed a duty--under the principles listed in section 6. Consequently, New York law governs whether MSSF owed a duty to MAFCO and CPH.

(iii) Fraudulent Misrepresentation: CPH v. MS & Co.

As outlined above, section 148 (1) of the Restatement dictates the application of New York law to determine whether reliance on a fraudulent misstatement is justified. Florida does not have a more significant relationship to this issue than New York, based on application of the principles outlined in section 6 of the Restatement. Though Florida has a strong public policy dictating that "(a) person guilty of fraudulent misrepresentation should not be permitted to hide behind the doctrine of caveat emptor," that interest does not override New York's. Besset at 997. Certainty and predictability require that the standards of due diligence governing sophisticated New York domiciled corporations entering into a commercial transaction in New York be governed by New York law.

(iv) Fraudulent Misrepresentation: MSSF v. MAFCO and CPH

Section 148 (1) of the Restatement dictates the application of New York law to determine the due diligence required to find reliance on a false statement reasonable. Application of section 6's principles does not dictate a different result.

(v) Conspiracy and Aiding and Abetting-CPH v. MS & Co.

The Court is unable to apply section 148's principles or conclude whether Florida or New York has the more significant relationship to CPH's aiding and abetting fraud and conspiracy claims, found at Counts II and III of its Complaint.

Both counts claim that MS & Co. actively worked with Sunbeam personnel to manipulate Sunbeam's finances to make it appear that Sunbeam had successfully rebounded from poor performance; to conceal and misrepresent Sunbeam's true financial condition to entice a potential purchaser or investor; and to provide CPH, both through MS & Co. and by materials it scripted for Sunbeam, false and inaccurate financial information to persuade

CPH to agree to, then consummate, a merger with Sunbeam.

It is unclear to the Court how, if at all, the two claims differ. However, if MS & Co. were found liable based on allegations of its participation with Sunbeam personnel in an elaborate fraud, then it would be liable for the entire fraud. See Hoch v. Rissman, Weisberg, Barrett, 742 So. 2d 451 (Fla. 5th DCA 1999), rev. den. 760 So. 2d 948 (Fla. 2000); Ford v. Rowland, 562 So. 2d 731 (Fla. 5th DCA 1990), rev. den. 574 So. 2d 141 (1990); Nicholson v. Kellin, 481 So. 2d 931 (Fla. 5th DCA 1985). Further, MS & Co. could be liable for Sunbeam's actions prior to its retention if it joined with Sunbeam to perpetuate a fraud with knowledge of its general purpose and scope. See James v. Nationsbank Trust Co. (Florida), N.A., 639 So. 2d 1031 (Fla. 5th DCA 1994). The fraud alleged is largely Florida based, and the location of its ultimate victim incidental. Florida has a strong public policy in favor of protecting the recipients of fraudulent misrepresentations. Besset. That policy is more clearly implicated if CPH is able to prove that MS & Co. was an actor in a Florida-based fraud. The allegations of conspiracy are disputed, precluding summary judgment at this juncture on the choice of law issue.

Based on the foregoing, it is

ORDERED AND ADJUDGED that Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc.'s Motion for Application of New York Law is Granted, in part. As to Counts I and IV of CPH's Complaint and MSSF's claims against MAFCO and CPH, the Court determines that New York substantive law applies (i) to engraft a requirement that the recipient of a negligent misrepresentation be in a special relationship to its publisher for the misrepresentation to be actionable, and (ii) to engraft a requirement that a party perform reasonable due diligence as to available information in order to prove that its reliance on a misrepresentation was reasonable.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 12 day of August, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

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EXHIBIT B

COLEMAN (PARENT) HOLDINGS INC.

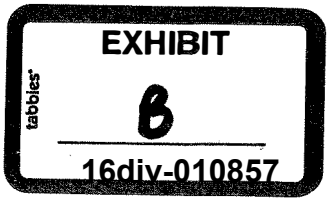
V.

MORGAN STANLEY & CO., INC.

Circuit Court of the Fifteenth Judicial Circuit, Palm Beach County, Florida

Expert Report

Arthur H. Rosenbloom
CFC Capital LLC
December, 2004



stated above, it was *Sunbeam* and its executives that were the best source for the answers to any questions that might have been raised respecting Sunbeam's fourth quarter results.

Mr. Horton goes on to argue (pp. 14-15) that Morgan Stanley had an obligation to present bad news concerning Sunbeam's fourth quarter 1997 and first quarter 1998 financial performance to Coleman (Parent) in order to supplement the generally optimistic views presented in the Long Term Strategic Plan and the Discussion Materials and elsewhere. For the following reasons, I disagree: (i) some of the negative news concerning Sunbeam that Mr. Horton believes should have been disclosed to Coleman (Parent) by Morgan Stanley was already in the public domain, easily accessible to Coleman (Parent) and the rest could have been discovered if it had performed ordinary due diligence; (ii) Any sophisticated investor like Coleman (Parent) understands that the Sunbeam materials in questions were not doctoral dissertations, judicial opinions or SEC filed documents that take exquisite care to present all sides of the issues discussed but, as described earlier herein, are rather advocacy documents and that projections in long range plans are to be viewed skeptically;[17] (iii) Morgan Stanley was Sunbeam's agent not Coleman (Parent's) and aside from the general standards of care described earlier in this report, had no obligation to Coleman (Parent); (iv) Coleman (Parent) had ample opportunity at the February 23, 1998 meeting to ask all the questions it wanted of Russel Kersh, Sunbeam's CFO, who made the

[17] Levin, TR. p. 234:17-23.

report, Sunbeam's was purported to be a turnaround story. Coleman (Parent's) election, for whatever reason, to proceed at a rapid pace came at a cost - its inability to perform thorough due diligence which experience and survey data describe as a leading cause of merger failure; (ii) It is counterintuitive to imagine that Coleman (Parent's) election to move fast created a greater obligation of disclosure on Morgan Stanley than would have been the case had Coleman (Parent) moved more cautiously, as Morgan Stanley was Sunbeam's agent not the agent of Coleman's (Parent).[18] Unlike Sunbeam, but typical for IBs, Morgan Stanley was not a party to the Sunbeam – Coleman (Parent) Agreement and Plan of Merger as of February 27, 1998, made no representations and warranties or otherwise bound itself by the terms of that agreement. Where then (save as I have described above) were its obligations to Coleman (Parent)?

Mr. Horton next appears to argue (pp. 18-19) that Coleman (Parent) should be regarded as some kind of indirect beneficiary of disclosures made incident to the zero coupon convertible debenture offering underwritten by Morgan Stanley. He offers four arguments in support of his position. I disagree with all of the conclusions set forth in those arguments: (i) Mr. Horton argues that as underwriter of the bonds, Morgan Stanley had a disclosure obligation to Coleman (Parent) respecting any material adverse change ("MAC") in Sunbeam's affairs. I disagree because Morgan Stanley's obligations as an underwriter ran not to Coleman (Parent) but to the bondholders. Further, as indicated above, the MAC

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18 See Morgan Stanley's engagement letter with Sunbeam dated September 5, 1997, p 3.

were for the protection of the Sunbeam bondholders not for the benefit of Coleman (Parent).

Respectfully submitted this 17th day of December, 2004.

CFC CAPITAL LLC

By: _____
Arthur H. Rosenbloom

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

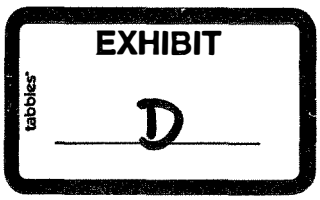
VS.

MORGAN STANLEY & CO., INC.,

Defendant.

VIDEOTAPED DEPOSITION
OF HOWARD GITTIS
New York, New York
Friday, November 19, 2004

Reported by:
Robert X. Shaw, CSR
CSR NO. 817
JOB NO. 167570



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A. Probably, but that is not important to us.
Q. It may not be important to you, but you would expect the stock to have dropped?
A. Ordinarily, sure.
MR. SOLOVY: Objection to the form of the question.
Q. Leading up to the point of the time of the closing -- excuse me, from the point of announcement -- excuse me, I will withdraw the question.
At the time that the transaction was announced, I think it was March 3rd, 1998, Coleman stock did run up; did it not?
A. Sure it would, on the basis of the transaction.
Q. Because Sunbeam was paying approximately a 44 percent premium over market for Sunbeam's, excuse me -- for Coleman's stock?
A. That is correct.
Q. Would you have expected Sunbeam's stocks -- excuse me, Coleman's stock, after an announcement that the merger was not going forward, to drop in the marketplace to a level

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approximating where it was before?
A. Sure.
Q. The announcement --
MR. SOLOVY: Objection to the form of the question.
A. That is exactly what I would have expected.
MR. SOLOVY: Objection to the form of the question.
Q. Where was Coleman -- withdrawn. I am done with that.
Did you see Sunbeam's annual report on form 10K for the year 1997 before the closing?
A. No.
Q. Did you see the offering memorandum for the debentures that Morgan Stanley underwrote in connection with the transaction?
A. I did.
Q. Did you read it?
A. I paged through it, I really just looked at financials.
Q. You, of course -- well, let me ask you. Do you read the footnotes to the financial statements?

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A. Usually. Usually.
Q. Some of the most important information is in the footnotes?
A. Right.
Q. Were you involved in any discussions at MacAndrews & Forbes, either internally or with third parties, concerning hedging the Sunbeam stock that Mr. Perelman's companies were to receive at the closing?
A. Yes, I was in part of those meetings.
Q. Did you -- were some of those discussions before the actual closing on March 30th?
A. I don't recall any before the closing. I think they all took place afterwards.
Q. What was your involvement in these discussions?
A. Well, I wanted to find out whether or not you could hedge, which I was told by our lawyers was simply not clear -- it was not a problem for us to hedge, it was a problem for the investment bank. It was very complex SEC stuff.

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And one of the conclusion I reached was, if you really couldn't do it, you really couldn't do it because you couldn't ask an investment bank to take a risk, or at least I wasn't ask an investment bank to take a risky position like that; so, we dropped that.
Q. What was the risky position?
A. I don't remember, to be honest with you. It was very complex SEC stuff.
Q. Is it fair to say that you passed those issues off to others to let them think it through?
A. Well, yes, no question about it. They told me it was questionable and they did not think any major investment bank would do it, so forget it.
Q. Who was the person who was the most closely involved with the hedging discussions at MacAndrews & Forbes?
A. I think Maher, Glen Dickes.
Q. Okay.
A. Dickes was a real SEC expert -- he knew that stuff backwards and forwards.
Q. Now, there was a press release issued by Sunbeam on or about April 3rd, 1998,

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

CPH'S RESPONSE TO MORGAN STANLEY'S MOTION IN LIMINE NO. 17 TO EXCLUDE CERTAIN TESTIMONY OF CPH'S DAMAGES EXPERT DR. BLAINE NYE

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") respectfully submits this response opposing Morgan Stanley's Motion in Limine No. 17 to Exclude Certain Testimony of CPH's Damages Expert Dr. Blaine Nye. Morgan Stanley seeks an order barring Dr. Nye from testifying as to the first component of his benefit-of-the-bargain damages measure — *i.e.*, the value CPH would have received from the Sunbeam stock, had the misrepresented facts about Sunbeam been true. Mot. at 6. Both Professor Grinblatt and Dr. Nye adhere to the same or similar forms of the "efficient markets hypothesis," which underpins both of their analyses.[1] But Morgan Stanley takes issue with the fact that Dr. Nye presents an average of Sunbeam stock market values during the month between announcement and closing, rather than choosing the Sunbeam stock market price on a single date to represent the anticipated value of Sunbeam.

Morgan Stanley's motion is without merit. A disagreement between two experts who take similar approaches but diverge with respect to the details is appropriate material for cross-examination, not a proper basis for excluding testimony.

[1] Dr. Nye demonstrates the efficiency of the market for Sunbeam stock at pages 17-28 of his Report (Nye Rep., *attached as* Ex. 1 to Mot.)

Morgan Stanley's expert Professor Grinblatt disagrees with CPH's benefit-of-the-bargain damages theory (and so does not calculate the value CPH would have received from the Sunbeam stock had the misrepresented facts about Sunbeam been true), but he agrees with Dr. Nye that Sunbeam's stock market value at some point after the announcement of the deal, but prior to (and including) the closing, is an appropriate measure of that value. *See* Ex. A, Grinblatt Rep. at 95 ("Dr. Nye correctly observes that market prices are relevant to Sunbeam's worth. I agree that stocks listed on the NYSE trade in an efficient market and that, in the absence of fraud, the correct measure of an efficiently traded stock's value is its market price."). Morgan Stanley cannot object in good faith to Dr. Nye's use of Sunbeam's stock market value to measure the value of the Sunbeam stock CPH anticipated receiving in its bargain. In his opinion concerning CPH's out-of-pocket loss, Professor Grinblatt attempts to measure the value of Sunbeam under the counterfactual assumption that Morgan Stanley made a "curative disclosure," utilizing much the same approach as Dr. Nye takes in calculating the value CPH anticipated from the Sunbeam stock: He takes the view that markets are efficient and thus provide a good measure of value given a particular set of information. *See* Ex. A, Grinblatt Rep. at 45-50 (estimating the value of Sunbeam given a hypothetical "curative disclosure" by Morgan Stanley).

In fact, Morgan Stanley's only real complaint is that Dr. Nye averaged Sunbeam's stock market prices between announcement and closing, rather than choosing a single date on which to base value. *See* Ex. A, Grinblatt Rep. at 95 ("If markets are efficient, then one need only look to a single day's price to get reasonable expectations for a stock's value measured at that day.") Morgan Stanley's cases regarding expert speculation are beside the point. *See, e.g., Arkin Constr. Co. v. Simpkins*, 99 So. 2d 557, 561 (Fla. 1957) (discounting expert testimony where the expert assumed that the claimant suffered stress from a minor fall that led to a later heart attack, but the record was "void of any evidence to support his assumption"). By contrast, here the

record contains evidence supporting the assumption that Sunbeam's stock market price after announcement and before closing measures the appropriate value — as even Morgan Stanley's expert agrees. The disagreement concerns which date — or group of dates — is the best choice to "calibrate" the measurement of the value of Sunbeam had the facts been as represented. *See* Ex. A, Grinblatt Rep. at 95.

Morgan Stanley engages in mere hyperbole when it criticizes Dr. Nye's average as "simple arithmetic." Mot. at 1. Academic papers and expert testimony routinely report averages. *See, e.g., Verizon Florida, Inc. v. Jaber*, No. SC02-2647, 2004 WL 1944461, at *3 (Fla. Sept. 2, 2004) (adopting as the most appropriate cost-of-equity calculation an estimate calculated as the average across different methods). Moreover, Morgan Stanley's alternative would have been to avoid averaging and choose a single number — Sunbeam's stock price on a single day — to represent value. Surely averaging cannot be too "simple" if the alternative is pointing to a single number.

Indeed, Dr. Nye testified that if he were to choose a single date to estimate the value of the Sunbeam stock CPH thought it was receiving, as Morgan Stanley claims is proper, Dr. Nye would choose March 3, after the deal was announced and the market learned that the funding for the deal was in place. *See* Ex. B, Nye Dep. at 187-88. The stock market value of a Sunbeam share on that day was close to $50. Instead, he averaged the daily prices between announcement and closing to allow for the fact that Sunbeam's share price declined somewhat after March 19. *Id.* His estimate based on averaging, $48.26, therefore was lower than this single-day estimate. Morgan Stanley thus is complaining of a methodology chosen to take account of facts less favorable to CPH.

CONCLUSION

For the foregoing reasons, this Court should deny Morgan Stanley's Motion in Limine No. 17.

Dated: February 9, 2005

Respectfully submitted,

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I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and hand delivery to all counsel on the attached list on this 9th day of Feb, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CPH'S RESPONSE TO MORGAN STANLEY'S MOTION IN LIMINE NO. 18 TO EXCLUDE TESTIMONY OF PLAINTIFF'S EXPERT DOUGLAS EMERY

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") respectfully submits this response opposing Morgan Stanley's Motion in Limine No. 18 to Exclude Testimony of Plaintiff's Expert Douglas Emery.

Dr. Emery's testimony is focused on the Sunbeam fraud scheme that Morgan Stanley is accused of joining and assisting. Dr. Emery will help the jury understand both how a public company like Sunbeam can manipulate its finances to create a skewed picture of its financial health and why it would have a financial incentive to do so. That information, in turn, is essential to the jury's evaluation of Morgan Stanley's role in assisting Sunbeam in carrying out the fraud. The principles of finance that underlie these opinions are not within the common knowledge of the prospective jurors; thus, the need for expert testimony. Morgan Stanley, however, seeks to exclude Dr. Emery's testimony on multiple grounds. Because those arguments are without merit, and Morgan Stanley's real motive is to disrupt the efficient presentation of CPH's case, the motion should be denied.

I. Dr. Emery's Opinions Are Relevant to Help the Jury Understand the Evidence in This Case.

Morgan Stanley first argues that Dr. Emery's testimony explaining the Sunbeam fraud is irrelevant. But Morgan Stanley flatly states in Paragraph 1 of its motion: "There is no stipulation or order in this action regarding Sunbeam committed [sic] a fraud, the scope of the fraud, and who participated in the fraud. These are matters CPH must prove to establish aiding and abetting and conspiracy." Mot. at 2. Morgan Stanley takes this position even though it has already admitted the Sunbeam fraud in its pleadings. *See, e.g.,* Ex. A, 1st Am. Compl., *Morgan Stanley & Co., Inc. v. Arthur Andersen LLP* (8/6/04). Morgan Stanley therefore errs when it takes the position, elsewhere in the same motion, that the "issue here is whether Morgan Stanley — not Sunbeam — defrauded Mr. Perelman." Mot. at 1. At least as to the aiding and abetting and the conspiracy counts, Sunbeam's fraudulent conduct is a required element.

It follows that CPH should be permitted to present expert testimony to the jury how the Sunbeam fraudulent scheme worked. As Morgan Stanley itself notes, Section 90.702 of the Florida Evidence Code allows expert testimony where such testimony "will assist the trier of fact in understanding the evidence or in determining a fact in issue." FLA. STAT. ANN. § 90.702 (West 2004) (emphasis added); *see also Jones v. Goodyear Tire & Rubber Co.*, 871 So. 2d 899, 903 n.8 (Fla. 3d DCA 2003) (expert's "testimony was also admissible under section 90.702 because he was qualified to give an expert opinion, and his testimony assisted the jury in understanding the evidence"), *rev. denied*, 886 So. 2d 227 (Fla. 2004). And it is hard to imagine a clearer case of a subject requiring expert assistance to the jury than a sophisticated corporate fraud like that committed at Sunbeam. How a public company can manipulate its own finances, how such actions affect the value of a company in the market, how such machinations might be hidden by having a company engage in an acquisition, and why a corporation might have strong

financial incentives for engaging in such actions are not matters jurors can readily determine using common sense alone. Dr. Emery's testimony is thus directly relevant to issues that CPH will be addressing at trial.

II. Dr. Emery Is Qualified to Opine Regarding How the Sunbeam Fraud Worked and Why Sophisticated Businesspeople Would Have Had Incentives to Orchestrate Such a Scheme.

Morgan Stanley asserts that Dr. Emery is "unqualified" to opine regarding the "motives of the Sunbeam 'robbers.'" Mot. at 4-6. In addition to providing only a very truncated discussion of his lengthy qualifications, Morgan Stanley misses the point of Dr. Emery's opinions. Dr. Emery does not offer any opinion about what motivated any particular person involved in the Sunbeam fraud. Rather, he explains, from a financial perspective, the mechanics of the scheme and the financial incentives for engaging in the kind of manipulations that occurred at Sunbeam.

Dr. Emery is eminently qualified to render such opinions. Dr. Emery chairs the Department of Finance at the University of Miami. *See* Emery Rep. at 2, *attached as* Ex. 2 to Mot. He has taught finance classes at all levels to undergraduate, graduate, doctoral, and professional students for over 25 years, including stints at the University of Missouri, Washington University, Purdue University, and the University of Kansas. *Id.* He recently was elected to serve as Vice President for the 2006 Financial Management Association international annual program and currently serves as the Chair of the Board of Trustees of the Eastern Finance Association. *Id.* He has authored five books on finance, including Prentice Hall's *Corporate Financial Management*, has authored dozens of articles regarding corporate finance and other finance topics, and has served in an editorial capacity for numerous finance journals, including the past six years as editor for *Financial Management*. *Id.* at 2-3. Moreover, Dr. Emery has studied and lectured on the Sunbeam matter, a topic widely studied by academics in recent years.

Id. at 2. In sum, Dr. Emery's background makes him a perfect candidate to explain the mechanics and financial effects of the fraud at issue in this case.

Morgan Stanley argues that *Smithson v. V.M.S. Realty, Inc.*, 536 So. 2d 260 (Fla. 3d DCA 1989), stands for the proposition that Dr. Emery cannot testify to the motives of persons running Sunbeam. Mot. at 5-6. In addition to misreading Dr. Emery's opinions, Morgan Stanley reads far too much into *Smithson.* In that case, the appellate court took issue with a security expert's testimony because the court ruled that a security expert was not qualified to opine as to a murderer's motives. 536 So. 2d at 262. That testimony is nothing like the proposed testimony of Dr. Emery here. Dr. Emery does not intend to opine as to the machinations of the human mind, as did the expert in *Smithson*, but simply will testify, based on his expertise in the area of finance, as to the financial incentives that can underlie the manipulation of a company's financial picture.

III. Dr. Emery's Opinions Are Not "Untested Speculation" and Do Not Have to Be Supported by "Methodology and Science."

Morgan Stanley's position that Dr. Emery's opinions are "speculation" unless supported by "methodology and science" is based on an apparent misunderstanding of the applicability of the *Frye* test to Dr. Emery's testimony. The Florida Supreme Court has said that the *Frye* test only applies to "novel scientific evidence." *Flanagan v. State*, 625 So. 2d 827, 828 (Fla. 1993). "Pure opinion" testimony such as Dr. Emery's here — that is, testimony that is based on the expert's training and experience rather than scientific principles or tests — is not subject to the *Frye* test. *See id.*; *Florida Power & Light v. Tursi*, 729 So. 2d 995, 997 (Fla. 4th DCA 1999). To be admissible, pure opinion testimony must "assist the trier of fact in understanding the evidence or in determining a fact in issue." FLA. STAT. ANN. § 90.702 (West 2004). As noted

above, Dr. Emery has ample experience in the field of finance to testify as to the "how" and "why" of the Sunbeam fraud.[1]

Dr. Emery's testimony also is not inadmissible "speculation." Courts commonly allow expert testimony to shed light on the potential rationales behind particular financial decisions. In the tax context, for example, questions frequently arise as to whether particular investments were legitimate ventures undertaken for profit or whether they impermissibly were undertaken purely for beneficial tax consequences. In *Long Term Capital Holdings v. United States*, 330 F. Supp. 2d 122, 160-65 (D. Conn. 2004), the court made use of multiple experts to determine the true nature of the complicated transactions at issue. The court permitted a professor of economics and finance to opine "whether there was any economic explanation for [the] transactions apart from the tax benefits." *Id.* at 163. The court also used an expert in economics, finance, structured finance, and leveraged transactions to opine as to the "risk return profile" of the particular transaction. *Id.* at 160; *see In re Sommers*, 209 B.R. 471, 480 (Bankr. N.D. Il. 1997) (allowing expert testimony for the same purpose). *See also Petruzzi's IGA Supermarkets, Inc. v. Darling-Delaware Co.*, 998 F.2d 1224, 1240-41 (3d Cir.), *cert. denied*, 510 U.S. 994 (1993) (reversing trial court's exclusion of expert testimony intended to explain rationale of alleged anticompetitive conspiracy).

Dr. Emery offers similar testimony here, applying generally accepted principles of finance to opine on what can incentivize a company to distort its financial picture. Morgan Stanley's complaint that Dr. Emery lacks methodology to establish what "actually motivated"

[1] Even if the *Frye* test did apply — which it does not — Dr. Emery testified that the approaches he took in preparing his report were "generally accepted" and that "nothing I have done here would surprise any of my colleagues in any way that I can imagine." *See* Ex. B, Emery Dep. at 61-63. In fact, Dr. Emery testified that the approach he followed in arriving at his opinions in this case is consistent with the methodologies set forth in his own finance publications.

Sunbeam (Mot. at 6) misses the point of his testimony. Dr. Emery does not purport to opine as to the psychology of Sunbeam's management; he simply applies his professional judgment and experience to analyze a complicated series of financial actions, helping the jury to understand those actions in the context of the financial incentives for them. In other words, he simply identifies the financial consequences that would reasonably have been expected to flow from the actions known to have been taken by Sunbeam. Conclusions regarding the intentions of Sunbeam then flow directly from the general legal principle that one is presumed to have intended the natural and probable consequences of one's acts.[2] He is well qualified to offer this testimony, and it will help the jury to understand the business context in which CPH's claims are made.

IV. Dr. Emery's Disclosure of the Bases for His Opinions Is Appropriate.

Finally, Morgan Stanley argues that Dr Emery's expert testimony should be excluded because it is just "a lengthy factual summary of Sunbeam's alleged fraud and misrepresentations, which CPH is trying to put before the jury under the imprimatur of expert testimony." Mot. at 1.[3] Morgan Stanley's attack is misdirected. In its October 14, 2004 Order, this Court ordered expert witness disclosures to include "the subject matter about which the expert will testify," "the substance of the facts and opinions to which the expert will testify," and "a summary of the

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[2] "Intent ordinarily may not be proved directly because there is no way of fathoming or scrutinizing the operations of the human mind. But you may infer a person's intent from surrounding circumstances. You may consider any statement made or act done or omitted by a party whose intent is in issue, and all other facts and circumstances which indicate his state of mind. You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. It is for you to decide what facts have been established by the evidence." Devitt, Blackmar and Wolff, Federal Jury Practice and Instructions, § 90.25.

[3] Morgan Stanley further states that Dr. Emery's "summary was based solely on materials that counsel for CPH selected for him to review." Mot. at 8. That is incorrect. As Dr. Emery noted in his report and at his deposition, in addition to reviewing documents produced by the parties to this case, he also conducted independent research in assembling the materials on which he bases his opinions. *See, e.g.*, Emery Rep. at 3; Ex. B, Emery Dep. at 75-78.

grounds for each opinion." 10/14/04 Order at 2.[4] The sections of Dr. Emery's report about which Morgan Stanley complains fulfill that disclosure requirement by setting forth the factual predicate for his analysis of how a public company can manipulate its finances to create a skewed picture of its financial health and why it would have a financial incentive to do so. Had Dr. Emery not disclosed the grounds for his opinions in sufficient detail, Morgan Stanley likely would have asserted that his report did not adequately provide notice of his opinions and the bases for those opinions. If Morgan Stanley takes issue with the grounds for Dr. Emery's opinions, it is free to explore those issues on cross-examination, but it has no ground to exclude his testimony.

Moreover, even accepting Morgan Stanley's characterization of the bases for Dr. Emery's opinions as a "summary," the result would be the same — the testimony is admissible. Morgan Stanley cites only the case of *Angrand v. Key*, 657 So. 2d 1146 (Fla. 1995), in support of its contrary position. Mot. at 3, 8. Morgan Stanley's argument is wrong for two reasons. First, what Morgan Stanley characterizes as a "holding" of the *Angrand* case is actually nothing but a snippet of dicta. Second, under Section 90.702 of the Florida Evidence Code (and its counterparts in other jurisdictions), courts routinely allow experts to present extensive summaries so long as the expert testimony will assist the jury in understanding the evidence or in determining a fact in issue, as it will here.

Angrand was a wrongful-death action brought by a widower and his son against the decedent's physician. After the trial court allowed plaintiffs to present expert testimony on grief and bereavement, the jury rendered a verdict against the defendant. On appeal, the Third District

[4] The Court's directive was wholly consistent with Florida Rule of Civil Procedure 1.280, which requires expert disclosures "to state the subject matter on which the expert is expected to testify, and to state the substances of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion."

reversed the judgment below on alternative grounds (only the first of which became the basis for the Florida Supreme Court's ruling): "First, the [Third District] concluded Dr. Platt did not testify to anything that was outside the common experience of the particular jury members, most of whom had experienced the death of a loved one in the past. . . . [Alternatively], the district court's review of the record revealed that Dr. Platt's testimony added nothing beyond what the survivors themselves, their minister, and other family members testified to as to the close family relationship Mrs. Angrand had with her husband and son, as well as the loss felt by them after her death." *Id.* at 1148 (plurality opinion) (citation omitted). The Florida Supreme Court affirmed the Third District's first alternative ground (that Dr. Platt's expert testimony merely relayed matters that were within the common experience of the jurors), but not its second alternative ground (that Dr. Platt's expert testimony merely summarized what he had been told by lay witnesses). Yet the part of the plurality opinion that Morgan Stanley quotes goes only to the second ground and thus is pure dicta, as well as being irrelevant here, given the nature of Dr. Emery's opinion.

The actual holding of *Angrand* instead strongly supports the admissibility of Dr. Emery's expert testimony. The plurality opinion makes clear that the linchpin to admissibility of expert testimony is that it be helpful to the trier of fact, and that expert testimony should be excluded only "'where the facts testified to are of a kind that do not require any special knowledge or experience in order to form a conclusion, or are of such character that they may be presumed to be within the common experience of all men moving in ordinary walks of life.'" *Angrand*, 657 So. 2d at 1149 (plurality opinion) (citation omitted). Unlike the grief that a husband or son suffers with the unexpected death of his wife or mother, the facts in a complex business fraud are relatively obscure, can best be clarified by a specialist, and certainly are not within the

"'common experience of all men moving in ordinary walks of life.'" *Id.*; *see Griefer v. DiPietro*, 708 So. 2d 666, 671-72 (Fla. 4th DCA 1998) (holding that expert testimony should have been permitted where it was "unlikely that the jury's common experience would enable it to resolve the [case's] factual issues"), *review dismissed*, 732 So. 2d 323 (Fla. 1999); *Bryant v. Buerman*, 739 So. 2d 710, 712 (Fla. 4th DCA 1999) (exclusion of an expert's opinion on a subject of specialized knowledge, which would be helpful to the fact-finder because of conflicting trial evidence, constitutes error); *see also Kruse v. State*, 483 So. 2d 1383, 1384 (Fla. 4th DCA 1986) ("Section 90.702 . . . embod[ies] a liberal policy on the admission of expert evidence, generally rendering such evidence admissible to the extent that it is helpful to the trier of fact."), *cause dismissed*, 507 So. 2d 588 (Fla. 1987).

For these very reasons, Florida courts routinely admit expert testimony summarizing the facts in complicated fraud cases where the facts are beyond the common understanding of the jurors. *See, e.g., Courtland Group, Inc. v. Phillips Gold & Co. LLP*, 876 So. 2d 629, 630 (Fla. 3d DCA 2004) (in an action for negligent misrepresentation and accounting malpractice, upholding the admission of expert testimony on the value of the defendant accounting firm's services because that expert testimony was helpful to the trier of fact). Moreover, the mere fact that lay testimony on the same facts or issues is admitted does not justify excluding expert testimony. *See Bryant v. Buerman*, 739 So. 2d at 712; *see also* CHARLES W. EHRHARDT, FLORIDA EVIDENCE § 702.2, at 623-24 (2004 ed.) (explaining that expert testimony may be admitted "[e]ven though the members of the jury have some understanding of an issue and are capable of forming a correct judgment" without expert testimony).

Similarly, in other jurisdictions, courts routinely allow experts to present extensive summaries of factual testimony so long as the expert testimony will assist the jury in

understanding the evidence or in determining a fact in issue. For example, in *United States v. Schafer*, 580 F.2d 774, 778 (5th Cir.), *cert. denied*, 439 U.S. 970 (1978), the appellate court upheld the admission of expert testimony summarizing factual testimony. The court explained that the parties' financial affairs "have been about as difficult to untie as the proverbial Gordian Knot," and permitted the summary testimony of an expert witness to help untie the knot for the jury. *Id.* The court concluded that, without expert testimony to assist the jury in understanding the complex financial picture presented to it, "the jury might well have been hopelessly confused." *Id.*; *see also United States v. Johnson*, 54 F.3d 1150, 1156, 1161-62 (4th Cir.) (upholding the admission of summary expert testimony, even where no "specialized knowledge" was required, reasoning that because of "the complexity of the conspiracy and the number of witnesses," the summary testimony "likely aided the jury in ascertaining the truth"), *cert. denied*, 516 U.S. 903 (1995).

Permitting such testimony is especially common in helping juries understand complex financial transactions and affairs. For example, in *United States v. Sabino*, 274 F.3d 1053, 1067 (6th Cir. 2001), *reh'g granted on other grounds*, 307 F.3d 446 (6th Cir. 2002), *cert. denied*, 540 U.S. 811 (2003), a prosecution for income-tax evasion, the government's expert was permitted to summarize and analyze factual testimony indicating willful tax evasion. The court admitted the expert testimony on the basis of settled law, reasoning that so long as the jury is properly instructed and the defense has "a full opportunity to cross-examine the witness," an expert's summary is perfectly acceptable. *Id.*; *see also United States v. Harenberg*, 732 F.2d 1507, 1513-

14 (10th Cir. 1984) (permitting an expert to summarize financial evidence presented at trial because his testimony "was very helpful in sorting out" the evidence).[5]

Here, as he explained in his deposition, Dr. Emery has applied his professional judgment and expertise to build a detailed analysis of an extremely complicated financial fraud from the perspective of both Sunbeam and the market. *See*, *e.g.*, Ex. B, Emery Dep. 84-86, 145-48. Asking the jury to do the same analysis without the aid of expert testimony might well leave the jury "hopelessly confused." *Schafer*, 580 F.2d at 778.

CONCLUSION

For the foregoing reasons, this Court should deny Morgan Stanley's Motion in Limine No. 18.

Dated: February 9, 2005

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[5] Courts permit experts to summarize facts even if the summary depends largely on evidence that would otherwise be inadmissible. In *United States v. Williams*, 431 F.2d 1168, 1772 (5th Cir. 1970), *aff'd in relevant part*, 447 F.2d 1285, 1290-92 (5th Cir. 1971), *cert. denied*, 405 U.S. 954 (1972), the Fifth Circuit explained: When an expert witness "'has gone to many sources — although some or all be hearsay in nature — and rather than introducing mere summaries of each source he uses them all, along with his own professional experience, to arrive at his opinion, that opinion is regarded as evidence in its own right and not as an attempt to introduce hearsay in disguise.'" *Id.* (citation omitted).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and hand delivery to all counsel on the attached list on this 9th day of Feb, 2005.

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EXHIBIT A

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

MORGAN STANLEY & CO. INCORPORATED, MORGAN STANLEY SENIOR FUNDING, INC., and MORGAN STANLEY,

Plaintiffs,

v.

ARTHUR ANDERSEN LLP (an Illinois limited liability partnership), AWSC SOCIÉTÉ COOPÉRATIVE, *en liquidation* (a Swiss cooperative corporation), ARTHUR ANDERSEN LLP (an Ontario limited liability partnership), ARTHUR ANDERSEN & CO. (a Hong Kong partnership), RUIZ, URQUIZA Y CIA, S.C. (a Mexico partnership), PORTA CACHAFEIRO, LARIA & ASOCIADOS (a Venezuela partnership), PHILLIP E. HARLOW, WILLIAM PRUITT, and DONALD DENKHAUS,

Defendants.

CASE NO. 502004CA002257XXXXMB
Division AA

DOROTHY H. WILKEN
CLERK OF CIRCUIT COURT
AUG 06 2004
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RECEIVED FOR FILING

FIRST AMENDED COMPLAINT

In March 1998, Morgan Stanley & Co. Incorporated ("MS & Co."), Morgan Stanley Senior Funding, Inc. ("MSSF"), and Morgan Stanley — in direct reliance on certified financial statements that were audited by Defendant Arthur Andersen LLP (an Illinois limited-liability partnership) ("Andersen") with the assistance of and in coordination with the other Defendants named in this Complaint[1] — underwrote a multi-million dollar offering of convertible notes and

[1] AWSC, Société Coopérative, *en liquidation*, a Swiss cooperative corporation ("Andersen-Worldwide") (formerly known as Andersen Worldwide, Société Coopérative), Arthur Andersen LLP (an Ontario limited liability partnership) ("Andersen-Canada"), Arthur Andersen & Co. (a

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provided a $680 million loan to Sunbeam Corporation, Inc., in connection with Sunbeam's acquisition of three companies. As Sunbeam's subsequent restatement of its financial results showed, these certified financial statements grossly misrepresented Sunbeam's true financial condition. Andersen and the other Defendants had full knowledge of these misstatements, and they intended that MS & Co. and MSSF would rely on these unqualified audit opinions. Plaintiffs — as a direct consequence of this deceit — have lost hundreds of millions of dollars. Accordingly, Plaintiffs bring this action and allege the following:

Nature of Action

1. In March 1998, Sunbeam announced the acquisition of The Coleman Company, Inc., Signature Brands USA, Inc., and First Alert, Inc. In order to finance these acquisitions, Sunbeam issued $750 million of convertible notes, which MS & Co. underwrote, and borrowed $1.2 billion in secured financing, including a loan of $680 million from MSSF.

2. In serving as an underwriter (which required MS & Co. to act as the initial purchaser of the convertible notes) and in agreeing to extend the loan, MS & Co. and MSSF relied on the accuracy of Sunbeam's financial statements, including its 1996 and 1997 financial statements that had been audited and certified by Andersen, as well as other representations made to them by Andersen. The Andersen-certified Sunbeam financial statements portrayed Sunbeam as a financially sound company in the midst of an extraordinary financial turnaround.

Hong Kong partnership) ("Andersen-Hong Kong"), Ruiz, Urquiza y Cia, S.C. (a Mexico partnership) ("Andersen-Mexico"), Porta Cachafeiro, Laria & Asociados (a Venezuela partnership) ("Andersen-Venezuela"), Phillip E. Harlow, William Pruitt, and Donald Denkhaus.

3. In reality, unbeknownst to Plaintiffs, Sunbeam's "turnaround" was an illusion facilitated by the Defendants. As became apparent in the summer of 1998 and as confirmed by Sunbeam's subsequent restatement of its financial results, the 1996 and 1997 statements that Andersen had certified — and upon which MS & Co. and MSSF had relied — did not, contrary to the representations that Andersen made to MS & Co. and MSSF, conform with generally accepted accounting principles ("GAAP"). Andersen, with full knowledge of the material misstatements contained in Sunbeam's financial reports, issued unqualified audit opinions for both 1996 and 1997. In so doing, it failed to perform its audit in accordance with generally accepted auditing standards ("GAAS").

4. In fact, the statements that Andersen audited and certified as in compliance with GAAP and as representing Sunbeam's true financial condition, were replete with accounting improprieties. As a consequence, and contrary to the representations that Andersen made to MS & Co. and MSSF, Sunbeam's true financial condition was misstated by millions of dollars.

5. Andersen's fraud was knowingly caused by Harlow, Pruitt, and Denkhaus. Harlow (the Sunbeam engagement partner) and Pruitt (the Sunbeam concurring partner) were senior partners of Andersen and members of Andersen-Worldwide and undertook direct responsibility for directing, managing, and approving the work that was done on the Sunbeam audits. Denkhaus, who also was a senior partner of Andersen and a member of Andersen-Worldwide, was the Audit Division Head and manager of Andersen's audit practice for the entire South Florida region and in this role undertook responsibility for supervising and monitoring the work performed at Harlow's and Pruitt's direction. Harlow, Pruitt, and Denkhaus each knew or recklessly disregarded the accounting violations contained in Sunbeam's 1996 and 1997 financial statements. Harlow, Pruitt, and Denkhaus also knew or recklessly disregarded that the

erroneous financial statements that they had caused Andersen to certify would be relied upon by MS & Co. in deciding to underwrite the convertible notes and by MSSF in deciding to loan Sunbeam hundreds of millions of dollars.

6. This fraud was also knowingly perpetrated by the foreign Andersen branches named in this complaint, Andersen-Canada, Andersen-Hong Kong, Andersen-Mexico, and Andersen-Venezuela (collectively, the "Foreign Andersen Branches"). Each of the Foreign Andersen Branches reviewed and audited financial statements prepared for Sunbeam's foreign subsidiaries for 1997, all of which contained significant accounting violations. Each of the Foreign Andersen Branches knew of or recklessly disregarded the fact that the financial statements that they had reviewed and audited were not prepared in accordance with GAAP or reviewed in accordance with GAAS. Each of the Foreign Andersen Branches also knew that the financial statements that they had audited would be incorporated into Sunbeam's consolidated financial statements and that lenders, such as MSSF, and underwriters, such as MS & Co., would rely on these financial statements.

7. The fraud was also knowingly perpetrated by Andersen-Worldwide through the actions of its members, including Harlow, Pruitt, and Denkhaus, and its member firms, including Andersen and the Foreign Andersen Branches.

8. This fraud ultimately forced Sunbeam and several of its subsidiaries to seek relief under Chapter 11 of the Bankruptcy Code, in February 2001. As part of the bankruptcy court-approved reorganization plan, MSSF's $680 million loan to Sunbeam was discharged in full, and MSSF received Sunbeam stock valued at a fraction of the original loan. In addition, the convertible notes issued by Sunbeam and held by MS & Co. had been rendered substantially less valuable.

9. By this complaint, Plaintiffs seek compensatory damages of several hundreds of millions of dollars.

THE PARTIES AND OTHER RELEVANT ENTITIES

10. MS & Co. is a financial services firm that engages in underwriting, investment banking, financial advisory services, securities sales and trading, and research. In late 1997 and early 1998, MS & Co. assisted Sunbeam in identifying potential acquisition targets and served as Sunbeam's financial advisor with respect to certain aspects of Sunbeam's acquisitions of Coleman, Signature Brands, and First Alert. MS & Co. also served as the underwriter of a $750 million offering of convertible notes that Sunbeam used to finance these acquisitions. MS & Co. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York.

11. MSSF is a company that provides credit services to its clients. In 1998, MSSF entered into a credit agreement with Sunbeam under which MSSF agreed to provide a loan to Sunbeam in connection with Sunbeam's acquisition of Coleman, Signature Brands, and First Alert. Pursuant to the credit agreement, Sunbeam borrowed $680 million from MSSF, with the borrowings used by Sunbeam to fund certain costs relating to the acquisitions. MSSF is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York.

12. Morgan Stanley is a financial services company. It owns 100 percent of the stock of both MS & Co. and MSSF. Morgan Stanley is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York.

13. Andersen was a member in or business unit of Andersen-Worldwide. Andersen is a partnership formed under the laws of the State of Illinois. Once one of the world's largest accounting firms, almost all of its partners have left the firm. Andersen participated in and coordinated the 1996 and 1997 audits of Sunbeam and the 1998 restatement of the reports of those audits. In addition, Andersen's partners and employees provided consulting services to Sunbeam as part of due diligence work performed in conjunction with Sunbeam's acquisition of Coleman, as well as on other projects.

14. Andersen-Worldwide is a cooperative corporation organized under the laws of Switzerland. Its members included more than 2,000 individuals from 390 offices in 84 countries. Various individuals who were members of Andersen-Worldwide participated in the 1996 and 1997 audits of Sunbeam and the 1998 restatement of the reports of those audits. Andersen-Worldwide and Andersen dictated the policies and procedures to be used by Andersen members and affiliates throughout the world. Andersen and Andersen-Worldwide at all relevant times (a) held themselves out to the public as a single, integrated, full-service, professional business enterprise comprising "one firm" with "one voice" and "common values and vision," (b) completely dominated and controlled each other's assets, operations, policies, procedures, strategies, and tactics, (c) failed to observe corporate formalities, and (d) used and commingled the assets, facilities, employees, and business opportunities of each other, as if those assets, facilities, employees, and business opportunities were their own.

15. Andersen-Canada was a member in or part of Andersen-Worldwide. Andersen-Canada is a partnership organized under the laws of the province of Ontario, Canada. Andersen-Canada audited the 1996 and 1997 audits of Sunbeam's Canadian subsidiary for inclusion in

Andersen's 1996 and 1997 audits of Sunbeam's consolidated financial statements. It also participated in the 1998 restatement of the reports of those audits.

16. Andersen-Hong-Kong was a member in or part of Andersen-Worldwide. Andersen-Hong Kong is a partnership organized under the laws of Hong Kong. Andersen-Hong Kong audited the 1996 and 1997 audits of Sunbeam's Hong Kong subsidiary for inclusion in Andersen's 1996 and 1997 audits of Sunbeam's consolidated financial statements. It also participated in the 1998 restatement of the reports of those audits.

17. Andersen-Mexico was a member in or part of Andersen-Worldwide. Andersen-Mexico is a partnership organized under the laws of Mexico. Andersen-Mexico audited the 1996 and 1997 audits of Sunbeam's Mexican subsidiary for inclusion in Andersen's 1996 and 1997 audits of Sunbeam's consolidated financial statements. It also participated in the 1998 restatement of the reports of those audits.

18. Andersen-Venezuela was a member in or part of Andersen-Worldwide. Andersen-Venezuela is a partnership organized under the laws of Venezuela. Andersen-Venezuela audited the 1996 and 1997 audits of Sunbeam's Venezuelan subsidiary for inclusion in Andersen's 1996 and 1997 audits of Sunbeam's consolidated financial statements. It also participated in the 1998 restatement of the reports of those audits.

19. Defendant Harlow is a resident of Florida and at all times material hereto was a partner in Andersen and a member in Andersen-Worldwide. He served as the engagement partner on the audits of Sunbeam's financial statements from 1993 to 1998. As engagement partner, Harlow undertook the primary responsibility for supervising the 1996 and 1997 audits of Sunbeam, including directing and overseeing the activities with respect to the Sunbeam work

performed by numerous persons at Andersen. Harlow also participated as a member of Sunbeam's due diligence team in connection with Sunbeam's acquisition of Coleman.

20. Defendant Pruitt is a resident of Florida and at all times material hereto was a partner in Andersen and a member of Andersen-Worldwide. He served as the concurring partner on the Sunbeam audits for at least 1996 and 1997. As such, he undertook responsibility for independently reviewing the Sunbeam audit work that had been conducted under Harlow's supervision and ensuring that it complied with GAAP and GAAS.

21. Defendant Denkhaus is a resident of Florida and at all times material hereto was a partner in Andersen and a member of Andersen-Worldwide. Denkhaus was Audit Division Head and manager of Andersen's audit practice for the entire South Florida region. As such, Denkhaus undertook responsibility for ensuring that the audit work performed by Andersen in the South Florida region was conducted in accordance with GAAP and GAAS. Denkhaus also served as the engagement partner on Sunbeam's ultimate restatement of its financial statements.

22. At all times material hereto, Sunbeam Corporation was headquartered in Palm Beach County, Florida. Sunbeam Corporation, through its operating subsidiaries and affiliates, manufactured, marketed, and distributed durable household and outdoor leisure consumer products through mass-market and other consumer channels. On February 6, 2001, Sunbeam and several of its affiliates filed a petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. Sunbeam has since emerged from bankruptcy and now operates under the name American Household.

23. The Coleman Company, Inc. was a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market. Coleman was a Delaware corporation, with its principal place of business in Kansas. Prior to March 30, 1998, Coleman (Parent)

Holdings Inc. ("Coleman-Parent") owned 44,067,520 shares (or approximately 82 percent) of Coleman. Coleman-Parent is a Delaware corporation, with its principal place of business in New York and is a wholly-owned subsidiary of MacAndrews and Forbes Holdings, Inc. ("MAFCO"). MAFCO is a global investment firm owned and operated by financier Ronald O. Perelman. Through its various subsidiaries and affiliates, MAFCO owns and/or controls a number of multi-billion dollar global corporations, including Revlon, Inc., the international consumer cosmetics company. MAFCO is a Delaware corporation, with its principal place of business in New York.

JURISDICTION AND VENUE

24. This Court has jurisdiction over the subject matter of this action pursuant to section 26.012(2)(a), Florida Statutes, because Plaintiff seeks damages in excess of $15,000 exclusive of interest, costs, and attorneys' fees.

25. This Court has personal jurisdiction over Andersen, Andersen-Worldwide, Andersen-Canada, Andersen-Hong Kong, Andersen-Mexico, and Andersen-Venezuela pursuant to section 48.193(1)(a), (b), and (f), Florida Statutes, because each of them, directly or through its partners, members, agents, or employees, (1) operated, conducted, engaged in, or carried on a business or business venture in Florida from which the acts and injuries complained of in this action arose, (2) committed within Florida the tortious acts complained of in this action, or (3) by an act or omission outside of Florida, caused the complained-of injuries to Plaintiffs to occur within Florida at or about the time that it was engaged in service activities in Florida or that its services were used or consumed within Florida in the ordinary course of commerce, trade, or use.

26. This Court has personal jurisdiction over Defendants Harlow, Pruitt, and Denkhaus, because each of them is a resident of Florida.

27. Venue is proper in this Court pursuant to section 47.011, Florida Statutes, because Andersen maintained an office with more than 30 employees and partners in Palm Beach County, and the cause of action accrued in Palm Beach County.

FACTUAL BACKGROUND

Andersen's and Sunbeam's Fraudulent Scheme

28. In July 1996, to address its growing financial difficulties, Sunbeam hired Albert Dunlap as Chairman and Chief Executive Officer. Dunlap was a well-known "turnaround" specialist who had a history of apparent success at other companies. He was nicknamed "Chainsaw Al" because of his practice of cutting staff and closing plants to achieve quick turnaround results.

29. Immediately after he was hired, Dunlap publicly predicted that, as a result of the Company's restructuring, Sunbeam would attain significant increases in its margins and sales. Dunlap replaced almost all of top management with his own selections, hiring Russell A. Kersh (Chief Financial Officer); Donald R. Uzzi (Vice President, Marketing and Product Development, and later Executive Vice President, Consumer Products Worldwide); Lee B. Griffith (Vice President, Sales); and Robert J. Gluck (Principal Accounting Officer).

30. Unbeknownst to the public and to Plaintiffs, Sunbeam's new senior management embarked upon a scheme designed to misrepresent Sunbeam's financial condition. Sunbeam's subsequent November 1998 restatement of its 1996 and 1997 financial statements revealed the plan that Sunbeam's management had adopted and Andersen facilitated. In 1996, Sunbeam's management, with Andersen's knowing assistance, caused Sunbeam to overstate its operating losses by at least $40 million, thereby establishing an overly bleak financial backdrop against

which the company's performance in 1997 would be measured. In 1997, by contrast, management caused Sunbeam dramatically to overstate its earnings. When 1997 operating earnings were eventually corrected and restated, they were $95 million less than the earnings originally reported — and approximately half of the figure that Andersen had previously certified.

31. In order to convince the public that Sunbeam's turnaround was real, Sunbeam needed an outside auditor to validate its financial reports. Andersen — desperate to retain a valuable client — stood ready to assist Sunbeam in its scheme.

32. After Dunlap assumed control of Sunbeam, Andersen had reason to fear that its relationship with Sunbeam was in jeopardy. Harlow, Pruitt, and Denkhaus knew that Dunlap had employed Coopers & Lybrand, one of Andersen's major competitors, as a financial consultant and independent auditor in past turnaround assignments. In fact, Dunlap had already engaged Coopers & Lybrand to assist in planning Sunbeam's massive restructuring.

33. Andersen had a significant stake in retaining Sunbeam, a long-time major client. Being dropped by a high-profile client such as Sunbeam would have been a severe blow to Andersen's reputation. The company generated substantial income for Andersen's Florida office, paying over $1 million in fees for its 1995 audit alone and providing it with substantial income from lucrative consulting assignments. Indeed, Andersen was so eager to keep Sunbeam as its client that it agreed to a 30-percent reduction in its 1996 audit fees.

34. Andersen's fees were particularly important to Andersen's partners, whose incomes were dependent on the continued business from Sunbeam. Andersen tied part of its audit partners' compensation to the solicitation and marketing of non-audit consulting services, and created other revenue-sharing arrangements between audit and consulting partner groups.

addition to overlapping partners and members, Andersen-Worldwide and Andersen shared officers in common. For example, the former CEO and Managing Partner of Andersen-Worldwide, Joseph Berardino, was also the CEO and Managing Partner of Andersen.

37. Andersen-Worldwide and Andersen also shared the same address. In its promotional literature, Andersen-Worldwide stated that its headquarters were located at 33 West Monroe Street, Chicago, Illinois 60603. That is the same address as the headquarters of Andersen.

38. Andersen-Worldwide set uniform professional standards for all its offices and required the members and partners in its international offices to agree to be bound by those professional standards and principles. Andersen-Worldwide coordinated the sharing of costs and allocation of revenues and profits among its members and partners and its offices around the world. Andersen-Worldwide operated under a worldwide tax structure. In addition, Andersen-Worldwide handled all borrowing on behalf of its international offices and maintained those offices' financial records, payroll, and employee health-benefits plans. All of Andersen's offices also shared global computer operations and training facilities.

39. The components of the Andersen Worldwide Organization ignored corporate formalities in referring to themselves and each other. For example, personnel affiliated with Andersen and Andersen-Worldwide regularly exchanged correspondence and e-mails that were labeled "Andersenwo" — short for "Andersen World Organization." Documents prepared by Andersen often bore the insignia and logos of Andersen-Worldwide, including "Andersen-Worldwide," "Andersen," and "Arthur Andersen." In its promotional literature, Andersen used the names "Andersen Worldwide," "Andersen," and "Arthur Andersen" interchangeably. In addition, Andersen sometimes used only the name "Andersen" when referring to all or part of the

43. As a result of the "one firm" approach, all actions taken by members of Andersen-Worldwide, as well as all actions taken by member firms of Andersen-Worldwide, may be attributed to Andersen-Worldwide.

44. Andersen applied the "one firm" approach in its work with Sunbeam. Top partners responsible for the Sunbeam audits and restatement were partners of Andersen and members of Andersen-Worldwide, including the engagement partner on the Sunbeam audits, Harlow, the concurring partner on those audits, Pruitt, and the Audit Division Head and manager of Andersen's audit practice for the entire South Florida region, Denkhaus.

45. In addition, various international offices of Andersen-Worldwide did substantial work for Sunbeam. Sunbeam was a multinational corporation with operations in Canada, Mexico, Venezuela, and Hong Kong. The Sunbeam engagement required the participation of auditors from each of those countries and numerous American cities. Harlow, on behalf of both Andersen and Andersen-Worldwide, developed work plans that he circulated to Andersen's branches in other countries, including the Foreign Andersen Branches. Those offices worked closely with Harlow and others within Andersen and Andersen-Worldwide to complete the tasks outlined in the plans. They sent their work product to Harlow for inclusion in an Andersen-Worldwide Management Letter, as well as for incorporation in Andersen's audit work.

The Fraudulent 1996 Financial Statements

46. In 1996, after Dunlap took control of Sunbeam, Andersen permitted Sunbeam management to employ numerous accounting practices that — as Sunbeam's November 1998 restatement of its 1996 financial statements and an SEC investigation later showed — did not

comply with GAAP. The objective of these accounting violations was to set an artificially bleak financial backdrop against which Sunbeam's 1997 performance would be judged.

47. Among other things, Sunbeam's 1996 financial statements, certified by Andersen, did not comply with the accounting principles of (1) reliability, Financial Accounting Standards Board ("FASB") Statement of Financial Accounting Concepts No. 2, §§ 58-97; Accounting Principles Board ("APB") Statement No. 4, §§ 109, 138, 189; (2) completeness, FASB Statement of Financial Accounting Concepts No. 2, §§ 79, 80; APB Statement No. 4, § 94; (3) conservatism, FASB Statement of Financial Accounting Concepts No. 2, §§ 91-97; APB Statements No. 9, §§ 35, 71; (4) neutrality, FASB Statement of Financial Accounting Concepts No. 2, §§ 98-110; or (5) relevance, FASB Statement of Financial Accounting Concepts No. 2, §§ 47, 48.

48. Among the accounting frauds that Andersen knowingly allowed was the artificial inflation of Sunbeam's reserves. Because the reserves were charged as an expense against income, this accounting practice allowed Sunbeam to overstate the 1996 loss against which its 1997 financial results would be compared.

49. For example, Sunbeam created a $338 million reserve for "restructuring" charges. As the November 1998 restatement made clear, included in these charges were costs of redesigning product packaging; costs of relocating employees and equipment; bonuses to be paid to employees who were told that they were being laid off but were asked to stay on temporarily; advertising expenses; and certain consulting fees. Because these items benefited future activities, GAAP did not permit them to be classified as restructuring charges. Andersen also permitted Sunbeam to violate GAAP by creating a $12 million reserve for a lawsuit alleging that

Sunbeam was liable for cleanup costs associated with a hazardous waste site, even though Sunbeam's estimated liability was, at best, half that amount.

50. Andersen also permitted Sunbeam improperly to write down its household products inventory in 1996. In connection with the restructuring, Sunbeam had decided to eliminate half of Sunbeam's product lines and to liquidate its inventory of those product lines. Although only half of Sunbeam's product lines were eliminated, Andersen allowed Sunbeam to apply, at year-end 1996, the special accounting treatment that it had accorded the eliminated lines to its entire inventory of household products. As a result, as the November 1998 financial restatement later showed, Sunbeam understated the balance sheet value of its inventory at year-end 1996 by approximately $2 million and overstated its 1996 loss by the same amount.

51. Andersen also allowed management improperly to recognize, as a 1996 expense, $2.3 million in 1997 advertising expenses and related costs. In addition, Andersen permitted Sunbeam to manipulate its 1996 liabilities for "cooperative advertising." It was Sunbeam's practice to fund a portion of its retailers' costs of running local promotions. As required by GAAP, Sunbeam accrued its estimated liabilities for this expense. At year-end 1996, Sunbeam set its cooperative advertising accrual at an inflated value of $21.8 million. According to the November 1998 restatement, this accrual was improper under GAAP because it was approximately 25 percent higher than the prior year's accrual amount, without a proportional increase in sales providing a basis for the increase. Ultimately, as the November 1998 restatement showed, $5.8 million of that excessive accrual was used (without disclosure) to inflate Sunbeam's 1997 income.

Andersen's 1996 Unqualified Audit Opinion

52. In the course of auditing Sunbeam's 1996 financial statements, Andersen became aware of these and other improper accounting practices. Indeed, an Andersen employee questioned a Sunbeam employee about the restructuring reserves and was told that the reserve included "everything but the kitchen sink." Harlow, the Andersen engagement partner, knew of this statement.

53. Harlow informed Kersh and Gluck, who were part of Sunbeam's senior management, that certain of the restructuring reserves that Sunbeam had established were not properly accounted for as restructuring costs under GAAP because they benefited Sunbeam's future operations. He proposed that Sunbeam reverse the accounting entries on its books and records reflecting the establishment of these reserves. However, when Kersh and Gluck refused to reverse these items, Harlow caused Andersen to acquiesce to Sunbeam's fraudulent accounting for the reserves.

54. In March 1997, Andersen issued an unqualified audit opinion regarding Sunbeam's 1996 financial statements and authorized the inclusion of its audit opinion in Sunbeam's 1996 Form 10-K filed with the SEC. A copy of the 1996 Audit Opinion is exhibit "A" attached hereto. Consistent with Andersen's internal procedures, the Audit Opinion was issued at the direction of Harlow and Pruitt. Denkhaus, as Audit Division Head and manager of Andersen's audit practice for the entire South Florida region, had undertaken responsibility for supervising the audit work performed in Andersen's South Florida region and thus also bore responsibility for the issuance of this opinion.

55. Despite its knowledge of the many improper accounting practices that Sunbeam's management had employed, Andersen's opinion stated:

> We conducted our audits in accordance with generally accepted auditing standards.
>
> Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.
>
> In our opinion, the financial statements . . . present fairly, in all material respects, the financial position of Sunbeam Corporation and subsidiaries as of December 31, 1995 and December 29, 1996, and the results of their operations and their cash flows for each of the three fiscal years in the period ended December 29, 1996 in conformity with generally accepted accounting principles.

56. Andersen also knowingly provided false descriptions of certain of Sunbeam's specific accounting practices. For example, it characterized Sunbeam's treatment of its restructuring charges in Note 2 to the audited 1996 consolidated financial statements as follows:

> In conjunction with the implementation of the restructuring and growth plan, the Company recorded a pre-tax special charge to earnings of approximately $337.6 million in the fourth quarter of 1996. This amount is allocated as follows in the accompanying Consolidated Statement of Operations: $154.9 million to Restructuring, Impairment and Other Costs as further described below; $92.3 million to Cost of Goods Sold related principally to inventory write-downs from the reduction in SKUs and costs of inventory liquidation programs; $42.5 million to Selling, General and Administrative expenses principally for increases in environmental and litigation reserves (see Notes 12 and 13) and other reserve categories; and the estimated pre-tax loss on the divestiture of the Company's furniture business of approximately $47.9 million.

In fact, however, Andersen knew that Sunbeam had improperly inflated its restructuring costs by millions of dollars.

57. Andersen's 1996 audit violated GAAS because, among other things, Andersen failed (1) to perform the audits with an attitude of professional skepticism as required by the Statement on Auditing Standards ("SAS") No. 53; (2) to conclude that there was a significant risk that Sunbeam management would intentionally distort the company's financial statements, in violation of American Institute of Certified Public Accountants Professional Standards, AU §§ 316.10 and 316.12; (3) to recognize that the accounting policies employed by Sunbeam were not acceptable in the circumstances, in violation of AU § 316.19; (4) to obtain sufficient competent evidential matter through inspection, observation, inquiries, and confirmations to afford a reasonable basis for its opinions regarding Sunbeam's financial statements, in violation of AU § 150.02; (5) to exercise due professional care in the performance of the audit, in violation of AU § 150.02; (6) to plan the work adequately to uncover the errors and irregularities in Sunbeam's accounting information, in violation of AU § 150.02; and (7) to obtain a sufficient understanding of Sunbeam's internal control structure to plan the audits and to determine the nature, timing, and extent of tests to be performed, in violation of AU § 150.02.

58. In addition, in conducting the 1996 audit, Andersen (1) improperly relied on management representations rather than applying the auditing procedures necessary to afford a reasonable basis for an opinion on Sunbeam's financial statements, in violation of SAS No. 19 (AU § 333.02); (2) failed to recognize that misstatements resulting from misapplication of GAAP, departures from fact, and omissions of necessary information, in aggregate, caused Sunbeam's financial statements to be materially misstated, in violation of SAS No. 47 (AU § 312.04); (3) failed to issue a qualified or adverse opinion, in violation of SAS No. 47 (AU § 312.31); and (4) improperly concluded that the accounting principles applied by Sunbeam were appropriate in the circumstances and that Sunbeam's financial statements were informative

of matters that could affect their use, understanding, and interpretation, in violation of SAS No. 69 (AU § 411.04(b) and (c)).

59. Harlow, Pruitt, and Denkhaus knew of or recklessly disregarded numerous red flags that should have caused them to prevent Andersen from certifying Sunbeam's 1996 financial statements. However, they did nothing to stop Andersen's unqualified 1996 audit opinion from being included in Sunbeam's Form 10-K filing with the SEC, despite the fact that they knew or were reckless in not knowing that the financial statements that Andersen had certified were materially misleading. Harlow, Pruitt, and Denkhaus also knew that the false financial statements that they had caused Andersen to issue would be incorporated into Sunbeam's consolidated financial statements and that lenders, such as MSSF, and underwriters, such as MS & Co., would rely on these financial statements.

60. In all, the 1996 financial statements audited by Andersen were materially false and misleading and overstated Sunbeam's operating losses for 1996 by at least $40 million. Moreover, Andersen's unqualified audit opinion was false in at least two material respects. First, the financial statements that Andersen audited did not "fairly" present Sunbeam's financial position in conformity with GAAP, as it represented. Second, Andersen had not, as it claimed, conducted its audit in accordance with GAAS.

The Fraudulent 1997 Financial Statements

61. The accounting frauds in which Andersen permitted Sunbeam to engage in 1997 were aimed at inflating the company's earnings. To accomplish this — as the November 1998 restatement and an SEC investigation subsequently showed — Andersen allowed Sunbeam to

record fraudulent sales, to account improperly for one-time events, and improperly to use "cookie-jar" reserves, all in violation of GAAP.

62. Among other things, Sunbeam's 1997 financial statements, certified by Andersen, did not comply with the accounting principles of (1) reliability, FASB Statement of Financial Accounting Concepts No. 2, §§ 58-97; APB Statement No. 4, §§ 109, 138, 189; (2) completeness, FASB Statement of Financial Accounting Concepts No. 2, §§ 79, 80; APB Statement No. 4, § 94; (3) conservatism, FASB Statement of Financial Accounting Concepts No. 2, §§ 91-97; APB Statements No. 9, §§ 35, 71; (4) neutrality, FASB Statement of Financial Accounting Concepts No. 2, §§ 98-110; or (5) relevance, FASB Statement of Financial Accounting Concepts No. 2, §§ 47, 48.

63. One of the revenue inflation tactics permitted by Andersen in 1997 was improper accounting for "bill-and-hold" sales. A bill-and-hold sale occurs when a seller bills a customer for a purchase while retaining the merchandise for later delivery. During 1997, Dunlap's management team offered financial incentives to various customers to purchase products. Under GAAP, revenue under bill-and-hold transactions may be recognized only if, among other things, the buyer — not the seller — requests a sale on that basis. As Andersen subsequently learned in the course of its 1997 audit, the purported bill-and-hold customers had not requested that treatment, and, in numerous cases, the risks of ownership and legal title were never passed to the customer. Sunbeam added more than $29 million to its 1997 sales and $4.5 million to income by improperly accounting for these transactions.

64. Another income-boosting tactic that Andersen sanctioned was Sunbeam's improper use of its inflated 1996 reserves, which artificially increased the company's 1997 income by almost $5 million. Andersen also let Sunbeam improperly treat $19 million that it received from

the sale of discounted and obsolete inventory as ordinary income. Although the recognition of that revenue was permitted under GAAP, Sunbeam was required to disclose that revenue as a non-recurring event. Sunbeam failed to do so, again with Andersen's blessing.

65. In addition, Andersen and Andersen-Hong Kong allowed Sunbeam's Hong Kong subsidiary to book sales that violated applicable accounting principles because they included an unlimited right to return unsold merchandise and because the amount of future returns on such sales could not reasonably be estimated. On Andersen's and Andersen-Hong Kong's watch, Sunbeam's Hong Kong subsidiary improperly recorded sales revenue of $8.6 million from various sales made during the fourth quarter of 1997. Andersen and Andersen-Hong Kong also permitted Sunbeam's Hong Kong subsidiary to under-provide for warranty and product liability expenses; improperly to include in 1997 net sales of $0.5 million of goods that were not shipped until 1998; and improperly to defer 1997 advertising costs to future periods.

66. Andersen and Andersen-Canada also permitted Sunbeam's Canadian subsidiary improperly to book sales that did not meet the applicable sales recognition criteria because they included an unlimited right to return unsold merchandise and because the amount of future returns on such sales could not reasonably be estimated.

67. Andersen and Andersen-Mexico also permitted Sunbeam to employ several improper accounting tricks with respect to its Mexican subsidiary. Sunbeam's Mexican subsidiary engaged in $900,000 in bill-and-hold transactions in 1997 that should not have been recognized as income until 1998. In addition, the subsidiary's inventory was overvalued by $2 million, and the financial statements for Sunbeam's Mexico operations failed to include a $3 million expense for the profit-sharing obligations of that business.

68. Andersen and Andersen-Venezuela also permitted Sunbeam's Venezuela subsidiary improperly to value its inventory of raw materials. Its books reflected purchases of raw materials that were held at various suppliers. Andersen failed to confirm that the booked amounts represented materials that were actually in the possession of suppliers. Had it done so, it would have discovered that the materials did not exist.

69. One of the most egregious accounting abuses that Andersen permitted in 1997 was to allow Sunbeam to record a profit on a sham sale of its warranty and spare parts business to its spare parts provider, EPI Printers, Inc. Prior to 1997, EPI satisfied spare parts and warranty requests of Sunbeam customers on a fee basis. To raise additional revenue at year-end 1997, however, Sunbeam entered into a sham "sale" of the warranty and spare parts inventories already in EPI's warehouse. As a result of the transaction, management fraudulently recognized millions of dollars of bogus sales and profits in 1997.

70. The problem with the EPI transaction was that the transaction was not a sale at all, for at least three reasons. First, there was never a final agreement between Sunbeam and EPI. The closest the parties ever came to a meeting of the minds was the execution of a mere "agreement to agree." Second, by its terms, the proposed sale was to terminate on January 23, 1998, with no payment obligation on the part of EPI, absent a subsequent agreement between Sunbeam and EPI on the value of the inventory. In other words, the sale could be completely unwound just after year-end without EPI ever having paid a cent. Third, Sunbeam had agreed as part of the proposed sale to pay certain fees to EPI and to guarantee a 5-percent profit to EPI on the eventual resale of the inventory. In essence, even after the proposed sale, EPI remained a contractor compensated by Sunbeam on a fee basis for its services. In sum, the relationship between EPI and Sunbeam was not materially altered by the purported "sale."

71. As a result of these and other violations of accounting standards, in 1997, Sunbeam reported $186 million in income, much of which was, according to the November 1998 restatement, improper under GAAP. In all, the overstatements included over $90 million of improper net income, including approximately $10 million from a sham sale of inventory to a contractor, approximately $4.5 million from non-GAAP bill-and-hold sales, approximately $35 million in income derived from the use of non-GAAP reserves and accruals taken at year-end 1996, and approximately $6 million from improper revenue recognition.

Sunbeam's Purchase of Coleman

72. Toward the end of 1997, Sunbeam engaged MS & Co. to advise it with respect to the possible sale of its core businesses and/or the initiation of one or more major acquisitions. Ultimately, Coleman, Signature Brands, and First Alert were identified as three companies interested in being acquired by Sunbeam.

73. On January 28, 1998, Sunbeam announced its financial results for 1997, reporting total revenues of $1.168 billion, and total earnings from continuing operations of $189 million (or $1.41 per share).

74. On February 3, 1998, Harlow met with key officers of Sunbeam to discuss the acquisition of Coleman and its financial impact on Sunbeam. By that time, as a result of reviewing Sunbeam's 1997 financial statements in the course of its audit, Harlow and Andersen knew that Sunbeam's 1997 results were false.

75. On February 20, 1998, Andersen agreed to act as a Sunbeam financial advisor and perform financial due diligence in connection with Sunbeam's acquisition of Coleman, First Alert, and Signature Brands, further compromising Andersen's duty as an auditor to maintain its

independence from its client. In agreeing to undertake that assignment, Andersen became an active member of the team working to assist Sunbeam in its acquisitions. Harlow and other Andersen employees who worked on Sunbeam's audit also served as members of Sunbeam's due diligence team.

76. On February 27, 1998, Sunbeam's Board of Directors met in New York to discuss Sunbeam's possible purchase of Coleman. During the February 27, 1998 meeting, MS & Co. provided Sunbeam's Board of Directors with a written "fairness" opinion regarding the fair acquisition price of Coleman. The opinion made clear that, even in the context of issuing a fairness opinion on the Coleman acquisition price, MS & Co. had relied upon Andersen's representations regarding Sunbeam's financial health. The fairness opinion explicitly stated that MS & Co. had reviewed "certain publicly available financial statements and other information" of Sunbeam. The opinion advised that MS & Co. had "assumed and relied upon without independent verification the accuracy and completeness of the information reviewed by us for the purposes of this opinion."

77. The Sunbeam Board of Directors approved the Coleman acquisition. That same day, Coleman-Parent — the 82-percent shareholder of Coleman — agreed to sell Coleman to Sunbeam for a purchase price of $2.2 billion. Sunbeam agreed to provide Coleman-Parent with $160 million in cash, to assume $584 million in Coleman-related debt, and to provide Coleman-Parent with 14,099,749 shares of Sunbeam stock. Sunbeam also agreed to purchase Signature Brands and First Alert for approximately $300 million.

Andersen's 1997 Unqualified Audit Opinion

78. In the first week of March 1998, shortly after the agreement for Sunbeam's purchase of Coleman was signed, but before the transaction closed, Andersen rendered an unqualified audit opinion for Sunbeam's 1997 financial statements. With Andersen's express consent, management included that opinion in Sunbeam's 1997 Form 10-K filed with the SEC on March 6, 1998.

79. Andersen was well aware of the potential for fraud in Sunbeam's 1997 books, including the risk that Sunbeam management would attempt to claim profits and revenue on transactions before the earnings process was completed. Harlow had specifically advised Andersen's foreign offices (including Andersen-Canada, Andersen-Hong Kong, Andersen-Mexico, and Andersen-Venezuela), for example, that Dunlap had made promises to the public regarding earnings-per-share to be attained in 1997, and that management had a vested interest in achieving the promised earnings levels because management's primary form of compensation was based on the company's stock price. Harlow had also noted the presence of the possibility of a third-party purchase of the company's stock or assets.

80. In the course of its audit of Sunbeam's 1997 financial records, Andersen learned that Harlow's concerns were well-founded. It discovered that Sunbeam had improperly accounted for certain bill-and-hold sales, had misused its reserves, and had overvalued its inventories. Harlow discussed these problems with Sunbeam's senior management and proposed that Sunbeam reverse these improper entries.

81. For example, as part of Andersen's 1997 year-end audit, Harlow raised with Sunbeam's management the improper accounting treatment accorded to the EPI transaction. He proposed that Sunbeam reverse the accounting entries reflecting the revenue recognition for that

transaction, pointing out that the profit guarantee and the indeterminate value of the contract rendered revenue recognition inconsistent with GAAP. Kersh and Gluck refused to reverse the transaction. Harlow caused Andersen to acquiesce in management's actions. As a result, Sunbeam's 1997 audited financial statements reflect almost $10 million of false profit on the sham EPI transaction.

82. Harlow also raised with Kersh and Gluck Sunbeam's inappropriate use of reserves and recorded the full $4.9 million of costs that Sunbeam had improperly offset against reserves on the list of proposed audit adjustments. Kersh and Gluck, however, refused to make the proposed adjustments. Harlow again failed to insist on honest, accurate accounting. Instead, he caused Andersen to acquiesce in Sunbeam's refusal to reverse these improper reductions in current-period costs, although he knew or recklessly disregarded facts indicating that this improper accounting would materially distort Sunbeam's reported results of operations. In fact, this use of reserves increased 1997 fourth-quarter income by almost 8 percent.

83. Harlow also proposed adjustments to reverse $2.9 million related to Sunbeam's inventory overvaluation by its Mexican subsidiary and $563,000 related to various miscellaneous items. Kersh and Gluck refused to make appropriate adjustments, and Harlow again caused Andersen to acquiesce in their refusal to reverse these errors — despite the fact that these items added over 5.4 percent to Sunbeam's reported earnings for the fourth quarter and contributed to the larger misstatement of Sunbeam's reported results of operations stemming from the fraudulent conduct of Sunbeam's management.

84. These improper accounting techniques raised clear red flags that should have — and must have — alerted Andersen to the need for greater scrutiny regarding all of Sunbeam's revenue recognition decisions. At a minimum, Andersen should have been on guard as to all of

the proposed audit adjustments that Harlow initially proposed but later rejected, and any previously recognized improper items that were ultimately dismissed as "immaterial."

85. Despite these clear red flags, Andersen once again gave Sunbeam a clean bill of financial health, issuing an unqualified audit opinion regarding Sunbeam's 1997 financial statements and authorized the inclusion of its audit opinion in Sunbeam's 1997 Form 10-K filed with the SEC. A copy of the 1997 Audit Opinion is exhibit "B" attached hereto. The Audit Opinion is signed by Andersen. Consistent with Andersen's internal procedures, the Audit Opinion was issued at the direction of Harlow and Pruitt. Denkhaus, as Audit Division Head and manager of Andersen's audit practice for the entire South Florida region, had undertaken responsibility for supervising the audit work performed in Andersen's South Florida region and thus also bore responsibility for the issuance of this opinion.

86. In this opinion, Andersen stated:

> We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.
>
> In our opinion, the financial statements . . . , present fairly, in all material respects, the financial position of Sunbeam Corporation and subsidiaries as of December 29, 1996 and December 28, 1997, and the results of its operations and its cash flows for each of the three fiscal years in the period ended December 28, 1997 in conformity with generally accepted accounting principles.

87. In fact, Andersen's 1997 audit violated GAAS because, among other things, Andersen had failed (1) to perform the audits with an attitude of professional skepticism as

required by SAS No. 53; (2) to reach a conclusion that there existed a significant risk of intentional distortion of financial statements by Sunbeam management, in violation of AU §§ 316.10 and 316.12; (3) to recognize that the accounting policies employed by Sunbeam were not acceptable in the circumstances, in violation of AU § 316.19; (4) to obtain sufficient competent evidential matter through inspection, observation, inquiries, and confirmations to afford a reasonable basis for its opinions regarding Sunbeam's financial statements, in violation of AU § 150.02; (5) to exercise due professional care in the performance of the audit, in violation of AU § 150.02; (6) to plan the work adequately to uncover the errors and irregularities in Sunbeam's accounting information, in violation of AU § 150.02; and (7) to obtain a sufficient understanding of Sunbeam's internal control structure to plan the audits and to determine the nature, timing, and extent of tests to be performed, in violation of AU § 150.02.

88. In addition, in conducting the 1997 audit, Andersen (1) improperly relied on management representations rather than applying the auditing procedures necessary to afford a reasonable basis for an opinion on Sunbeam's financial statements, in violation of SAS No. 19 (AU § 333.02); (2) failed to recognize that misstatements resulting from misapplication of GAAP, departures from fact and omissions of necessary information, in aggregate, caused Sunbeam's financial statements to be materially misstated, in violation of SAS No. 47 (AU § 312.04); (3) failed to issue a qualified or adverse opinion, in violation of SAS No. 47 (AU § 312.31); (4) improperly concluded that the accounting principles applied by Sunbeam were appropriate in the circumstances and that Sunbeam's financial statements were informative of matters that could affect their use, understanding and interpretation, in violation of SAS No. 69 (AU § 411.04(b) and (c)); and (5) failed to report that a change in the application of accounting principles in Sunbeam's 1997 financial statements had materially affected their

comparability with the financial statements for prior periods, especially 1996, due to a different treatment of sales and reserves in those periods, in violation of SAS Nos. 1 and 43 (AU § 420.02).

89. Harlow, Pruitt, and Denkhaus knew of or recklessly disregarded numerous red flags that should have caused them to withhold Andersen's unqualified certification of Sunbeam's 1997 financial statements. However, Harlow, Pruitt, and Denkhaus did nothing to stop Andersen's unqualified 1997 audit opinion from being included in Sunbeam's Form 10-K filing with the SEC, despite the fact that they knew or were reckless in not knowing that the financial statements that Andersen had certified were materially misleading. Harlow, Pruitt, and Denkhaus also knew that the false financial statements that they had caused Andersen to issue would be incorporated into Sunbeam's consolidated financial statements and that MSSF, as a lender, and MS & Co., as an underwriter, would rely on these financial statements.

90. The Foreign Andersen Branches also knew of or recklessly disregarded the fact that the financial statements of Sunbeam's foreign subsidiaries, which they had reviewed and audited, were not prepared in accordance with GAAP or reviewed in accordance with GAAS. The Foreign Andersen Branches nevertheless certified that their audit work complied with GAAP and GAAS. Each of the Foreign Andersen Branches also knew that the false financial statements that they had audited would be incorporated into Sunbeam's consolidated financial statements and that lenders, such as MSSF, and underwriters, such as MS & Co., would rely on these financial statements.

91. In all, the 1997 financial statements audited by Andersen reported operating income of $186 million — an overstatement of at least 50 percent. Like its 1996 unqualified audit opinion, Andersen's 1997 opinion was false in two material respects. First, the financial

statements Andersen audited did not "fairly" present Sunbeam's financial position in conformity with GAAP, as it represented. Second, Andersen had not, as it claimed, conducted its audit in accordance with GAAS.

Reliance by Plaintiffs on Andersen's Unqualified Audit Opinions

92. After it agreed to acquire Coleman, First Alert, and Signature Brands, Sunbeam needed to raise approximately $2.3 billion to refinance existing debt and to fund these acquisitions. To accomplish these financing objectives, Sunbeam's management elected to issue $500 million in subordinated convertible notes (an amount later increased to $750 million) (the "Convertible Note Offering") and to enter into a new $2 billion senior credit agreement (later reduced to $1.7 billion) with secured lenders (the "Bank Facility"). MS & Co. served as the lead underwriter for the Convertible Note Offering. MSSF served as the Syndication Agent for the Bank Facility and coordinated the Bank Facility with First Union and Bank of America, Sunbeam's other secured lenders.

93. Andersen, Harlow, Pruitt, and Denkhaus knew of these proposed financing arrangements. Specifically, they knew that the Coleman and other acquisitions would not close unless Sunbeam secured the financing necessary to cover the acquisition prices. They knew that MS & Co. would underwrite a notes offering that Sunbeam would use to finance the transaction. Moreover, they knew that MSSF was a principal participant in the Bank Facility, and that MSSF would be relying on the representations Andersen made regarding Sunbeam's financial condition.

94. In addition, Andersen, Harlow, Pruitt, and Denkhaus knew that documents issued in connection with the Convertible Note Offering clearly stated that "[Sunbeam] is currently

negotiating the terms of the New Credit Facility with a group of banks which [Sunbeam] expects will provide for borrowings by [Sunbeam] or one or more of its subsidiaries in the aggregate principal amount of $2.0 billion. *The New Credit Facility is being arranged by an affiliate of [Morgan Stanley].*" Andersen, Harlow, Pruitt, and Denkhaus knew that the affiliate referred to in this document was MSSF.

95. In addition to their knowledge of MS & Co.'s and MSSF's roles in Sunbeam's acquisitions, Andersen, Harlow, Pruitt, and Denkhaus had many reasons to know that MS & Co. and MSSF would rely on Sunbeam's audited financial statements. To begin with, Andersen, Harlow, Pruitt, and Denkhaus, in their substantial experience working on multi-billion dollar mergers and acquisitions, understood that Sunbeam's lenders and underwriters would rely on an auditor's certification of Sunbeam's financial condition. As would any lender engaged in a deal of this scale, MSSF looked to the financial statements provided by Sunbeam and audited by Andersen to evaluate annual cash flow and to assess Sunbeam's ability, following the acquisition, to promptly and comfortably pay interest and, ultimately, pay back the loan. Indeed, reasonable and professional lenders such as MSSF, Bank of America, and First Union would not have loaned over $1 billion dollars to any person or entity without strong assurance that their money would be returned. Andersen, Harlow, Pruitt, and Denkhaus knew that MS & Co., the underwriter of the Convertible Note Offering, would similarly refuse to underwrite a $750 million offering without strong assurance that Sunbeam's financial condition was sound.

96. Not only were Andersen, Harlow, Pruitt, and Denkhaus aware that any prudent business in MS & Co.'s or MSSF's position *would* rely on Andersen's financial statements, but they also knew that MS & Co. and MSSF *were* specifically relying on Andersen's certifications. In a letter dated March 11, 1998, MS & Co. wrote a letter to Andersen — to the attention of

Harlow — notifying Andersen that MS & Co. would be "reviewing certain information relating to Sunbeam that will be included in the Offering Memorandum." MS & Co. requested that Andersen deliver to it a "'comfort' letter concerning the financial statements" of Sunbeam.

97. In response to this request, Andersen expressly represented to MS & Co. that Sunbeam's financial statements were truthful and that Andersen's unqualified audit opinions were reliable. On March 19, 1998, Andersen sent MS & Co. a "comfort" letter stating that, in Andersen's opinion, "the consolidated financial statements [for 1996 and 1997] audited by [Andersen] and included in the Offering Memorandum comply as to form in all material respects with the applicable accounting requirements of the [Securities Act of 1933] and the related published rules and regulations." Andersen knew that MS & Co. would rely on the comfort letters in deciding to underwrite the Convertible Note Offering. Andersen also knew that Sunbeam's acquisitions were contingent on Sunbeam's obtaining the necessary financing for the transactions, including the underwriting of the convertible notes. Andersen knew that, absent its representations, MS & Co. would not have underwritten the notes, and therefore the financing, including MSSF's loan to Sunbeam, would not have gone forward. A copy of the March 19, 1998 letter is exhibit "C" attached hereto.

98. Harlow and Pruitt authorized the issuance of the March 19, 1998 comfort letter, which was signed by Andersen. Upon information and belief, Denkhaus knew of this letter and did nothing to stop its issuance.

99. In a follow-up letter to MS & Co. dated March 25, 1998, Andersen reaffirmed its previous representation, stating that it "reaffirm[ed] as of the date hereof (and as though made on the date hereof) all statements made in that letter." Again, Andersen knew that MS & Co. would rely on the comfort letters in deciding to underwrite the Convertible Note Offering and that,

108. Sunbeam closed its acquisition of Coleman on March 30, 1998. On that date, Sunbeam, through a wholly owned subsidiary, acquired approximately 81 percent of the then-outstanding shares of Coleman common stock. These shares were acquired by Sunbeam in exchange for 14,099,749 shares of Sunbeam's common stock and approximately $160,000,000 in cash. In addition, Sunbeam assumed or repaid approximately $1,016,000,000 in debt belonging to Coleman and Coleman-Parent. Included in the repaid debt portion of the transaction was an immediate cash payment by Sunbeam to Coleman-Parent of $590 million.

109. MSSF and Sunbeam closed the Bank Facility on March 31, 1998. In accordance with the terms of the Bank Facility, MSSF — unaware of the falsity of Sunbeam's financial statements and Andersen's audit reports and in justifiable reliance on Andersen's representations — loaned Sunbeam $680 million in immediately available funds to be used for the acquisitions. First Union, which served as the Administrative Agent for the Bank Facility, loaned Sunbeam an additional $510 million. Bank of America, which served as the Documentation Agent for the Bank Facility, loaned Sunbeam an additional $510 million.

110. As Andersen, Harlow, Pruitt, and Denkhaus knew, MS & Co. had relied on Sunbeam's 1996 and 1997 financial statements in deciding to underwrite the Convertible Note Offering. Andersen, Harlow, Pruitt, and Denkhaus further knew that MSSF had relied on Sunbeam's 1996 and 1997 financial statements in deciding to loan Sunbeam $680 million. Moreover, they knew that the Sunbeam-MSSF credit agreement provided that a condition precedent to MSSF's obligations under the agreement was the absence of any event, change, or development that would have a material adverse effect on the business, results of operation, or financial condition of Sunbeam. Andersen knew that an additional condition precedent to

MSSF's obligations was the absence of any material misrepresentation or omissions in Sunbeam's SEC filings, including Andersen's 1996 and 1997 audit reports in the Form 10-Ks.

111. But for Andersen's fraud and its failure to issue qualified or adverse reports exposing the falsity of Sunbeam's financial statements, MS & Co. and MSSF would have had notice of an adverse material change affecting Sunbeam before funding, and of a material misstatement in Sunbeam's SEC filings. Not only would MS & Co. never have agreed to underwrite the Convertible Note Offering, but MSSF's obligation to loan Sunbeam $680 million also would have been discharged by the failure of conditions precedent to its obligations under the credit agreement. Andersen's fraud directly caused the extensive losses that Plaintiffs suffered.

112. Andersen's fraud was knowingly caused by Harlow, Pruitt, and Denkhaus. Harlow, as engagement partner, and Pruitt, as concurring partner, had direct responsibility for directing, managing, and approving of the work that was done on the Sunbeam audits. They caused Andersen to represent to MS & Co. and MSSF that Sunbeam's financial statements were reliable. Denkhaus, who was a senior partner of Andersen and a member of Andersen-Worldwide, as well as the Audit Division Head and manager of Andersen's audit practice for the entire South Florida region, had undertaken responsibility for supervising and monitoring the work that was performed at Harlow's and Pruitt's direction. Harlow, Pruitt, and Denkhaus each knew of or recklessly disregarded the accounting violations contained in Sunbeam's 1996 and 1997 financial statements. They each also knew that the financial statements that they had caused Andersen to certify would be relied upon by MS & Co. in deciding to underwrite the Convertible Note Offering and by MSSF in deciding to loan Sunbeam hundreds of millions of dollars.

113. This fraud was also knowingly perpetrated by the Foreign Andersen Branches. Each of the Foreign Andersen Branches reviewed and audited financial statements prepared for Sunbeam's foreign subsidiaries for 1997, all of which contained significant accounting violations. Each of the Foreign Andersen Branches knew of or recklessly disregarded the fact that the financial statements that they had reviewed and audited were not prepared in accordance with GAAP or reviewed in accordance with GAAS, but nevertheless certified that their audit work complied with these standards. Each of the Foreign Andersen Branches also knew that the financial statements that they had audited would be incorporated into Sunbeam's consolidated financial statements and that lenders, such as MSSF, and underwriters, such as MS & Co., would rely on these financial statements.

114. The fraud was also knowingly perpetrated by Andersen-Worldwide through the actions of its members, including Harlow, Pruitt, and Denkhaus, and its member firms, including Andersen and the Foreign Andersen Branches.

Andersen's Improper Accounting and Misrepresentations Are Revealed

115. In an April 3, 1998 conference call with securities analysts, Sunbeam revealed that sales for the first quarter of 1998 were 5 percent below reported sales for the same period of the prior year.

116. On April 22, 1998, a class of Sunbeam shareholders sued Sunbeam and its senior officers in the United States District Court for the Southern District of Florida, alleging that the company had violated the securities laws by issuing materially false and misleading statements regarding Sunbeam's financial condition. Andersen was subsequently added as a defendant in that lawsuit.

117. On June 8, 1998, an article was published in Barron's that raised serious questions regarding Sunbeam's apparent success under Dunlap, suggesting that it was the result of "accounting gimmickry." On June 15, 1998, Sunbeam's Board announced that it had removed Dunlap as Chairman and CEO. On June 17, 1998, Sunbeam received a letter from the SEC informing it that the SEC had initiated an investigation into the company.

118. Andersen continued to stand behind its fraudulent audit opinions. On June 15, 1998, Andersen allowed Sunbeam's Board of Directors to assert that Andersen had "assured the Board that Sunbeam's audited financial statements [were] accurate in all material respects." Andersen made this statement knowing that it was false. Harlow, Pruitt, and Denkhaus likewise knew the statement was false, but caused Andersen to make this statement. It was not until June 25, 1998 — when Andersen withheld its consent for use of its 1997 audit opinion in a registration statement that was to have been filed with the SEC — that Andersen gave any hint that its unqualified audit opinions were unreliable.

119. On June 30, 1998, Sunbeam announced that the Audit Committee of its Board of Directors would conduct an inquiry into the accuracy of its 1997 financial statements. The Audit Committee subsequently retained Deloitte & Touche LLP to assist in the review, in addition to Andersen. Sunbeam stated that "pending the completion of the review, its 1997 financial statements and the report of Arthur Andersen LLP should not be relied upon." Sunbeam added that the review "could result in a restatement of the 1997 financial statements and the first quarter 1998 Form 10-Q."

120. On August 6, 1998, Sunbeam announced that its Audit Committee had determined that Sunbeam would be required to restate its audited financial statements for 1997 and possibly for 1996, as well as its unaudited financial statements for the first quarter of 1998. On

October 20, 1998, Sunbeam and Andersen announced a restatement of its 1996 and 1997 financial statements.

121. Holders of the convertible notes sued Sunbeam on October 30, 1998, and Andersen was later named as a defendant in that suit.

122. On November 12, 1998, Sunbeam released its restated 1996 and 1997 financial results, again audited by Andersen. The restated 1996 financial statements reported operating losses for 1996 that were approximately $40 million less than originally reported, losses from continuing operations that were approximately $26 million less than previously reported and net losses that were approximately $20 million less than previously reported.

123. For 1997, the restated financial statements reported operating earnings that were approximately $95 million less than originally reported, earnings from continuing operations that were approximately $70 million less than previously reported and net earnings that were approximately $70 million less than previously reported. The new operating income figure for 1997 was approximately half the amount that Andersen had previously certified.

Sunbeam Declares Bankruptcy

124. On February 6, 2001, as a direct result of the deceit that Andersen had committed, with the knowledge and assistance of the other Defendants named in this Complaint, Sunbeam and several of its subsidiaries were forced to seek relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. As part of the bankruptcy court-approved reorganization plan, MSSF's $680 million loan to Sunbeam was discharged in full, and MSSF received Sunbeam stock valued at a fraction of the original loan. In addition, as a result of Andersen's actions, the convertible notes issued by Sunbeam and held

by MS & Co. had been rendered substantially less valuable. The shareholders of Sunbeam saw the value of their stock decline by over $5 billion from its peak in early March 1998 to February 5, 2001.

Subsequent Censure of Andersen's Conduct

125. Both courts and regulators have scrutinized Andersen's facilitation of Sunbeam's fraud. In their judgments against the firm and Harlow, they have denounced Andersen's conduct.

126. In December 1999, for example, the United States District Court for the Southern District of Florida, which presided over the Sunbeam shareholders' class action securities fraud lawsuit, refused to dismiss any claims against Andersen. The court found that the plaintiff class had, by alleging the material misstatements made by Andersen in its unqualified audit opinions, describing the violations of GAAP and GAAS that had occurred, and setting forth why the statements in the audit opinions were false and misleading, pled fraud against Andersen with sufficient particularity to satisfy Federal Rule of Civil Procedure 9(b)'s pleading requirements. *See In re Sunbeam Sec. Litig.*, 89 F. Supp. 2d 1326, 1344 n.11 (S.D. Fla. 1999).

127. The *In re Sunbeam* court also rejected Andersen's argument that the plaintiffs had merely alleged that Andersen violated GAAP and GAAS and had not set forth facts sufficient to show that it acted with knowing fraudulent intent or recklessness. The court ruled that Andersen's arguments "fail[ed] to appreciate the breadth" of the plaintiffs' allegations, which described much more than "innocent auditing and accounting slip-ups." *In re Sunbeam Sec. Litig.*, 89 F. Supp. 2d at 1344. The court concluded (*id.* at 1344-45) that the following facts established that Andersen had acted with requisite scienter:

- Andersen violated a GAAS requirement that it have a sufficient understanding of Sunbeam's internal control structure;
- Andersen failed to adhere to GAAS by not identifying numerous fraud risk factors suggesting that there was a significant risk that Sunbeam had fraudulently misstated its financials;
- Andersen was alerted by Sunbeam employees to material misstatements in Sunbeam's financial statements;
- Andersen failed to stop Sunbeam from recognizing, in violation of GAAP, revenues from guaranteed sales and consignment transactions, with the result that its sales were substantially overstated;
- Andersen ignored a June 8, 1998, Barron's article that accused Sunbeam of accounting improprieties, continued to stand behind its audit opinions, and did not given any hint that its unqualified audit opinions were unreliable until June 25, 1998, when it withheld consent to the use of its audit opinion in an SEC registration statement; and
- The sheer magnitude of the restatements of Sunbeam's financial statements indicated that Andersen was at least severely reckless not to know that its unqualified audit opinions were misleading.

128. The United States District Court for the Southern District of Florida concluded that these facts were sufficient to "demonstrate that Arthur Andersen acted with severe recklessness in issuing its misleading Unqualified Audit Opinion," and therefore supported a valid federal securities law fraud claim. *In re Sunbeam Sec. Litig.*, 89 F. Supp. 2d at 1344. Andersen subsequently settled this lawsuit in 2001 for $110 million.

129. On May 15, 2001, the SEC filed a civil action in the United States District Court for the Southern District of Florida against five former Sunbeam officers and Harlow, Andersen's engagement partner. The SEC alleged that Harlow, by causing Andersen to issue materially incorrect audit opinions, had engaged in fraud in violation of the federal securities laws.

130. In January 2003, Harlow consented to an injunction and agreed not to contest the SEC's charges against him. In the SEC's consent order, it made numerous factual findings

regarding Harlow's improper conduct. It concluded that Harlow had proposed, on many occasions, adjustments to rectify Sunbeam's false financial statements. After management refused to make these adjustments, Harlow improperly acceded to that decision. *In re Phillip E. Harlow*, Rel. No. 34-47261, 2003 WL 169818, at *1-*3 (SEC Rel. Jan. 27, 2003).

131. The SEC's assessment of Harlow's conduct was damning. Among many other things, it concluded that Harlow (1) "failed to exercise professional skepticism when performing audit procedures and gathering and analyzing audit evidence," (2) "accepted uncorroborated representations of Sunbeam's management in lieu of performing appropriate audit procedures," (3) "failed to exercise due professional care in performing the audit and preparing the audit report," (4) "failed to perform sufficient audit procedures to determine whether the financial statements were in conformity with GAAP," even after he had "identified a number of audit risks and accounting issues associated with the Sunbeam engagement," and (5) "failed to obtain sufficient competent evidential matters through inspection, observation, inquiries, and confirmation to afford a reasonable basis for an audit opinion." *Id.* at *4. Based on these factual findings, the Commission concluded that the 1996 and 1997 financial statements that Harlow had audited were not in conformity with GAAP, and the audit was not performed in accordance with GAAS. *Id.* (citing AU §§ 410, 411, 508.07).

132. Other participants in the Coleman acquisition have also sued Andersen for its fraudulent conduct. On June 8, 2001, Coleman-Parent sued Andersen and Harlow for fraudulent misrepresentation, fraudulent inducement to contract (conspiracy and concerted action), and negligent misrepresentation. *See Coleman (Parent) Holdings, Inc. v. Arthur Andersen LLP*, No. 502001CA006062XXOCAN (Fla. 15th Cir. Ct., filed June 8, 2001). That case was assigned to Judge Stephen A. Rapp. Andersen and Harlow moved to dismiss. However, after an

October 29, 2001, hearing on their motion, Andersen and Harlow answered Coleman-Parent's complaint. On March 15, 2002, the complaint in this matter was amended to add Andersen-Worldwide, Andersen-Canada, Andersen-Hong Kong, Andersen-Mexico, Andersen-Venezuela, and Andersen's United Kingdom branch as defendants. *See* Amended Complaint, *CPH v. Andersen* (filed Mar. 15, 2002). The Court denied Andersen-Worldwide's Motion To Dismiss on June 19, 2002, and the matter was voluntarily dismissed on January 28, 2003, after the parties had settled for an undisclosed amount.

Tolling Agreements

133. On March 8, 2001, Morgan Stanley, MSSF, and all of "their respective successors, predecessors, subsidiaries, affiliates, and assigns" executed the first of a series of tolling agreements with the Defendants. Additional tolling agreements were executed on April 4, 2001, April 19, 2001, April 24, 2001, April 23, 2002, October 16, 2002, April 10, 2003, and October 21, 2003. Copies of these Tolling Agreements are exhibits "E" through "L" attached hereto.

134. These agreements were signed by Andersen. The individuals that signed the agreements on behalf of Andersen represented that they had the "authority to bind and act on behalf of" Andersen and all of its "successors, predecessors, subsidiaries, affiliates, assigns, partners, employees, agents, officers, or directors."

135. Taken together, these agreements show that, in consideration for forbearance from commencing an action against the Defendants, Andersen agreed to toll from March 8, 2001, to March 1, 2004, the statute of limitations on all Morgan Stanley entities' claims against Andersen, its partners and agents (including Harlow, Pruitt, and Denkhaus), and its affiliates (including

Andersen-Worldwide and the Foreign Andersen Branches) that arose out of Andersen's audits of Sunbeam's financial statements.

COUNT I

Fraudulent Misrepresentation

136. Paragraphs 1 through 135 are repeated and realleged as if set forth herein.

137. Andersen consented to the publication of its audit reports to the public and business world by permitting Sunbeam to include them in Sunbeam's SEC filings. Given that publication, Andersen knew and intended that the public — including MS & Co. and MSSF — would rely on Andersen's representations.

138. Andersen knew of Sunbeam's proposed financing arrangements and of MS & Co.'s and MSSF's roles in Sunbeam's acquisitions. Andersen also knew that MS & Co. and MSSF would rely and had relied upon Andersen's 1996 and 1997 unqualified audit opinions for the particular purpose of determining whether to underwrite the Convertible Note Offering and to provide Sunbeam with a loan for $680 million.

139. Andersen itself invited MS & Co to rely on its unqualified audit opinions, expressly representing to MS & Co., in letters dated March 19, 1998, and March 25, 1998, that Sunbeam's financial statements were truthful and that Andersen's unqualified audit opinions were reliable. Andersen knew that, absent its representations, MS & Co. would not have underwritten the notes, and therefore the financing, including MSSF's loan to Sunbeam, would not have gone forward. In addition, Andersen's and Andersen-Worldwide's members, partners, and employees, including Harlow, participated in meetings and telephone calls in which they represented to MS & Co. and MSSF that Sunbeam's audited financial statements were accurate.

140. Andersen knew that Sunbeam's financial statements were replete with accounting irregularities and that the information in Sunbeam's 1996 and 1997 financial statements and in Andersen's 1996 and 1997 unqualified audit opinions was materially false and misleading.

141. Although Andersen knew that MS & Co. and MSSF would rely and had relied on its false statements, it did not inform MS & Co. or MSSF that the unqualified audit opinions it had provided were materially false or that Sunbeam's financial statements contained numerous misstatements of material facts.

142. Andersen made its materially false representations regarding its unqualified audit opinions and the accuracy of Sunbeam's financial statements with the intent to deceive Plaintiffs.

143. Andersen knew that the false information that had been provided to Plaintiffs would be critical to Plaintiffs' decisions to participate in the financing of Sunbeam's acquisitions. But for Andersen's fraudulent representations, MS & Co. would not have underwritten the Convertible Note Offering, nor would MSSF have loaned Sunbeam $680 million.

144. Andersen's fraud was knowingly caused by Harlow, Pruitt, and Denkhaus. Harlow, as engagement partner, and Pruitt, as concurring partner had direct responsibility for directing, managing, and approving of the work that was done on the Sunbeam audits. Denkhaus, who was a senior partner of Andersen and a member of Andersen-Worldwide, as well as the Audit Division Head and manager of Andersen's audit practice for the entire South Florida region, had undertaken responsibility for supervising and monitoring the work performed at Harlow's and Pruitt's direction. Harlow, Pruitt, and Denkhaus each knew of or recklessly disregarded the accounting violations contained in Sunbeam's 1996 and 1997 financial statements. They each also knew that the financial statements that they had caused Andersen to certify would be relied

upon by MS & Co. in deciding to underwrite the Convertible Note Offering and by MSSF in deciding to loan Sunbeam hundreds of millions of dollars.

145. This fraud was also knowingly perpetrated by the Foreign Andersen Branches. Each of the Foreign Andersen Branches reviewed and audited financial statements prepared for Sunbeam's foreign subsidiaries for 1997, all of which contained significant accounting violations. Each of the Foreign Andersen Branches knew or recklessly disregarded the fact that the financial statements that they had reviewed and audited were not prepared in accordance with GAAP or reviewed in accordance with GAAS, but nevertheless certified their audit work as in compliance with these standards. Each of the Foreign Andersen Branches also knew that the financial statements that they had audited would be incorporated into Sunbeam's consolidated financial statements and that lenders, such as MSSF, and underwriters, such as MS & Co., would rely on these financial statements.

146. The fraud was also knowingly perpetrated by Andersen-Worldwide through the actions of its members, including Harlow, Pruitt, and Denkhaus, and its member firms, including Andersen and the Foreign Andersen Branches.

147. As a direct result of this fraud, MS & Co., MSSF, and Morgan Stanley have collectively suffered hundreds of millions of dollars in damages.

COUNT II

(Conspiracy to Defraud)

148. Paragraphs 1 through 135 are repeated and realleged as if set forth herein.

149. Andersen, Andersen-Worldwide, the Foreign Andersen Branches, Harlow, Pruitt, and Denkhaus acted in concert and wrongfully conspired with Dunlap, Kersh, Gluck, and other

senior Sunbeam executives to create the appearance that Sunbeam was performing at a high level. The purpose of this conspiracy was artificially to inflate the stock price of Sunbeam and thereby to induce MS & Co. to underwrite the Convertible Note Offering and MSSF into loaning Sunbeam $680 million to finance Sunbeam's acquisition of Coleman, First Alert, and Signature Brands. Andersen, Andersen-Worldwide, the Foreign Andersen Branches, Harlow, Pruitt, and Denkhaus agreed to become part of the conspiracy to defraud Plaintiffs and committed overt acts in furtherance of this fraudulent scheme.

150. In furtherance of the conspiracy, Dunlap, Kersh, Gluck, and the other Sunbeam executives agreed to misstate Sunbeam's true financial condition by millions of dollars in order to create the illusion that Sunbeam had undergone a radical financial turnaround. Pursuant to this scheme, Dunlap, Kersh, Gluck, and other Sunbeam executives caused Sunbeam, in 1996, to overstate its operating losses by at least $40 million, thereby establishing an overly bleak financial backdrop against which the company's performance in 1997 would be measured. In 1997, by contrast, Dunlap, Kersh, Gluck, and the other Sunbeam executives caused Sunbeam dramatically to overstate its earnings.

151. In late 1997 to early 1998, in furtherance of the conspiracy, Dunlap, Kersh, Gluck, and the other Sunbeam executives decided to acquire Coleman, First Alert, and Signature Brands. They communicated this decision to Andersen and Harlow. Thereafter, Andersen, Andersen-Worldwide, the Foreign Andersen Branches, Harlow, Pruitt, and Denkhaus agreed to become part of the conspiracy to defraud Plaintiffs.

152. In March 1998, in furtherance of the conspiracy, Andersen and Andersen-Worldwide, through their partners/members Harlow, Pruitt, and Denkhaus, committed overt acts in furtherance of the conspiracy, including, but not limited to, issuing Andersen's false and

misleading 1997 unqualified audit opinion with respect to Sunbeam's 1997 financial statements and consenting to its publication to the SEC as part of Sunbeam's Form 10-K filing on March 6, 1998.

153. The members of the conspiracy all knew or recklessly disregarded the fact that Sunbeam's 1996 and 1997 financial statements and Andersen's audit opinions concerning those financial statements contained false statements of material fact. All of the co-conspirators that the representations regarding Sunbeam's 1996 and 1997 financial statements were false when made and/or made these representations with reckless disregard as to their truth.

154. In furtherance of the conspiracy, and to induce MS & Co. into underwriting the Convertible Note Offering and MSSF into loaning Sunbeam $680 million, Andersen and Sunbeam represented to MS & Co. and MSSF that Sunbeam's audited financial statements and Andersen's audit opinions were accurate and not misleading. The co-conspirators invited MS & Co. and MSSF to rely on Andersen's unqualified audit opinions. In furtherance of the conspiracy, Andersen expressly represented to MS & Co., in letters dated March 19, 1998, and March 25, 1998, that Sunbeam's financial statements were truthful and that Andersen's unqualified audit opinions were reliable.

155. In furtherance of the conspiracy, Andersen, Harlow, other Andersen-Worldwide members and employees, and Sunbeam employees participated in meetings and telephone calls in which they represented to employees of MS & Co. and MSSF that Sunbeam's audited financial statements were accurate.

156. In furtherance of the conspiracy, Sunbeam's senior management caused Sunbeam expressly to represent, in loan negotiations with MSSF, that Andersen's audit opinions were accurate. They caused Sunbeam to warrant, in the Sunbeam-MSSF credit agreement, that it had

provided MSSF with accurate information regarding its consolidated statements of operations, stockholders' equity and cash flows, as well as its consolidated balance sheets. They caused Sunbeam to include its 1996 and 1997 audited financial statements in its March 19, 1998, offering memorandum and to represent to MS & Co. that its audited financial statements were reliable. As part of the Coleman merger agreement executed on February 27, 1998, they caused Sunbeam to represent and warrant that all of Sunbeam's filings with the SEC, which included the 1996 financial statements audited by Andersen, were accurate, not misleading, and prepared in accordance with GAAP, and that they would continue to be accurate and not misleading as of the transaction's closing date. Andersen and the other Defendants named in this Complaint had full knowledge and approved of these false representations.

157. In reasonable and justifiable reliance on the co-conspirators' representations that Sunbeam's financial statements and Andersen's audit reports were accurate and truthful, MS & Co. agreed to underwrite the Convertible Note Offering, and MSSF agreed to loan Sunbeam $680 million to finance Sunbeam's acquisition of Coleman. But for the co-conspirators' fraudulent representations, MS & Co. would not have underwritten the Convertible Note Offering, nor would MSSF have loaned Sunbeam $680 million.

158. Harlow, Pruitt, and Denkhaus had full knowledge of and participated in this conspiracy. Harlow, as engagement partner, and Pruitt, as concurring partner, had direct responsibility for directing, managing, and approving of the work that was done on the Sunbeam audits. Denkhaus, who was a senior partner of Andersen and a member of Andersen-Worldwide, as well as the Audit Division Head and manager of Andersen's audit practice for the entire South Florida region, had undertaken responsibility for supervising and monitoring the work performed at Harlow's and Pruitt's direction. Harlow, Pruitt, and Denkhaus each knew of or recklessly

disregarded the accounting violations contained in Sunbeam's 1996 and 1997 financial statements. They each also knew that the financial statements that they had caused Andersen to certify would be relied upon by MS & Co. in deciding to underwrite the Convertible Note Offering and by MSSF in deciding to loan Sunbeam hundreds of millions of dollars.

159. The Foreign Andersen Branches also knowingly participated in this scheme. Each of the Foreign Andersen Branches reviewed and audited financial statements prepared for Sunbeam's foreign subsidiaries for 1997, all of which contained significant accounting violations. Each of the Foreign Andersen Branches knew or recklessly disregarded the fact that the financial statements that they had reviewed and audited were not prepared in accordance with GAAP or reviewed in accordance with GAAS, but nevertheless certified their audit work as in compliance with these standards. Each of the Foreign Andersen Branches also knew that the financial statements that they had audited would be incorporated into Sunbeam's consolidated financial statements and that lenders, such as MSSF, and underwriters, such as MS & Co., would rely on these financial statements.

160. Andersen-Worldwide also participated in this conspiracy through the actions of its members, including Harlow, Pruitt, and Denkhaus, and its member firms, including Andersen and the Foreign Andersen Branches.

161. As a direct result of this conspiracy of fraudulent inducement, Plaintiffs have collectively suffered hundreds of millions of dollars in damages.

COUNT III

Aiding and Abetting Fraud

162. Paragraphs 1 through 135 are repeated and alleged as if set forth herein.

163. To induce MSSF into loaning Sunbeam $680 million to finance its acquisition of Coleman, First Alert, and Signature Brands, Sunbeam represented to MSSF in loan negotiations that Sunbeam's audited financial statements were accurate and not misleading. In the Sunbeam-MSSF credit agreement, Sunbeam warranted that it had provided MSSF with accurate information regarding its consolidated statements of operations, stockholders' equity and cash flows, as well as its consolidated balance sheets. Sunbeam included its 1996 and 1997 audited financial statements in its March 19, 1998, offering memorandum and represented to MS & Co. and MSSF that its audited financial statements were reliable.

164. As part of the Coleman merger agreement executed on February 27, 1998, Sunbeam expressly represented and warranted that all of its filings with the SEC, which included the 1996 financial statements audited by Andersen, were accurate, not misleading, and prepared in accordance with GAAP, and that they would continue to be accurate and not misleading as of the transaction's closing date. Sunbeam knew that its many representations regarding its 1996 and 1997 financial statements were materially false when made and/or made these representations with reckless disregard as to their truth. It also knew that Andersen's 1996 and 1997 unqualified audit opinions were materially false and misleading.

165. Sunbeam knew that MS & Co. would rely on Sunbeam's representations in determining whether to act as Sunbeam's underwriter and that MSSF would rely on its representations in deciding to loan Sunbeam $680 million to finance its acquisitions. Although Sunbeam knew that MS & Co. and MSSF would rely and had relied on its false statements, it did not inform them that the unqualified audit opinions it had provided were materially false or that Sunbeam's financial statements contained numerous misstatements of material facts.

166. Sunbeam made its materially false representations regarding its financial statements and Andersen's unqualified audit opinions with the intent to deceive MS & Co. and MSSF and to induce them to participate in the financing of Sunbeam's acquisitions.

167. Sunbeam knew that the false information that it had provided to MS & Co. and MSSF, and its intentional failure to correct the misrepresentations contained in Sunbeam's financial statements, would be critical to their decision to participate in the financing of Sunbeam's acquisitions. But for Sunbeam's fraudulent representations, MS & Co. would not have underwritten the Convertible Note Offering, nor would MSSF have loaned Sunbeam $680 million.

168. Andersen and Andersen-Worldwide, through their partners/members Harlow, Pruitt, and Denkhaus, knowingly and substantially assisted Sunbeam in its fraud. Andersen itself expressly represented to MS & Co., in letters dated March 19, 1998, and March 25, 1998, that Sunbeam's financial statements were truthful and that Andersen's unqualified audit opinions were reliable. In addition, employees, partners, and members of Andersen and Andersen-Worldwide, including Harlow, participated in meetings and telephone calls in which they represented to MS & Co. and MSSF that Sunbeam's audited financial statements were accurate.

169. Harlow, Pruitt, and Denkhaus substantially and knowingly assisted Sunbeam's fraud. They each knew of or recklessly disregarded the accounting violations contained in Sunbeam's 1996 and 1997 financial statements. They each also knew that the financial statements that they had caused Andersen to certify would be relied upon by MS & Co. in deciding to underwrite the Convertible Note Offering and by MSSF in deciding to loan Sunbeam hundreds of millions of dollars.

170. The Foreign Andersen Branches substantially and knowingly assisted Sunbeam's fraud. They each reviewed and audited financial statements prepared for Sunbeam's foreign subsidiaries for 1997, all of which contained significant accounting violations. Each of the Foreign Andersen Branches knew of or recklessly disregarded the fact that the financial statements that they had reviewed and audited were not prepared in accordance with GAAP or reviewed in accordance with GAAS, but nevertheless certified their audit work as in compliance with these standards. Each of the Foreign Andersen Branches also knew that the financial statements that they had audited would be incorporated into Sunbeam's consolidated financial statements and that lenders, such as MSSF, and underwriters, such as MS & Co., would rely on these financial statements.

171. As a direct result of Sunbeam's fraud, aided and abetted by Andersen, Andersen-Worldwide, the Foreign Andersen Branches, Harlow, Pruitt, and Denkhaus, MS & Co., MSSF, and Morgan Stanley collectively have suffered hundreds of millions of dollars in damages.

WHEREFORE, Plaintiffs, MS & Co., MSSF, and Morgan Stanley, demand judgment against Andersen, Andersen-Worldwide, Andersen-Canada, Andersen-Hong Kong, Andersen-Mexico, Andersen-Venezuela, Harlow, Pruitt, and Denkhaus, jointly and severally, for:

(A) compensatory damages;

(B) prejudgment interest;

(C) attorneys' fees and costs; and

(D) such other relief as may be just and appropriate.

Plaintiffs reserve the right to amend their complaint pursuant to section 768.72, Florida Statutes, to assert claims for punitive damages in excess of $1.2 billion as allowed by law.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CPH'S RESPONSE TO MORGAN STANLEY'S MOTION IN LIMINE NO. 19 TO EXCLUDE THE TESTIMONY OF WILLIAM HORTON

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") respectfully submits this response opposing Morgan Stanley's Motion in Limine No. 19 to Exclude the Testimony of William Horton. Morgan Stanley seeks an Order prohibiting CPH from introducing any expert testimony by Mr. Horton concerning Morgan Stanley's "due diligence 'duties,' the 'reasonableness' of CPH's reliance on Morgan Stanley, or the materiality and accuracy of alleged statements or omissions by Morgan Stanley in the course of the Sunbeam-Coleman transaction." Mot. at 6.

In its motion, Morgan Stanley attempts to frame Mr. Horton's opinions as legal conclusions and hence inadmissible. To the contrary, Mr. Horton is not offering any "legal" opinions — rather, his opinions relate to the customs and practices of investment bankers involved in mergers and acquisitions, and the customs and practices of parties involved in such transactions when conducting due diligence. Those business issues are before the jury in this case, and they are issues that will involve evidence the jury will need assistance to understand. The opinions offered by Mr. Horton will assist the jury, and they are well within the scope of Mr. Horton's expertise, given his 22 years of experience as an investment banker working on a broad array of transactions.

Contrary to Morgan Stanley's assertions, Mr. Horton makes no effort — overtly or covertly — to tell this Court or the jury what the law should be. His opinions are stated in a manner designed to make clear that they are confined to what is customary and appropriate as a business matter. It follows that his opinions are both relevant and admissible.

Morgan Stanley objects to Mr. Horton offering any opinions regarding Morgan Stanley's "duties." Mot. at 1. But that is a straw man. Morgan Stanley adds the word "duty" in its summaries of Mr. Horton's testimony where Mr. Horton does not use that word.[1] Instead, Mr. Horton offers opinions on the practices and customs of investment bankers and parties involved in transactions of the type at issue in this case.

Morgan Stanley cites the case of *Palm Beach County v. Town of Palm Beach*, 426 So. 2d 1063, 1070 (Fla. 4th DCA 1983), for the undisputed proposition that an expert may not opine on the law. Mot. at 2. But that case does not begin to support Morgan Stanley's actual argument, which is that opinions about business practices, however relevant, should be excluded if they might be mistaken for statements about the law. As the Florida Supreme Court made clear in a later decision in the same case, *Town of Palm Beach v. Palm Beach County*, 460 So. 2d 879, 882 (Fla. 1984), the distinction between permissible and impermissible expert testimony depends heavily on the particular words chosen by the expert to express his conclusion. The issue in that case was whether the plaintiffs received "real and substantial" benefits from a tax levied upon them in accordance with the Florida Constitution. *Id.* at 881. The Court held that an expert could testify within his expertise about benefits received by the plaintiffs, as long as he did not

[1] Ironically, the only times that the word "duty" appear in any of Mr. Horton's three reports — it appears only twice — are in reference to opinions offered by Mr. Rosenbloom, Morgan Stanley's expert. *See* Ex. A, Horton Rep. (12/28/04) at 6.

purport to apply the legal standard of "real and substantial" benefits. *Id.* Mr. Horton's opinions comply fully with this rule, as a review of his opinions makes clear.

I. There Is Nothing Improper About Mr. Horton's Opinion That It Would Be Customary for CPH to Rely on the Debenture Offering Disclosures and Due Diligence.

In his report, Mr. Horton opines that, "[a]s a matter of industry practice and custom," CPH would expect to benefit from the due diligence performed for the contemporaneous Rule 144A offering and the related disclosures made in connection with that offering. *See* Horton Rep. at 18, *attached as* Ex. 1 to Mot. Mr. Horton takes account of all the relevant circumstances, including Sunbeam's status as a public company and its acceptance of a contractual obligation to disclose material adverse changes.[2]

Morgan Stanley claims that this opinion improperly seeks to establish a legal duty running from Morgan Stanley to CPH. But it does nothing of the kind — Mr. Horton's testimony relates to industry practice and custom. The law permits the introduction of expert testimony if it "will assist the trier of fact in understanding the evidence or in determining a fact in issue." FLA. STAT. ANN. § 90.702 (West 2004). Here, Mr. Horton's testimony on this point does both. Given his expertise, Mr. Horton will be able to help the jury understand general customs and practices of investment bankers and of parties involved in major merger transactions, topics with which the jury is unlikely to be familiar. Moreover, his opinion

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[2] Morgan Stanley contends that investment banks have no "obligation . . . to conduct due diligence in connection with the offering of securities." Mot. at 3 n.1. That contention is disingenuous. As Mr. Horton explained at his deposition, the investment banker's "obligation" to conduct "reasonable and adequate due diligence" in connection with an offering is a matter of "usual customary practice." Ex. B, Horton Dep. at 84-85. An investment banker who foregoes due diligence runs too great a risk of being sued — a lesson "that is taught to investment bankers from the very beginning." *Id.* at 85. *See also* Ex. C., Dep of James Lurie (counsel for Morgan Stanley) at 27 ("Q. Did Morgan Stanley have any responsibility to determine that the offering memorandum was fair and accurate? A. Under the '33 Act, they have a due diligence obligation, yes.")

regarding the prevailing customs and practices in the investment-banking industry and in merger transactions will assist the jury in determining whether CPH conducted proper due diligence — a matter Morgan Stanley has put in issue in this case. *See, e.g.,* CHARLES W. EHRHARDT, FLORIDA EVIDENCE § 90.406, at 265-66 (2004 ed.) ("Evidence that a person's conduct conformed to a general custom has probative value in proving the conduct was reasonable . . . ."); *see also Ploetz v. Big Discount Panel Center, Inc.*, 402 So. 2d 64, 65 (Fla. 4th DCA 1981) ("'[W]hat is ordinarily and usually done by men generally, engaged in the same work, has some relevancy to the inquiry as to what an ordinarily prudent person would do under the same circumstances.'") (quoting *Sea Board Air Line Ry. Co. v. Watson*, 113 So. 716, 718 (Fla. 1927)); RESTATEMENT (SECOND) OF TORTS § 295A, cmt. b ("Any such custom of the community in general, or of other persons under like circumstances, is always a factor to be taken into account in determining whether the actor has been negligent.").

II. Mr. Horton Can Offer Opinions on the Industry Meaning of "Materiality," and He Made Clear that He Is Not Opining on the Legal Meaning of that Term.

In his report, Mr. Horton offers the opinion that the information provided to Morgan Stanley in the March 19, 1998 comfort letter represented a "material adverse change in the business of Sunbeam from any business perspective, and certainly from an investment banking perspective," and thus it would have been customary for Morgan Stanley to disclose this information. *See* Horton Rep. at 20-21. Operating from the same perspective, Mr. Horton also opines that the failure of Sunbeam and Morgan Stanley to disclose this information in the March 19 press release rendered that press release "materially misleading." *See* Horton Rep. at 23. Morgan Stanley takes issue with those opinions, arguing that any characterization of "facts, representations, or omissions" as "material" renders the opinion a legal conclusion. Mot. at 4-5. Morgan Stanley is again incorrect.

The term "material adverse change," or "material adverse effect," is a term of art in the financial industry, and Mr. Horton is eminently qualified to give his opinion on whether certain information about Sunbeam's financial performance would be so considered. Courts have routinely held that experts may opine on whether a particular event had a "material adverse effect" on a company's finances. *See Wechsler v. Hunt Health Sys., Ltd.*, No. 94 Civ. 8294 (PKL), 2003 WL 22358807, at *6 (S.D.N.Y. Oct 16, 2003) (admitting expert testimony of a certified public accountant that a partnership's distributions to its partners '"had a material adverse effect on the financial well-being of the company,"' as a "factual conclusion[]" that "does not usurp the function of the Court"); *Robertson Oil Co. v. Phillips Petroleum Co.*, 930 F.2d 1342, 1346 (8th Cir. 1991) (affirming district court's admission of expert testimony that pending litigation against defendant would have no "material adverse effect" on its financial position); *see also Consolidated Edison, Inc. v. Northeast Utilities*, 249 F. Supp. 2d 387, 411-13 (S.D.N.Y. 2003) (holding, in case where material adverse change clause was at issue, that there was a material dispute of fact precluding summary judgment, on the basis of conflicting expert reports regarding whether change in company's finances amounted to a "material adverse change").

In addition, the simple fact that the phrase "material adverse change" is used in the merger agreement is no basis for excluding his testimony under Florida law. So long as it will "assist the trier of fact in understanding the evidence or in determining a fact in issue," FLA. STAT. ANN. § 90.702 (West 2004), expert testimony concerning the use of particular practices or terms of art in specialized fields is admissible to help the jury understand the connotations of contractual provisions. *See Red Carpet Corp. of Panama City Beach v. Calvert Fire Ins. Co.*, 393 So. 2d 1160, 1160-61 (Fla. 1st DCA) (holding that trial court, in suit to enforce an insurance

contract, erred in excluding expert testimony on industry practice relating to such provisions, which would have "better informed" the jury "as to the meaning of the policy terms" and "equipped [it] to properly resolve the issues of fact"), *review denied*, 401 So. 2d 608 (Fla. 1981); *Aetna Ins. Co. v. Loxahatchee Marina, Inc.*, 236 So. 2d 12, 14 (Fla. 4th DCA 1970) ("Obscure connotations of an insurance policy can be greatly illuminated by knowledge of custom and usage in the industry as well as the expert's knowledge of terms which take on a different hue in the specialized field than in the field of general knowledge."). Like the insurance-industry experts in *Red Carpet Corp.* and *Aetna Insurance Co.*, Mr. Horton is highly qualified, through training and experience, to interpret this term of art, and should be permitted to do so in explaining his opinions to the jury.

Morgan Stanley's objection to Horton's opinion regarding the failure to disclose material facts also should be rejected, for the identical reason. Mr. Horton testified that he was using the term "material" in a business sense to connote that the facts concealed by Morgan Stanley relating to the material adverse change at Sunbeam.[3] Moreover, whether particular facts are "material" from a business perspective is plainly a matter within the proper scope of expert testimony in investment banking, even where legal materiality is separately at issue. *See Calvin Klein Trademark Trust v. Wachner*, 124 F. Supp. 2d 207, 209 (S.D.N.Y. 2000) (holding that a

[3] *See* Ex. B, Horton Dep. at 271-72 (That's material, as it . . . relates to sales. . . . Each and every one of those aspects in the comfort letter resulted in material adverse changes. Then I took it the next step, which is Morgan Stanley had all this information. They were in a unique position dealing with the information and it was never disclosed."); *id.* at 299 ("So, am I an expert in disclosure[s] that are made and that I feel need to be made in the context of offering documents, mergers and acquisition documents, that type of thing, the answer is yes. Do I apply a legal standard to it? Do I step back and say that disclosure is covered by — is it legally sufficient? No, I don't make that characterization. I'm dealing with it from a business point of view."). Mr. Horton also made clear that he was drawing the same distinction between a business term of art and a legal meaning in testifying about the occurrence of a "material adverse change." *See id.* at 249-50.

legal determination of "materiality" presented a question that could not be "adequately resolve[d] without the benefit of an investment banker's expert assessment of which facts were 'material' from a business person's perspective").

CONCLUSION

For the foregoing reasons, this Court should deny Morgan Stanley's Motion in Limine No. 19.

Dated: February 9, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and hand delivery to all counsel on the attached list on this 9th day of Feb, 2005.

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EXHIBIT C

IN THE FIFTEENTH JUDICIAL CIRCUIT

IN AND FOR PALM BEACH COUNTY, FLORIDA

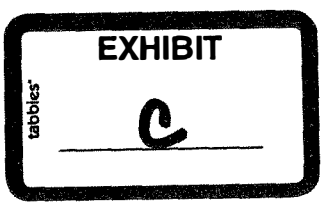
COLEMAN(PARENT)HOLDINGS, INC., Plaintiff, vs. MORGAN STANLEY & CO., INC., Defendant.	No. CA 03-5045 AI
MORGAN STANLEY SENIOR FUNDING, INC., Plaintiff, vs. MACANDREWS & FORBES HOLDINGS, INC., Defendant.	No. CA 03-5165 AI

VIDEOTAPED DEPOSITION OF JAMES M. LURIE

New York, New York

Friday, June 18, 2004

Reported by:
Jane Watson
JOB NO. 161083



Lurie

dealing.

What kind of meetings or telephone conferences did you have -- strike that.

Give me the names of Morgan Stanley personnel with whom you had telephone conferences or other meetings.

A. I do not recall today who was at any specific due diligence meetings, organizational meetings or conference calls from Morgan Stanley. The only call I do recall was one on the night of, I believe, March 18th. And Ruth -- at least Ruth Porat I know was on the phone.

Q. Did you have any dealings with Shani Boone?

A. Would you repeat that name.

Q. Shani Boone?

A. The name doesn't even ring a bell.

Q. Jean Ewe (phonetic)?

A. The name doesn't ring a bell.

Q. Lily Rafii?

A. No.

Q. You mentioned one of Morgan Stanley's responsibilities was to prepare an offering memorandum for the convertible offering?

Lurie

A. Correct.

Q. Did Morgan Stanley have any responsibility to determine that the offering memorandum was fair and accurate?

A. Under the '33 Act, they have a due diligence obligation, yes.

Q. And what did you understand that to be?

A. To undertake a reasonable investigation.

Q. A reasonable investigation into what?

A. The affairs of the company.

Q. In order to determine that the offering memorandum is fair and accurate?

A. That's a fair way to put it.

Q. To your knowledge, was there anything secret or confidential about the fact that Morgan Stanley was contemplating a convertible debt offering?

Let me give you a better question.

To your knowledge, was there anything secret or confidential about the fact that Sunbeam was contemplating a convertible debt offering?

Lurie

A. I don't recall today anything being secret or confidential.

Q. And at some point, they would obviously try to sell it?

A. Yes. Other than it was a 144A offering. So you can't do a general solicitation. So there were those Security Act obligations.

Q. When you first began working on the Sunbeam transaction, did you gain any understanding of Morgan Stanley's existing relationship with Sunbeam?

A. I don't recall those -- any discussions along those lines. I have no specific knowledge at this point. I may have at an earlier date, but certainly not now.

Q. Did you understand that Morgan Stanley had been Sunbeam's representative in connection with the acquisitions that were to be financed?

A. I recall that they were financial advisor to Sunbeam.

Q. And when I refer to the acquisitions --

Lurie

A. There were three.

Q. And those were?

A. Coleman, Signature Brands and --

Q. -- First Alert?

A. First Alert. Thank you.

Q. Did you gain any understanding about how long Morgan Stanley had been working with Sunbeam?

A. Today, I don't recall that specific discussions or understanding. Again, I may have known something back then about how long the relationships were, but I do not recall anything today.

Q. Would the length of the relationship between Morgan Stanley and Sunbeam be significant to you in connection with your work on the convertible offering?

A. Not necessarily. It all depends. That's one fact that may be relevant, given a whole bunch of other facts in any individual situation and depending upon what you're doing. But that one fact would not today raise an issue in my mind, and I do not think it would have raised an issue in my mind.

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Honorable Elizabeth T. Maass
Palm Beach County Courthouse
Room #11.1208
205 North Dixie Highway
West Palm Beach, FL 33401

Re: Coleman (Parent) Holdings Inc. vs Morgan Stanley & Co., Inc.
Matter No.: 029986-230580

Dear Judge Maass:

Enclosed please find a courtesy copy of Coleman (Parent) Holdings Inc.'s Motion in Limine #22 together with a Notice of Hearing for Monday, February 14, 2005. Also enclosed are the case authorities associated with the motion.

Respectfully,

JACK SCAROLA
JS/mep
Enc.

cc: Joseph Ianno, Esq. (with case authorities)
Thomas Clare, Esq. (w/o case authorities)
Mark C. Hansen, Esq. (w/o case authorities)
Jenner and Block LLP (w/o case authorities)

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Honorable Elizabeth T. Maass
Palm Beach County Courthouse
Room #11.1208
205 North Dixie Highway
West Palm Beach, FL 33401

Re: Coleman (Parent) Holdings Inc. vs Morgan Stanley & Co., Inc.
Matter No.: 029986-230580

Dear Judge Maass:

Enclosed please find an original and five copies of a Stipulation entered into by the parties. If same meets with your Honor's approval, please sign same returning conformed copies to all counsel in the envelope provided.

Respectfully,

JACK SCAROLA
JS/mep
Enc.

cc: Joseph Ianno, Esq.
Thomas A. Clare, Esq.
Mark C. Hansen, Esq.
Jenner and Block LLP

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

CASE NO.: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

STIPULATION

Morgan Stanley & Co. ("Morgan Stanley") stipulates that the documents listed in Exhibit A are true and correct copies of authentic documents, that those documents were prepared by Morgan Stanley or by Morgan Stanley's accountants pursuant to authorization by Morgan Stanley, and that those documents constitute records of regularly conducted business activity pursuant to Section 90.803(6) of the Florida Evidence Code.

MORGAN STANLEY & CO.

BY: _____

Thomas A. Clare
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

COLEMAN (PARENT) HOLDINGS INC.

BY: _____

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Dated: February 2, 2005

ORDER APPROVING STIPULATION

THIS CAUSE, having come before the Court upon the foregoing stipulation, and after having reviewed the agreement of the parties, the Court approves the stipulation.

DONE AND ORDERED in chambers in West Palm Beach, Florida this _____ day of February, 2005.

Elizabeth Maass
Circuit Judge

Copies furnished to:

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EXHIBIT A

BATES RANGE
MSC 0112001-0112050
MSC 0112220-0112285
MSC 1112218- 1112219

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.'S VERIFIED
MOTION TO PERMIT FOREIGN ATTORNEY TO APPEAR

Plaintiff Coleman (Parent) Holdings Inc. ("CPH"), joined by its Florida counsel, Jack Scarola, moves this Court pursuant to Rule 2.061(b) of the Florida Rules of Judicial Administration, for an Agree Order permitting Paul M. Smith to appear *pro hac vice* in this action on its behalf. Counsel for Defendant Morgan Stanley consents to this Motion. In support of the motion, CPH states:

1. CPH has retained attorney Jack Scarola and the firm of Searcy Denney Scarola Barnhart & Shipley, P.A., 2139 Palm Beach Lakes Boulevard, West Palm Beach, Florida, as Florida counsel to assist in this matter.

2. CPH and its Florida counsel seek the assistance of Paul M. Smith of Jenner & Block LLP, One IBM Plaza, Chicago, Illinois, in this matter. CPH has previously retained the above-mentioned law firm to provide legal representation in connection with this matter.

3. Paul M. Smith is a member in good standing of the following bars: Supreme Court of the United States; U.S. Court of Appeals for the Federal Circuit; U.S. Court of Appeals for the First Circuit; U.S. Court of Appeals for the Second Circuit; U.S. Court of Appeals for the Third Circuit; U.S. Court of Appeals for Fourth Circuit; U.S. Court of Appeals for the Fifth

Circuit; U.S. Court of Appeals for the Sixth Circuit; U.S. Court of Appeals for the Seventh Circuit; U.S. Court of Appeals for the Eighth Circuit; U.S. Court of Appeals for the Ninth Circuit; U.S. Court of Appeals for the Tenth Circuit; U.S. District Court for the District of Columbia; U.S. District Court for the District of Colorado; U.S. District Court for the Northern District of Illinois; U.S. District Court for the District of Maryland; Court of Appeals of Maryland; and District of Columbia Court of Appeals. Outside of this case, Mr. Smith has not filed an application in any Florida state court to appear as counsel under Florida Rule of Judicial Administration 2.061 in the last five years. Mr. Smith has never been disciplined, suspended, or disbarred by any court.

4. Mr. Smith has read all applicable provisions of the Florida Rules of Judicial Administration and the Rules Regulating the Florida Bar, and this motion complies with those rules.

5. Jack Scarola has been a member of the Florida Bar since 1973, Florida Bar No. 169440, and consents to act as co-counsel with the foreign attorney in this action.

WHEREFORE, CPH moves this Court for an Agreed Order permitting Paul M. Smith to appear on its behalf in this action.

Under penalty of perjury, I declare that I have read the foregoing motion and with respect to my credentials the facts stated in it are true.

Paul M. Smith

Respectfully submitted,

By: _____
Jack Scarola
Fla. Bar No. 169440

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a copy of the foregoing has been furnished by U.S. Mail and facsimile to the following counsel for Plaintiff on this 9th day of February, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

AGREED ORDER GRANTING VERIFIED MOTION TO PERMIT FOREIGN ATTORNEY TO APPEAR

THIS CAUSE having come before the Court upon Plaintiff Coleman (Parent) Holdings Inc.'s ("CPH") Verified Motion to Permit Foreign Attorney Paul M. Smith to Appear *pro hac vice*, and the Court having been advised in the premises, it is hereby

ORDERED AND ADJUDGED that:

CPH's Verified Motion to Permit Foreign Attorney Paul M. Smith to Appear *pro hac vice* is GRANTED.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this ___ day of February, 2005.

_____
ELIZABETH T. MAASS
Circuit Court Judge

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.
MORGAN STANLEY & CO. INCORPORATED,
Defendant.

CASE NO: CA 03-5045 AI

VERIFIED MOTION TO ADMIT
ANTONY B. KLAPPER, PRO HAC VICE

Defendant Morgan Stanley & Co., Inc., pursuant Fla. R. Jud. Adm. 2.061, requests this Court to admit attorney Antony B. Klapper *pro hac vice*, and in support of this Motion states the following:

1. Defendant requests that this Court permit Antony B. Klapper, an attorney with the law firm of Kirkland & Ellis LLP whose address is 655 Fifteenth Street, N.W., Suite 1200, Washington, District of Columbia, 20005, to appear *pro hac vice* and participate fully in this action as additional counsel on behalf of Defendant.

2. Mr. Klapper has been admitted to practice before all courts in New York since February 27, 1996 and all courts in the District of Columbia since January 6, 1997. Mr. Klapper is a member of the State Bars of New York and the District of Columbia (D.C. Bar No. 433027) and is in good standing with respect to such memberships. Mr. Klapper has not been disciplined in any jurisdiction.

3. Mr. Klapper has read all the applicable provisions of The Rules of Judicial Administration and the Rules Regulating The Florida Bar.

4. This verified motion complies with the Rules of Judicial Administration.

5. The undersigned will remain associated with this matter at all stages as required by local rules.

6. Mr. Klapper has not filed a motion for permission to appear in Florida state courts in the preceding five years. The representation of Defendant in this matter commenced on May 8, 2003.

7. Mr. Klapper will be associated with Joseph Ianno, Jr. for purposes of this representation. Mr. Ianno is a member in good standing of the Florida Bar.

8. A proposed order granting this Motion is attached hereto.

9. Counsel for Plaintiff has been consulted regarding this motion and has no objection.

WHEREFORE, Defendant respectfully requests that this Court enter an order admitting Antony B. Klapper *pro hac vice* for the purpose of representing Defendant as counsel in connection with this action pending before this Court together with such other and further relief as the Court deems just and proper.

The undersigned verifies that he has knowledge of the facts stated herein, and that the statements in the foregoing motion are true and correct.

Antony B. Klapper
Dated: 2/7/05

Respectfully submitted,

for Joseph Ianno, Jr. 0096105

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 4th day of February, 2005.

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.
MORGAN STANLEY & CO. INCORPORATED,
Defendant.

CASE NO: CA 03-5045 AI

ORDER GRANTING VERIFIED MOTION TO ADMIT ANTONY B. KLAPPER, PRO HAC VICE

THIS CAUSE came before the Court on Morgan Stanley & Co. Incorporated's Verified Motion to Admit Antony B. Klapper, Pro Hac Vice. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Morgan Stanley's Verified Motion to Admit Antony B. Klapper Pro Hac Vice is GRANTED, and Mr. Klapper is admitted to practice in this case.

DONE AND ORDERED in West Palm Beach County, Florida this ____ of February, 2005.

Elizabeth T. Maass
Circuit Court Judge

Copies furnished to:

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,
Defendant.

MORGAN STANLEY'S RESPONSE TO CPH'S MOTION IN LIMINE (NO. 19) TO EXCLUDE PORTIONS OF EXPERT WITNESS MARK GRINBLATT'S TESTIMONY

CPH's Motion in Limine No. 19 is in essence a motion for reconsideration. CPH seeks to reverse the Court's earlier rulings that CPH's fraud and negligent misrepresentation claims arise under New York law. New York law explicitly rejects benefit-of-the-bargain damages, and Florida law only allows such damages in limited circumstances — circumstances that do not exist here. The out-of-pocket loss rule is the only applicable damages standard in this case. And Morgan Stanley's expert, Mark Grinblatt Ph.D., properly applies this standard.

Moreover, CPH, in purporting to "elect" benefit-of-the-bargain damages instead of out-of-pocket losses, is attempting to abrogate the Court's responsibility in deciding the appropriate damages measurement. The Court, not CPH, decides which measure of damages is proper under the evidence and instructs the jury accordingly. If CPH seeks any damages at all, then this so-called election provides no basis for excluding Dr. Grinblatt, as CPH is entitled, at most, to a jury instruction on the out-of-pocket loss rule. CPH's other objections go to the weight, not the admissibility, of Dr. Grinblatt's testimony. Dr. Grinblatt's opinions are relevant and should be admitted.

In support of its position, Morgan Stanley states as follows:

I. PLAINTIFF'S SO-CALLED "ELECTION" OF BENEFIT-OF-THE-BARGAIN DAMAGES PROVIDES NO BASIS FOR EXCLUDING DR. GRINBLATT.

A. The Court, Not CPH, Decides The Proper Measure Of Damages.

1. CPH may not simply "elect" the measure of damages to be applied to the facts and claims in this case. While CPH may elect to present whatever relevant evidence it chooses to the jury, the Court's duty is to instruct the jury and determine, as a matter of law, the proper measure of damages for each of the four counts in CPH's complaint. *Vagabond Container, Inc. v. City of Miami Beach*, 356 So. 2d 1266, 1267 (Fla. 3d DCA 1978). In short, the Court, not CPH, determines what effect, if any, CPH's "election" of damages will have.

B. The Out-of-pocket Loss Rule Is The Applicable Measure Of Damages.

2. The Court already has determined that New York law applies to Count I (fraudulent misrepresentation) and Count IV (negligent misrepresentation). (Aug. 11, 2004 Order on Morgan Stanley's Mot. for Application of N.Y. Law at 10-11.) It follows that New York law applies when measuring damages for those counts.[1] *See Aerovias Nacionales de*

---

[1] CPH's counsel did not hesitate to agree that, when New York law governs a claim in this case, New York substantive law applies to damages for that claim:

> THE COURT: Right. And if we got to trial and determined New York law applied to the other two counts [aiding and abetting and conspiracy], you would agree that would include the substantive law on punitive damages if leave to amend had been given?
>
> MR. SCAROLA: I think I would have to agree to that.
>
> THE COURT: Okay.
>
> MR. SCAROLA: If Your Honor ruled that New York law applied to those other claims, then I would have to agree that New York law applies with regard to the punitive damage standard as well. ….

(Nov. 5, 2004 Hrg. at 40:2-13.)

Colombia, S.A. v. Tellez, 596 So. 2d 1193, 1194 (Fla. 3d DCA 1992) (concluding that New York substantive law governs the action and applying New York law to damages).

3. Benefit-of-the-bargain damages are not available as tort damages under New York law; only out-of-pocket losses may be awarded. *See Board of Educ. of Hudson City Sch. Dist. v. Sargent, Webster, Crenshaw & Folley*, 511 N.Y.S.2d 961, 963 (App. Div.) ("The case law is also clear that there are no remedies afforded under the law of torts where a plaintiff's claim is … solely for benefit of the bargain."), *aff'd*, 523 N.Y.S.2d 475 (N.Y. 1987); *Cayuga Harvester, Inc. v. Allis-Chalmers Corp.*, 465 N.Y.S.2d 606, 618 (App. Div. 1983) ("[There] is no question that in New York damages for fraud are limited to indemnity for the actual loss sustained and that loss of the benefit of the bargain as represented by the wrongdoer is not recoverable."). Thus, as to Counts I and IV, CPH only may recover out-of-pocket losses.[2]

4. As to Count II (aiding and abetting) and Count III (conspiracy), the Court left open whether New York or Florida law applies to these "derivative" claims, depending on whether CPH proves Morgan Stanley was an "actor" in a Florida-based fraud. (*See* Aug. 11, 2004 Order at 11-12.) If the Court ultimately determines that New York law applies to Counts II and III, then CPH will be limited to out-of-pocket losses for all claims in its complaint. As discussed below, *see infra* Part I.D, even if Florida's "flexibility theory" governs Counts II and III, the out-of-pocket loss rule still applies because CPH cannot show that benefit-of-the-bargain damages are justified in this case.

---

[2] If CPH's Motion in Limine No. 19 is construed as a formal election and a rejection by CPH of out of pocket losses, then the Court should dismiss Counts I and IV.

C. Morgan Stanley Did Not Waive Its Contention That Plaintiff's Damages Are Governed By New York's Out-of-pocket Loss Rule.

5. Throughout this litigation, Morgan Stanley has pled and maintained that New York law applies to all substantive elements of CPH's claims. (*See, e.g.,* Jan. 12, 2005 Restated Am. Answer of Morgan Stanley (citing New York law in Affirmative Defenses 2, 5-8); Jan. 10, 2005 Morgan Stanley's MIL No. 16 (arguing that damages are governed by New York law); Dec. 10, 2004 Mem. in Supp. of Morgan Stanley's Mot. for Summ. J. at 13-32 (asserting that New York law applies to all CPH's claims); Oct. 22, 2004 Morgan Stanley's Opp. to CPH's Mot. to Amend Its Compl. to Seek Punitive Damages (arguing that CPH's punitive damages claim fails under New York law); June 21, 2004 Reply Supp. Morgan Stanley's Mot. Application of N.Y. Law at 16 ("CPH's attempt to foreclose the consideration of any choice-of-law issues beyond the two raised in Morgan Stanley's opening memorandum is misguided."); June 25, 2003 Mem. in Supp. of Def.'s Mot. Dimiss at 10-35 (asserting that New York law applies to all CPH's claims); Apr. 30, 2003 Mem. in Supp. of Morgan Stanley's Mot. for Application of N.Y. Law (same).)

6. Before filing its Motion in Limine No. 19, CPH never "elected" a particular damages theory. Even when submitting expert reports on December 7, 2004, CPH disclosed two experts who applied an out-of-pocket loss analysis (Dr. Kursh and Mr. Wagner) and one expert who applied a benefit-of-the-bargain analysis (Dr. Nye). Before that, CPH indicated that it would be relying on an out-of-pocket loss theory: in an interrogatory response, CPH identified the value of Coleman stock as an element of its damages. (*See* Oct. 13, 2003 CPH's Resp. to Morgan Stanley's 2d Set of Interrogs., Resp. 6 (Ex. 1).) The Coleman stock value is a component only of an out-of-pocket loss calculation; it has no applicability to benefit-of-the-bargain damages. CPH has never amended this interrogatory response.

7. CPH now says that it is electing to pursue only benefit-of-the-bargain damages, apparently recognizing it has no out-of-pocket loss once the merger rumor run-up in Coleman's stock price is eliminated and Sunbeam's stock is devalued to account for the earnings shortfall. And without ever having asserted this so-called election before, CPH now claims that Morgan Stanley "waived any contention that Florida law does not apply to the measure of damages for all four counts of plaintiff's complaint." (CPH's MIL No. 19 at 4.) This makes little sense given (i) the Court's prior ruling that New York law applies to Counts I and IV (*see* Aug. 11, 2004 Order at 10-11); (ii) the Court's punitive damages analysis, which looked first to New York law in determining damages for Counts I, II, and III (*see* Nov. 19, 2004 Order on CPH's Mot. to Amend Its Compl. to Seek Punitive Damages); and (iii) CPH's counsel's admission that New York damages law applies to claims governed by New York law. (*See* Nov. 5, 2004 Hrg. at 40:2-13.)

8. In addition, CPH's waiver argument is not supported by the cases CPH cites. In the *Owens-Corning*, *Aetna Casualty*, *Watson*, and *Collins* cases, a party was barred from asserting foreign law on appeal when that party failed to assert the foreign law in the trial court before a final judgment was rendered. By contrast, here, (i) there has been no final judgment rendered, (ii) the Court has held that New York law applies to at least two of the four claims and perhaps all four (*see* Aug. 11, 2004 Order), and (iii) Morgan Stanley has a pending motion asserting that any damages measurement must be under the out-of-pocket loss rule because New York law does not recognize benefit-of-the-bargain damages. (*See* Morgan Stanley's MIL No. 16.) Furthermore, the parties submitted their choice of law briefing in spring 2004, months before any expert reports were submitted and long before the plaintiff purportedly "elected"

benefit-of-the-bargain damages. This Court would err if it were to find that Morgan Stanley is somehow estopped from asserting that damages must be governed by the out-of-pocket loss rule.

D. Even Under Florida's "Flexibility Theory," The Out-of-pocket Loss Rule Applies Because CPH Cannot Justify Benefit-of-the-bargain Damages.

9. The Court only has left open whether Florida law applies to Count II (aiding and abetting) and Count III (conspiracy), both of which are linked to Count I (fraud), although the scope of the alleged fraud has two separate components. CPH has not clearly established what the applicable Florida damages standard is for Counts II and III. Indeed, CPH cites no Florida case law that applies benefit-of-the-bargain damages to claims for aiding and abetting fraud or conspiracy. With respect to aiding and abetting fraud, there appears to be no Florida state case law even setting forth the elements of this claim. And conspiracy is not recognized as a separate or independent tort under Florida law. *Hoch v. Rissman, Weisberg, Barrett*, 742 So. 2d 451, 460 (Fla. 5th DCA 1999). Rather, conspiracy requires an actionable underlying tort. *Liappas v. Augoustis*, 47 So. 2d 582, 582 (Fla. 1950). Here, that underlying tort is fraud, which, Morgan Stanley contends, arises from New York-based activities. (*See* Aug. 11, 2004 Order at 10.)[3]

10. CPH relies on Florida's damages standard in ***fraud*** cases, the so-called "flexibility" standard. Assuming arguendo that the Florida fraud standard applies to CPH's Counts II and III, the out-of-pocket loss rule remains the default measure of damages. *Totale, Inc. v. Smith*, 877 So. 2d 813 (Fla. 4th DCA 2004). In such cases, the trial court must consider the following:

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[3] Morgan Stanley acknowledges that the Court has left open the question of what law applies to what the Court has referred to as the Florida-based fraud by Sunbeam. (*See* Aug. 11, 2004, Order at 11.)

> (1) [I]f the defrauded party is content with the recovery of only the amount that he actually lost [*i.e.*, out-of-pocket loss], his damages will be measured under that rule;
>
> (2) if the fraudulent representation also amounts to a warranty [*i.e.*, breach of contract], recovery may be had for loss of the bargain [*i.e.*, benefit-of-the-bargain rule], because a fraud accompanied by a broken promise should cost the wrongdoer as much as the latter alone;
>
> (3) where the circumstances disclosed by the proof are so vague as to cast virtually no light upon the value of the property had it conformed to the representations, the court will award damages equal only to the loss sustained [*i.e.*, out-of-pocket loss]; and
>
> (4) where the damages under the 'benefit of the bargain' rule are proved with sufficient certainty, that rule will be employed.

Id. at 815 (internal quotations & citation omitted). Thus, when a plaintiff seeks benefit-of-the-bargain damages, ***the Court must first determine*** whether such damages are justified and applicable. *Martha A. Gottfried, Inc. v. Amster*, 511 So. 2d 595, 599 (Fla. 4th DCA 1987); *see Getelman v. Levey*, 481 So. 2d 1236, 1239 n.4 (Fla. 3d DCA 1985) (finding that plaintiff was not entitled to benefit-of-the-bargain damages because such damages would be inappropriate given the facts of the case). In short, the plaintiff may "elect" to present whatever relevant evidence it chooses, but the Court must instruct the jury based on what damages theories are relevant under the evidence and the law of the case.

11. In examining whether justice demands benefit-of-the-bargain damages, Florida courts generally (though not explicitly) have limited such damages to fraud claims based on contractual privity between the plaintiff and defendant. *See, e.g., Sprayberry v. Sheffield Auto & Truck Serv., Inc.*, 422 So. 2d 1073, 1075 (Fla. 1st DCA 1982) (general rule that a party may not recover contractual damages in a tort action is subject to the "limited exception" of where a party is fraudulently induced into a contract by the other party); *Greater Coral Springs Realty, Inc. v. Century 21 Real Estate of S. Fla., Inc.*, 412 So. 2d 940, 941 (Fla. 3d DCA 1982) ("Failure to

establish the contract limited appellant to tort remedies for the fraud and precluded recovery of the 'benefit of the bargain'."); *see also Totale*, 877 So. 2d at 815 ("[I]f the fraudulent representation also amounts to a warranty, recovery may be had for the loss of the bargain ....").[4]

12. Indeed, the *Restatement (Second) of Torts* — cited in CPH's brief — explicitly requires contractual privity between the plaintiff and defendant for the plaintiff to recover benefit-of-the-bargain damages in a fraud case: "When the plaintiff has not entered into any transaction with the defendant but has suffered his pecuniary loss through reliance upon the misrepresentation in dealing with a third person, these are the rules [the out-of-pocket loss formula] that must of necessity be applied." *Restatement (Second) of Torts* § 549 cmt. g (1977). (*See also* CPH's MIL No. 19 at 6 ("Florida follows the *Restatement (Second) of Torts* regarding the measure of damages for fraudulent misrepresentation." (citing *Nordyne, Inc. v. Florida. Mobile Home Supply, Inc.*, 625 So. 2d 1283, 1287 (Fla. 1st DCA 1993)).)

13. Here, there was no contract, no privity, no warranty, and no bargain between CPH and Morgan Stanley. Indeed, in the Court's order on CPH's motion for leave to amend to seek punitive damages for Counts I, II, and III, the Court concluded:

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[4] *Strickland v. Muir*, 198 So. 2d 49 (Fla. 4th DCA 1967), a securities fraud case, appears to be the only case that allows for the possibility that a plaintiff could recover benefit-of-the-bargain damages from a defendant with whom there was no contractual privity. The *Strickland* court noted that Florida case law had never addressed the proper measure of damages in a securities fraud case and observed that the "preferable rule" is that a plaintiff's "damages will be measured by the out-of-pocket rule." *Id.* at 51. Ultimately, the *Strickland* court ruled that the plaintiff had not proved sufficiently its damages and remanded for the trial court to take another look at damages, an approach that was subsequently rejected by an appellate court *en banc*. *See Teca, Inc. v. WM-Tab, Inc.*, 726 So. 2d 828, 830 (Fla. 4th DCA 1999) (en banc) (rejecting *Strickland*).

> Here, CPH does not claim it had a contract with Morgan Stanley or that the duties allegedly breached by Morgan Stanley arose because of a contractual relationship between them. *Rocanova* and *New York University* [requiring "public injury" for punitive damages when tort is based on a contract] do not apply.

(Nov. 19, 2004 Order at 2.) Benefit-of-the-bargain damages therefore do not fit the facts of the case as found by the Court. To allow CPH to seek such damages would be contrary to the Restatement, contrary to the Court's order on punitive damages, and anomalous in Florida decisional law.

14. Beyond the lack of contractual privity between the plaintiff and the defendant in this case, benefit-of-the-bargain damages would be particularly inappropriate for at least four additional reasons: *First*, CPH negotiated to receive — and in fact received — from Sunbeam a fixed amount of cash and debt assumption (a cash equivalent). *Second*, CPH further negotiated from Sunbeam to receive a fixed number of Sunbeam shares — not cash — at closing, with no adjustment in the number of those shares based on the market price for Sunbeam's stock between February 27, 1998 and March 30, 1998. In short, CPH gambled on the movement of Sunbeam's stock. *Third*, other Sunbeam shareholders only received their out-of-pocket losses in the Sunbeam securities fraud litigation. *See In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1331 (S.D. Fla. 2001) (holding that "the appropriate measure of damages is the class members' out-of-pocket losses"). ***Finally***, CPH insiders negotiated sweetheart deals for themselves allowing them to forego exchanging their Coleman stock for Sunbeam stock and to instead receive $27.50 in cash for their Coleman shares, even after March 30, 1998. (*See* MS 99 at F-49 (Ex. 2).) CPH insider Ronald Perelman profited to the tune of $6,700,000 by exercising 500,000 Coleman options. (*Id.*) In sum, benefit-of-the-bargain damages have no place where, as here, the "benefit" sought is only the upside of the plaintiff's gamble, and CPH insiders are seeking special treatment that other shareholders did not receive.

15. Thus, the only applicable damages standard is out-of-pocket loss, which is the standard applied by Dr. Grinblatt. As such, the Court should allow Dr. Grinblatt's testimony.

II. DR. GRINBLATT'S TRUE VALUE ESTIMATE OF SUNBEAM STOCK IS RELEVANT TO ALL COUNTS — CPH'S OBJECTION TO THIS ESTIMATE GOES TO THE WEIGHT, NOT THE ADMISSIBILITY, OF DR. GRINBLATT'S TESTIMONY.

16. Dr. Grinblatt is the only expert in this case who estimates the true value of Sunbeam stock at the time of the transaction, *i.e.*, the value that the stock would have had if not for the artificial inflation. This value is relevant to both the out-of-pocket loss rule and the benefit-of-the-bargain analysis. *See Teca*, 726 So. 2d at 829 (explaining that calculation of actual value of business at time of sale is required to determine both out-of-pocket and benefit-of-the-bargain measure of fraud damages); *see also* Fla. Evid. Code § 90.401 ("Relevant evidence is evidence tending to prove or disprove a material fact.").

17. CPH's objection boils down to an underlying assumption in how Dr. Grinblatt accounts for the artificial inflation in Sunbeam stock. To prove its aiding and abetting and conspiracy claims, CPH must show that Morgan Stanley had actual knowledge of the overall scope and purpose of the wrongdoing committed. *See Cromer Fin. Ltd. v. Berger*, 137 F. Supp. 2d 452 (S.D.N.Y. 2001) (scienter required for aiding and abetting); *Snyder v. Puente De Brooklyn Realty Corp.* 746 N.Y.S.2d 517, 521-22 (App. Div. 2002) (scienter required for conspiracy). CPH wants to conflate Sunbeam's knowledge and Morgan Stanley's knowledge and seeks to attribute to Morgan Stanley all of the artificial inflation caused by Sunbeam's "three-step," false turnaround scheme that started back in 1996. Morgan Stanley, on the other hand, asserts that, at most, Morgan Stanley only had knowledge that Sunbeam's 1998 first quarter sales were lower than "street" estimates. The difference basically comes down to which set of facts CPH is able to prove, if at all.

18. CPH has not (and cannot) provide any factual basis for Dr. Grinblatt to assume that Morgan Stanley had knowledge of Sunbeam's overall fraudulent accounting schemes (and therefore could aid and abet or conspire with Sunbeam to defraud CPH). As such, Dr. Grinblatt only accounts for artificial inflation related to the 1998 first quarter sales data being overstated.

19. Of course, Dr. Grinblatt does not have to accept and assume CPH's overreaching theory of the case. *See Gershanik v. Dep't of Prof'l Regulation, Bd. of Med. Examiner*s, 458 So. 2d 302, 305 (Fla. 3d DCA 1984) ("The sufficiency of the facts required to form an opinion is usually decided by the expert; any deficiency relates to the weight of the evidence rather than to its admissibility."). Just as "[a] plaintiff is entitled to present evidence upon the facts that are relevant to his theory of the case so long as that theory has support in the law," a defendant is likewise entitled to present its theory of the case on the same basis. *Steiger v. Mass. Cas. Ins. Co.*, 273 So. 2d 4, 6-7 (Fla. 3d DCA 1973).

20. If CPH wants to attack one of Dr. Grinblatt's assumptions in his calculations as it relates to Counts II and III, CPH may do so on cross-examination. And CPH may argue that Dr. Grinblatt underestimates CPH's damages. In any event, Dr. Grinblatt's testimony is relevant. CPH's objection just goes to the weight, not the admissibility of the evidence. *See Florida Dep't of Transp. v. Armadillo Partners, Inc.*, 849 So. 2d 279, 287-88 (Fla. 2003) (holding an expert's opinion "may be subject to impeachment or to having its weight reduced because of its failure to properly consider one of the many factors that may influence an opinion as to value, but that failure should not prevent the opinion's admission, nor cause its complete exclusion from the jury's consideration").

III. DR. GRINBLATT'S TESTIMONY REGARDING RULE 144A AND HEDGING TRANSACTIONS IS ADMISSIBLE FOR THE NARROW PURPOSE DISCLOSED IN HIS REPORT.

21. In its Motion in Limine No. 19, CPH baldly states, much like its expert Dr. Nye, that CPH could not sell its Sunbeam stock because the stock was unregistered and restricted. (CPH's MIL No. 19 at 11-15.) In responding to Dr. Nye's report, Dr. Grinblatt simply points out, as a practical matter and a general economic principle, that unregistered and restricted stock is sold all the time to institutional investors in private transactions, such as through an active Rule 144A market and other financial arrangements.[5] (Dec. 17, 2004 Grinblatt Report at 45 n.58, 98 (Ex. 4).) And when deposed, Dr. Grinblatt testified that, based on his review of the record, he "saw no evidence that [CPH] couldn't have captured this value or shorted Sunbeam stock or entered into a total return swap." (Jan. 7, 2005 Grinblatt Dep. at 264:7-23 (Ex. 5).)

22. Dr. Grinblatt is qualified to testify as an expert on selling securities in private transactions. He has a Ph.D. in Economics from Yale University. (Grinblatt Report App. A.) He is the author of a leading text on finance, as well as numerous other published works on securities. (*Id.*) For more than two decades, he has taught graduate students at Yale, The Wharton School, and UCLA in nearly every subject in finance, including hedging transactions and the sale of restricted and unregistered stock. (*Id.*; Grinblatt Dep. at 267:25-268:7.) His testimony is further backed up by his business experience, including structuring hedging transactions while a Vice President at Salomon Brothers, managing a hedge fund with two other

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[5] Rule 144A of the Securities Act, as explained by Dr. Grinblatt in his text on finance, "allows institutions with assets exceeding $100 million to trade privately placed financial claims among themselves without first registering them as securities." 1 Mark Grinblatt & Sheridan Titman, *Financial Markets and Corporate Strategy* 7 (2d ed. 2002) (Ex. 3).

partners, and running his own hedge fund. (Grinblatt Report App. A; Grinblatt Dep. at 43:13-44:12, 47:9-14, 50:6-9, 55:14-24, 251:16-252:13, 265:11-22.)[6]

23. At a minimum, Dr. Grinblatt certainly may testify as to the general economic principle that restricted and unregistered stock may still be sold in private Rule 144A and hedging transactions. *See* 1 Charles W. Ehrhardt, *Florida Evidence* § 702.2 (2004 ed.) ("[A]n expert may give a dissertation or draw an explanation of scientific principles relevant to the case, leaving the trier of fact to apply these principles to the facts of the case.").

24. Dr. Grinblatt also may testify that he "saw no evidence" that prevented CPH from selling its Sunbeam stock in a private market transaction. CPH may test this opinion on cross-examination. In sum, CPH's objections only go to the weight, not the admissibility, of Dr. Grinblatt's opinions. *See Island Hoppers, Ltd. v. Keith*, 820 So. 2d 967, 971 (Fla. 4th DCA 2002) ("[A]llegations that an expert witness lacked a sufficient factual predicate to form an opinion, go to the weight to be given to the evidence (the expert's opinion) rather than its admissibility.") (citation omitted), *disapproved on other grounds, Sarkis v. Allstate Ins. Co.*, 863 So. 2d 210, 223 (Fla. 2003).

IV. DR. GRINBLATT'S PRIOR RETENTION BY JENNER & BLOCK MAY BE INTRODUCED IF ELICITED ON CROSS-EXAMINATION.

25. On February 3, 2005, the Court granted ***without prejudice*** CPH's Motion in Limine No. 18 to Bar Evidence and Argument Concerning Plaintiff's Counsel's Retention of

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[6] At his deposition, Dr. Grinblatt answered questions about his hedge fund experience, but, due to a strict confidentiality agreement with regard to one hedge fund he was involved with, he declined to identify the fund, his investment return, and a valuation model trade secret. (Grinblatt Dep. at 47:9-51:25.) Even if the Court were to order that Dr. Grinblatt could not base his testimony on any non-disclosed hedge fund experience, he still has other sufficient hedge fund experience that qualifies him to provide the limited expert testimony in this instance.

Professor Mark Grinblatt as an Expert in Prior Unrelated Cases. Under the Court's Order, if CPH, on cross-examination, attacks Dr. Grinblatt's credibility — and CPH has indicated that it intends to do so — it is proper for Dr. Grinblatt to rehabilitate his credibility by testifying that he was retained in the past by CPH's law firm. (Feb. 3, 2005 Order on Pl.'s MIL No. 18.) *See Tomlian ex rel. Tomlian v. Grenitz*, 782 So. 2d 905, 907 (Fla. 4th DCA 2001) (holding that, in medical malpractice action in which defense expert's credibility was in issue, defense expert could testify that he had been retained in the past by plaintiffs' law firm).

WHEREFORE, Morgan Stanley respectfully requests that this Court deny CPH's Motion in Limine No. 19 to Exclude Portions of Expert Witness Mark Grinblatt's Testimony.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 9th day of February, 2005.

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Exhibit 5

CIRCUIT COURT, FIFTEENTH JUDICIAL DISTRICT

IN AND FOR PALM BEACH COUNTY, FLORIDA

- - - - - - - - - - - - - - - - X

COLEMAN (PARENT) HOLDINGS, :

Plaintiff, : Case No. 2003 CA

v. : 005045 AI

MORGAN STANLEY & CO., INC., :

Defendant. :

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COPY

VIDEOTAPE DEPOSITION OF MARK GRINBLATT
District of Columbia
Friday, January 7, 2005

Reported by: Marijane Simon, RDR

Job No. 165111

confidentiality issue.

A. I don't think Mr. Bemis should be legally advising me on this. I -- I mean, if I could call the attorney associated with the case, and he reassured me, I'd feel more comfortable about that, but Mr. Bemis isn't my counsel, so --

Q. Fine. We'll do that at a --

A. -- he is not involved in this matter, so I don't think he should be the legal authority on that matter.

Q. Okay. We'll do that at a break.

A. Okay.

Q. Aside from that one possible addition, is your curriculum vitae found in your report, to the best of your knowledge, true and correct?

A. Yes.

Q. And complete?

A. Yes.

Q. We've spent some time talking about litigation consulting that you have done. In addition to the litigation consulting and testifying you -- you've done, have you done any nonlitigation consulting?

A. Yes.

Q. About what subject matters?

A. I have been involved in portfolio management. I assisted Times-Mirror in developing a cutting-edge valuation system. I've assisted a money management firm, and I believe it was in efficiently allocating their portfolio.

I have assisted Salomon Brothers in LDC debt, valuation, and hedging. I assisted Salomon Brothers in structuring securities transactions.

I assisted Salomon Brothers in valuing collateralized ob -- bond obligations and hedging them.

I'm sure there are more. Just, again, a long history of various interests, and -- and it's hard to recall specifically beyond that.

Q. In those matters, do you charge the same hourly rate that you charge in your litigation consulting?

A. Most of those -- In fact, all of those matters were a long time ago, so just because my rate has appreciated, I charged less back then. Were I to have a similar pending retention as a consultant, I would charge the same thing -- in litigation matters. My time is my time.

Q. I understand. When was the last

rise to you being involved in a business venture?

A. No. I -- I have been involved in business ventures, but not specifically with respect to that, yes.

Q. You -- You've taken me into my next area. You said you've been involved in business ventures.

A. Yes.

Q. Describe the business ventures you have been involved in.

A. Okay. One is a -- has some confidentiality associated with it, but I can provide some loose details. I did manage money for a large hedge fund.

Q. Is that on your resume?

A. No, because there is a very, very strict con -- confidentiality agreement associated with the severance.

Q. When did you do that?

A. In the late 1990s.

Q. Can you identify the hedge fund?

A. No.

Q. What -- what assets were you involved in managing?

A. Primarily, equity securities.

Q. In particular fields?
A. I don't understand what you mean by that question.
Q. Well, equity securities in telecommunications or in biotech or in manufacturing or in -- Was your involvement limited to a particular industrial area?
A. No.
Q. Aside from -- I assume this involved more than taking long positions in various stocks.
A. It involved more than that, yes.
Q. What did it involve? Can you tell me?
A. It involved taking short positions.
Q. Anything else?
A. It involved futures hedging. And we were free to do all kinds of other kinds of investment. Just at the time that was the only transactions we undertook.
Q. When you were involved in this relationship for the hedge fund, were you compensated strictly on an hourly basis, or were you also paid a percentage of returns?
A. I never received hourly compensation.
Q. How -- What was the -- the nature of your compensation? How was your compensation

derived?

A. It was a standard hedge-fund type of arrangement, incentive fee and a base fee.

Q. Do you know when you terminated your relationship with them?

A. January or February of 1999.

Q. Why'd you leave?

A. I -- I -- To delve into that, I think, would disclose some things that I think the confidentiality agreement would prohibit.

Q. Can you describe for me the performance, the -- how well the hedge fund did during the time period you were involved with them?

A. I can say that we were paid a substantial fee. Beyond that, I don't think I want to talk about the specifics.

Q. You said "we." Was there someone else involved besides yourself?

A. I had two partners.

Q. Who were they?

A. Again, I -- I mean, this confidentiality agreement is so broad in terms of mentioning anything about this, I -- I hesitate to go beyond this.

Q. Okay. Is there anything else that you can tell me about the work you did for them, for this unnamed hedge fund, that wouldn't violate the confidentiality provision?

A. No.

Q. Aside from the work you did for this hedge fund, what other business ventures have you been involved in?

A. I ran my own hedge fund.

Q. Okay. When was that?

A. That was from approximately October 2000 through June 2001.

Q. What was the name of the hedge fund?

A. Palisades Quant.

Q. Q-u-a-n-t?

A. Q-u-a-n-t.

Q. What was the business of that fund? What did it do?

A. It identified companies via a statistical method that had high probability relative to other companies of exaggerating their accounting numbers, perhaps even committing fraud. It also analyzed companies that were extremely conservative in their accounting practices and, accordingly, took positions, the details of which

would reveal trade secrets that I'd prefer not to divulge.

Q. So you took positions based on this statistical analysis?

A. Yes, and hedging considerations.

Q. How much money did the fund invest?

A. The fund invested $5 million.

Q. What were the fund's returns?

A. Modestly positive.

Q. Why'd you stop the fund or why -- Let me withdraw that. Is the fund continuing?

A. No.

Q. When you ceased your association with it in June of 2001, was that the end of it?

A. That was the end of it.

Q. Why did it come to an end?

A. I made a decision that there was not enough money that we were managing to, A, achieve the performance I would like to achieve given that expenses are charged to the fund; and at the level of funding, I didn't think the compensation was worth my time.

Q. Aside from those two funds, have you been involved in any other business ventures?

A. Not that I recall.

Q. -- how often does the board meet?
A. The board meets quarterly.
Q. There was also a period, Professor Grinblatt, when you worked at Salomon; is that correct?
A. There was a period I worked at Salomon Brothers as well.
Q. And when -- when was that?
A. Let's call it spring of 1989 through spring of 1990.
Q. And you did that while you were on leave from your academic responsibilities?
A. Yes.
Q. What is it that you did for Salomon when you were there?
A. I worked on five or six different projects. One project involved valuations of various kinds of securities and commodities. Another -- Most of my projects involved valuing credit-sensitive instruments. I was also involved in security design, carving up tranches for collateralized bond obligations of portfolios of high-yield bonds. I was computing hedge ratios for various complex financial instruments.
And I was involved in the design of a

would have been lower damages, but it would have been inappropriate in this case.

Q. Why is February 26th an appropriate date for the debt; whereas, February 23rd is the appropriate date for the stock?

A. Because the stock price that I use is linked to the value of the debt. And when we're looking at March 30, we're looking at a stock price that's closer to the February 26th price than to the February 23rd price.

Q. But the stock price for Coleman between February 23rd and February 26th moves, by your analysis, to reflect the merger premium. There are two factors. One is the merger premium?

A. Yes.

Q. Is there any evidence that there would be a merger premium in the debt return?

A. No. The debt return is a derivative security of the stock, whatever the market believes is the source of its price.

One of the things I did on Wall Street was to value high-yield debt. And the way to think about that high-yield debt is that it's an option on the assets of the company as is the stock, so transactions would often take place in

the debt where you would hedge the debt transaction by, for example, shorting the stock.

I know of several cases where arbitrageurs did this on Wall Street, and they could hedge that because the equity and the debt, when the debt is high-yield, are proxies for these -- each other in a very complicated way. And just as -- There was a Nobel Prize awarded for this -- you can value any option in relation to the underlying stock, you can value in this particular circumstance -- this is very simple zero coupon debt -- You can value this debt in relation to the underlying stock.

So the fact that a merger-related premium is attached to it is unimportant. What's important is actually what the price is. And I've got a benchmark for what a stock price on March 30th is by going to February 26th. It doesn't matter to me whether it's caused by a merger -- an inflation due to accounting or inflation due to merger rumors or anything. The fact that it's a number that's close to the number on March 30 for the true value tells me that I can use this whole option pricing technology developed by Black and Scholes to value that high-yield debt

business experience as well as from my academic experience that you can sell anything and capture any kind of gamble in the financial markets, particularly if you're a wealthy investor or an institutional investor with access to the most sophisticated vehicles of modern finance.

Q. Have you looked at how Coleman could have sold this particular investment, how Coleman (Parent) Holdings could have sold this particular investment?

A. Well, as I stated in my report, I saw no evidence that they couldn't have captured this value or shorted Sunbeam stock or entered into a total return swap. The legalities of a physical transfer of those shares, you know, with the restrictions that may have been placed on them in the merger, I'm -- you know, I'm -- that's more of a legal opinion, but it's not relevant to the economics of this case. I believe they could have captured that value, and even if they could -- have captured it at that time with some form of hedging transaction, it would not have affected my damage calculation.

Q. I -- I understand that latter point, but now I'm talking about how they could have

captured it. Have you developed or outlined a strategy that they could have used that would have been legal and appropriate in this case to do that transaction?

A. I don't know what's legal or illegal in this case. What I suggested in my report is a number of vehicles that I think would be available to any holder of restricted stocks or illiquid shares. Investment banks are willing to make bets with you on almost anything.

In my hedge fund experience, for example, when I went around, I talked to in -- investment banking people in the -- associated with the hedge fund industry and said: If I want to sell shares, but there's some legal restriction associated with it, associated with the securities laws, can I just enter into a swap with you?

And they said, Well, we can do swaps out of London on almost anything.

So to the extent that I have general knowledge that you can hedge almost anything, they can capture that value.

Whether there was some physical, legal issue involved that prevented them from physically selling those specific shares as opposed to

for large and wealthy investors, not, perhaps, for you and me, but, you know, for somebody with sufficient capital and access to sophisticated financial advisors and accounts that could be set up all over the world, I see no reason that this could not have been done.

BY MR. BRODY:

Q. Have you formed any opinions as to the amount of the stock that could have been hedged?

A. I -- I don't have an answer to that, but I see no reason why all of it could not have been hedged nor is that relevant to my damage calculation.

Q. I know it's not relevant to your damage calculation, but you've criticized Mr. Nye for it, for -- for not looking into this, and so I want to evaluate it a little more carefully.

A. Yeah.

Q. Do you know what the investment banks were offering at the time in terms of the volume of stock that they would hedge?

A. I haven't specifically looked into this transaction.

Q. Okay.

A. All of my knowledge with respect to

the answers I've been giving you is a general impression I have from my business experience in the financial markets as well as my 24 years of teaching and -- about securities. And one of the principles I teach my student is, you know, the way financial markets are set up today, you can hedge anything.

Q. Now, you also talked about Rule 144.

A. Yes.

Q. Do you consider yourself expert in the manner in which Rule 144 operates?

A. I am not a legal expert on Rule 144A. I teach Rule 144A as a -- just a general principle about what can be done with privately held stock. I mentioned it in my textbook, but I am not a legal expert on the specifics of when and when it cannot be applied.

Q. Do you know if McAndrews & Forbes or its companies would have been considered an affiliate of Sunbeam under Rule 144A at any time?

A. I don't have any knowledge about --

Q. Do you have any knowledge about whether 144A imposes limits on a potential seller's ability to sell, the amount of stock that can be sold in a -- any given time period?

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

CASE NO: CA 03-5045 AI

SUPPLEMENT TO
MORGAN STANLEY'S MOTION IN LIMINE NO. 13
TO STRIKE THE EXPERT OPINION
OF SAMUEL J. KURSH AS UNTIMELY AND CUMULATIVE

On January 26, 2005, Morgan Stanley moved to strike the testimony of CPH expert Samuel Kursh for three separate and independent reasons: (1) Kursh's testimony relates solely to the valuation of The Coleman Company — the very same topic for which CPH offers two other experts, Michael Wagner and Blain Nye; (2) Kursh's "out-of-pocket" valuation theory arrives at a different conclusion than Wagner's "out-of-pocket" valuation opinion and utterly contradicts the "expectation damages" theory offered by Nye; and (3) CPH failed to file Kursh's rebuttal expert report in a timely fashion and has failed to make Kursh available for deposition in this case. At this stage of the case CPH should have already settled on its damages theory and shown its cards to Morgan Stanley.

Since the filing of Morgan Stanley's Motion in Limine No. 13 To Strike the Expert Opinion of Samuel Kursh on these grounds, CPH has yet to make a reasonable proposal to make Kursh available for deposition. On February 4, 2004 — ten days before the start of the four day Pretrial Conference — CPH sent a letter to Morgan Stanley stating that Kursh could be made available ***in Delaware or Pennsylvania*** for four hours on February 11 and again the following week for four additional hours, either February 14, 15, or 16, during the Pretrial Conference.

(Feb. 4, 2005 M. Brody Letter. to T. Clare (Ex. 1).) CPH cannot take the position that Kursh's health prevents him from submitting a timely report and giving an ordinary, timely deposition in Florida, and also conveniently maintain that Kursh is available to testify at trial as needed.

In the Court's January 12, 2005 Order granting CPH's request to extend time for filing Kursh's rebuttal report, the Court acknowledged Morgan Stanley's right "to seek to exclude all or part of Mr. Kursh's testimony if it is unduly prejudiced by the delay." Morgan Stanley ***has*** been unduly prejudiced by the delay. CPH has already gained an unfair tactical advantage with respect to Kursh by ***missing*** the December 28, 2004 rebuttal report date, (CPH filed Kursh's report a month later on January 24), ***missing*** the deadline for expert depositions, ***missing*** the January 14 date for expert designations, ***missing*** the January 21 and 28 dates for objections and counter-designations, ***missing*** the January 26, 2005 date for motions in limine regarding experts and ***missing*** the February 5 response date for those motions. The Court cautioned CPH over a month ago that further delay would result in Kursh's exclusion: "[T]he longer the time goes, the more likely it is that [Morgan Stanley] is going to be prejudiced, which means for whatever reason this evidence isn't going to come in." (Jan. 12, 2005 Hrg. at 17:20-18:1.)

Because the parties are on the eve of trial, and CPH has yet to disclose to Morgan Stanley what damages theory it intends to pursue or to make reasonable arrangement for its third (alternate) damages expert to be deposed, and because Kursh is redundant, duplicative, and cumulative of CPH's other expert testimony, Kursh should be excluded from trial. *See Binger v. King Pest Control*, 401 So. 2d 1310, 1314 (Fla. 1981) (affirming trial court's right to exclude expert testimony for failure to comply with pretrial order in order to help "eliminate surprise and avoid trial by 'ambush'").

WHEREFORE, Morgan Stanley respectfully requests that this Court enter an order striking the testimony and opinions of CPH expert Samuel J. Kursh.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and hand delivery on this 9th day of February 2005.

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Exhibit 1

JENNER&BLOCK

February 4, 2005

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Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Tom:

I write concerning the health of Dr. Samuel Kursh.

Dr. Kursh has been advised by his doctor that he may resume an abbreviated work schedule. Dr. Kursh has advised us that he is available for a deposition on February 11. Due to his recent heart surgery, Dr. Kursh requests that the deposition be limited to four hours per day. If you need additional time to conclude the deposition of Dr. Kursh, he can make himself available for a second session on either February 14, 15, or 16. Dr. Kursh requests that the deposition take place in Wilmington, Delaware. If this is not convenient to you, Dr. Kursh could make himself available in Philadelphia.

Please advise me whether Morgan Stanley wishes to go forward with Dr. Kursh's deposition on the days we have offered.

Very truly yours,

Michael T. Brody

MTB:cjg
cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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